

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 001332-TL - Intrastate
tariffing of xDSL Service by BellSouth
Telecommunications, Inc., Verizon Florida,
Inc. and Sprint-Florida, Incorporated.

BEFORE: CHAIRMAN E. LEON JACOBS, JR.
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 27

DATE: Tuesday, February 6, 2001

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Tallahassee, Florida

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DAVID DOWDS, Commission Staff.
SEAN FLEWMAN, City.com Communications Services.
BILL HEINZ, Tampa Bay DSL.
DUSTIN JURMAN, Rapid Systems Corporation.
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DAVID SELTZER, Rapid Systems Corporation.
RICHARD SHINE, on behalf of FISPA.
SALLY SIMMONS, Commission Staff.
NANCY WHITE, BellSouth Telecommunications, Inc.

STAFF RECOMMENDATION

Issue 1: Should the Commission order BellSouth Telecommunications, Inc., Verizon Florida, Inc., and Sprint-Florida, Incorporated to file intrastate xDSL tariffs?

Recommendation: Yes. The Commission should order BellSouth, Verizon, and Sprint to file intrastate xDSL tariffs with this Commission within 30 days of the issuance of a consummating order. The ILECs' intrastate xDSL tariffs should mirror their FCC tariffs.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the order, the order will become final upon the issuance of a consummating order. Thereafter, tariffs should be filed within 30 days of the issuance of the Commission's order. This docket should be closed after tariffs have been filed. If a timely protest is filed, the docket should remain open pending the outcome of further proceedings.

1 CHAIRMAN JACOBS: Item 27.

2 MS. SIMMONS: Commissioners, Item No. 27
3 concerns staff's recommendation to require
4 intrastate tariffing of xDSL offerings by
5 BellSouth, Verizon, and Sprint.

6 We have a number of parties here to speak,
7 but first I would just like to make a few
8 opening remarks. I think a key point is that
9 customer complaints on installation and repair
10 intervals really are the driving force behind
11 this recommendation.

12 Additionally, staff has provided a number
13 of different arguments that we believe
14 substantiate that xDSL services are at least in
15 significant part intrastate in nature.

16 Thirdly, even if the communication is
17 viewed on an end-to-end basis as the FCC has
18 advocated, there is no assurance that the
19 destination is interstate. Due to popular
20 websites increasingly being stored in multiple
21 servers, the destination is now in much closer
22 proximity to the end user than it might have
23 been a few years ago.

24 Additionally, the communication with the
25 website is not continuous. During a single

1 website session, and end user is viewing a
2 snapshot in time.

3 Finally, with xDSL service, data and voice
4 communication are or can be commingled over the
5 same loop, and staff's recommendation is
6 designed to ensure that this Commission
7 maintains jurisdiction over voice regardless of
8 the technology used to provide the
9 functionality.

10 Staff has received a number of e-mails
11 concerning this recommendation, roughly 30,
12 which we have tried to distribute to the
13 Commissioners and aides, and we've provided some
14 copies for the parties. Mr. Audu will just make
15 a brief remark about the e-mails.

16 MR. AUDU: Commissioners, thus far we have
17 received close to 40 e-mails. These e-mails are
18 primarily from ISPs around the state, of which
19 about -- a good number of them are here, and
20 they do intend to address the Commission.

21 But primarily these e-mails are going to
22 address their own experiences out there in the
23 real world as to provision of xDSL. While they
24 are not directly on target with what we are
25 doing here today, I mean, suffice it to say that

1 these basically go on to underline, I mean, a a
2 number of customer issues that we've raised and
3 the need for an ability to intervene with
4 regards to quality of service.

5 That's all I have.

6 CHAIRMAN JACOBS: Very well. I assume all
7 on the back row are going to participate as
8 well.

9 Given that we have a good number of
10 speakers, I would -- I'm not going to put a time
11 limit on, but I would ask all the speakers to be
12 mindful that we do have a good number of
13 speakers and to govern your time accordingly.
14 And if possible, if your comments have already
15 been essentially given by a previous speaker,
16 feel free to just adopt those prior comments.

17 Ms. White.

18 MS. WHITE: Yes. Nancy White for
19 BellSouth Telecommunications. I'm also going to
20 speak generally on behalf of Verizon and Sprint,
21 which is a fairly unusual situation. If I don't
22 say something they agree with or if they have
23 things to add, I'm sure they will do so.

24 First of all, we believe that the staff
25 recommendation is wrong, and we believe it is

1 wrong for many reasons. The first -- in the
2 first instance, I think it's necessary to give
3 you a short technical summary of what ADSL is
4 and what it is not. And you'll have to bear
5 with me. I am not a technical person. I am not
6 a computer expert. I'm not an Internet expert.
7 So what we have tried to do -- and what
8 Ms. Caswell is handing out to you now is a very
9 simple diagram of how ADSL works.

10 ADSL is not POT service. It is not plain
11 old telephone service. It is not circuit
12 switched. It is not a dial-up connection. It
13 is a dedicated special access service.

14 As you can see from the diagram, it
15 provides a high-speed access connection between
16 an end user and an Internet service provider.
17 The end user is provided with a computer modem.
18 On some occasions, the computer may have the
19 modem in it. On most occasions, the modem has
20 to be hooked up to the computer at the
21 customer's premises. It is then connected to
22 the network interface device on the outside of
23 the computer -- customer's premises, and then it
24 goes from the network interface device to the
25 DSLAM, which is the digital subscriber line

1 access multiplexer. At that point, the voice
2 communication is stripped off and goes to the 5E
3 switch in my diagram, while the data portion of
4 it, the high-speed portion of it goes on to, in
5 BellSouth's case, its packet-switched network,
6 which is the ATM network, and then on to the
7 ISPs, including BellSouth.net, and then on to
8 the Internet.

9 POTS is not required to provide ADSL. You
10 do not have to have a dial-up line in order to
11 have ADSL service. An end user can use their
12 telephone line while they are on the Internet.
13 That makes it quite unlike a dial-up connection
14 where you're using your POTS line to reach the
15 ISP, and when you're on the Internet and on your
16 computer, you cannot use your telephone line.
17 With ADSL you can speak on your telephone as
18 well as surf the net at the same time. I often
19 do it when I'm talking to family members that
20 like to talk for hours at a time. The POTS can
21 work if the ADSL service goes down. ADSL
22 service continues to work if the POTS line goes
23 down.

24 BellSouth sells ADSL solely to Internet
25 service providers. BellSouth does not sell ADSL

1 service to end users. In turn, the Internet
2 service providers sell to end users.

3 The availability of ADSL service is
4 technically limited. The distance from the
5 central office at which an end user is located
6 and the makeup and condition of the end user's
7 loop are factors that limit the provisioning of
8 ADSL.

9 Now, one of the most important things --

10 COMMISSIONER DEASON: Ms. White, let me ask
11 you a question.

12 MS. WHITE: Sure.

13 COMMISSIONER DEASON: You said that BellSouth
14 does not sell DSL directly to end use customers?

15 MS. WHITE: That is correct.

16 COMMISSIONER DEASON: Is that a business
17 decision or a regulatory mandate?

18 MS. WHITE: I have to say probably at this
19 point in time it's a business decision.

20 COMMISSIONER DEASON: Okay.

21 MS. WHITE: One of the other important
22 things you have to know about ADSL is that it is
23 an extremely competitive service. ADSL is
24 simply connections to the Internet. The ILECs,
25 the incumbent local exchange companies are not

1 monopoly providers in this area. We compete
2 with ALECs, we compete with satellite providers,
3 we compete with cable television providers, and
4 we compete with wireless. For example, AT&T,
5 MediaOne, Time Warner, and Cox all provide this
6 type of service over cable modems using coaxial
7 cable, high speed.

8 In fact, there are eight -- as of June of
9 2000, there were eight of such providers in
10 Florida. ALECs, both facility-based and
11 resellers, provide this service. Examples of
12 facility-based ALECs who provide this service
13 are Covad and Rhythms. Resellers who provide
14 this service are MindSpring and Telocity.
15 Satellite and wireless providers provide this
16 service, DirecPC, MCI, AT&T, Gilat Satellite
17 Networks.

18 Florida is second only to California in the
19 number of subscribers to high-speed lines. In
20 fact, the total customers of all these providers
21 as of June of 2000 were 240,895. And this comes
22 from an FCC Trends in Telephone Service --

23 COMMISSIONER JABER: What's that number
24 again?

25 MS. WHITE: 240,895. And that was as of

1 June of 2000.

2 COMMISSIONER JABER: And that's for --

3 MS. WHITE: For Florida, for all providers
4 of this service.

5 Now, the Commission staff's -- one of their
6 main reasons for saying that this service needs
7 to be tariffed on an intrastate basis is that
8 they are receiving complaints from end users.

9 well, BellSouth and Verizon and Sprint
10 fully understand and appreciate staff's
11 concerns. In fact, the second handout that
12 Ms. Caswell gave you is a letter that these
13 three companies sent to the Commission staff on
14 November 8th of 2000, in which these three
15 companies agreed to handle inquiries and
16 complaints on this service consistent with Rule
17 25-22.032 of the Florida Administrative Code,
18 which deals with customer complaints.
19 BellSouth, Verizon, and Sprint have all pledged
20 to treat end user ADSL complaints just like we
21 treat any other complaint.

22 In fact, 17% of BellSouth's ADSL complaints
23 or end user ADSL complaints are concerned with
24 the fact that ADSL is not available in a
25 specific end user's neighborhood, for the

1 technical reasons I talked about earlier.

2 Demand has exceeded forecast. Demand has
3 exceeded supply. There are growing pains. We
4 don't doubt that. We understand that there are
5 end user complaints. We deal with them as best
6 we can, and we have pledged to the staff to work
7 with them on that.

8 The billing, as far as BellSouth is
9 concerned, BellSouth sells ADSL to all ISPs,
10 including BellSouth.net. The billing appears on
11 the unregulated portion of the BellSouth bill if
12 they're a BellSouth.net customer, and POTS
13 cannot be disconnected for nonpayment of the
14 ADSL.

15 Now I would like to talk for a few minutes
16 about the legal arguments that staff has put
17 forward in their recommendation.

18 COMMISSIONER JABER: Before you switch
19 gears to that, can you tell me when BellSouth,
20 for example, began deploying ADSL?

21 MS. WHITE: I think it was in '99.

22 COMMISSIONER JABER: Okay.

23 MS. WHITE: I'm looking for some assistance
24 here. I believe it was in '99. I can tell you
25 that as of -- at the end of '99 we had 11,000

1 subscribers, so it might have started in '98.
2 But as of '99, we had 11,000 subscribers, and by
3 the end of 2000, we have -- BellSouth has 89,724
4 subscribers in Florida. This is in Florida.

5 COMMISSIONER PALECKI: I have a question.

6 MS. WHITE: Sure.

7 COMMISSIONER PALECKI: You had mentioned
8 earlier that you have DSL service and that you
9 are able to use the dial-up telephone while
10 you're using the DSL service. Do you
11 acknowledge the Commission's jurisdiction over
12 the dial-up service?

13 MS. WHITE: Absolutely. The dial-up
14 service that I'm using is plain old telephone
15 service. I am talking on the phone, either on a
16 long distance call or a local call. Of course,
17 that is Commission jurisdiction. But the ADSL
18 part, the part that I'm using to reach the
19 Internet, is an interstate service, and I don't
20 believe that the Commission has jurisdiction
21 over that. I believe that is an FCC
22 jurisdictional matter.

23 Again, BellSouth believes, and Verizon and
24 Sprint do as well, that the staff's position is
25 contrary to existing law. The FCC in an order

1 issued in the GTE ADSL tariff in 1998, which was
2 FCC Order 98-292, and then again in the Bell
3 Atlantic ADSL tariff, Order No. 98-317, found
4 that ADSL is an interstate service properly
5 tariffed at the federal level. They relied on
6 the end-to-end theory of the call, and that is
7 when you just look at the totality of the call
8 from the end user premise to where the call ends
9 up.

10 Staff's position is that you should look at
11 it as a two-call theory, in other words, the end
12 user calls the ISP, which may or may not be a
13 local call, and the ISP contacts the Internet.
14 The FCC said that the end user doesn't seek to
15 reach the ISP with the ADSL, they seek to get to
16 the Internet, and that the purpose of ADSL is to
17 originate and terminate interstate
18 communications.

19 The FCC recognized that because ADSL
20 service provides a direct connection between
21 users, end users and ISPs, it is a special
22 access service, and a special access service is
23 interstate if more than a de minimis amount of
24 the traffic it carries is interstate. More than
25 a de minimis amount of ADSL-carried Internet

1 traffic is destined for websites in other states
2 and other countries.

3 A second issue here is that the Commission
4 has an ongoing generic ISP docket, Docket No.
5 000075-TP, in which some of these same issues
6 are looking to be decided. We are concerned
7 that if the Commission makes this decision and
8 votes the staff rec., they will have prejudged
9 that case. We have a very big concern about
10 that.

11 COMMISSIONER JABER: Ms. White, does the
12 State Commission have any jurisdiction over
13 Internet service, period, any kind of Internet
14 service?

15 MS. WHITE: I hesitate to give you a
16 blanket answer on that only because I don't know
17 what could happen in the future. Technology is
18 changing so very quickly.

19 COMMISSIONER JABER: Today, as it exists
20 today.

21 MS. WHITE: Today, as it exists today, I
22 would say no, they do not.

23 COMMISSIONER JABER: If that's the case,
24 why do we have to define service through ADSL as
25 interstate or intrastate? Why do we even need

1 to reach the definition of how the call is made?

2 MS. WHITE: Well, I think I'm reacting to
3 what the staff has put in their recommendation.
4 I think -- you're looking at two different
5 things. One, are you talking about regulating
6 the Internet, which is actually regulating
7 websites, regulating content, or are you talking
8 about regulating the access to the Internet?

9 I think to some degree, access to the
10 Internet is regulated by the Florida Commission,
11 and that's when you're looking at dial-up
12 connections, because that's when you're just
13 using your local line to dial it up. It dials
14 it up like it dials up any other call,

15 The Commission has some limited
16 jurisdiction over that, because they're looking
17 at the issue of whether that dial-up connection
18 is a local call for purposes of reciprocal
19 compensation. And the FCC had not reissued an
20 order on that since the Eighth Circuit -- I
21 believe it was the Eighth Circuit's remand, so
22 to that extent and on that particular issue
23 right now, I think there is jurisdiction for the
24 Florida Commission.

25 But to me and to us here, this situation is

1 no different than when the FCC put out comments
2 and asked for comments on open access to cable
3 modem services. And in November of 2000, this
4 Commission was briefed by the staff on whether
5 they wanted to provide comments on that docket,
6 which was docket -- I'm sorry. I don't have the
7 docket. But the Commission eventually decided
8 not to file comments coming down one way or the
9 other.

10 But the staff had some interesting comments
11 in their presentation to the Commission. The
12 Commission staff said that the -- "The logical
13 extension of the policies would create more
14 regulation, not less, and could have the
15 unintended consequences of deterring further
16 advanced communications development over the
17 Internet." The staff stated, "Given the highly
18 competitive nature of the broadband market and
19 the inability of regulators to at times keep up
20 with the pace of technological change, the most
21 appropriate policy could quite possibly be to
22 forbear from open access regulation." And in
23 fact, the staff went on to say that it could be
24 characterized as a, quote, solution in need of a
25 problem.

1 The bottom line here is that the staff rec.
2 is wrong. ADSL is not POTS. It is not like
3 POTS. It is jurisdictionally interstate. It is
4 a competitive service. BellSouth, Verizon, and
5 Sprint have previously addressed the
6 Commission's concerns with customer complaints
7 and will continue to do so.

8 Intrastate regulation of ADSL will stymie
9 competition and growth. It will prejudice, we're
10 afraid, the generic ISP docket.

11 And not only that, but you've got a
12 situation here where you've got all these
13 providers who provide this kind of service, but
14 right now we're looking at three companies that
15 have been singled out by the staff, so we
16 believe there's some discrimination there. We
17 don't believe that it should be regulated on an
18 intrastate basis at all, but we believe that to
19 single out BellSouth, Verizon, and Sprint for
20 this is just wrong, and it's discriminatory.

21 We urge the staff -- we urge the Commission
22 to reject the staff recommendation.

23 Thank you.

24 CHAIRMAN JACOBS: Thank you.

25 COMMISSIONER DEASON: Mr. Chairman, I have

1 a question. Did I understand you correctly to
2 say that if we tariff it, that action will
3 stifle growth?

4 MS. WHITE: I believe it will.

5 COMMISSIONER DEASON: Can you explain that?

6 MS. WHITE: Well, one of my concerns is,
7 you know, I've already talked about how the
8 provision of ADSL is technically limited. You
9 have to be a certain distance from the central
10 office in order to get it. Your loop has to be
11 of a certain type.

12 If you tariff it, is the Commission going
13 to say, "well, Joe Smith in this neighborhood
14 wants it, and we think you should have to
15 provide it, so you have to put in all the
16 network"? well, you know, it may not be
17 technically -- I mean it may not be economically
18 efficient to do that. But you would have -- if
19 you've tariffed it, if you've said we're going
20 to regulate this service, you would have the
21 authority to do that.

22 COMMISSIONER DEASON: So if we tariffed it,
23 we -- you're concerned that if we tariff it, we
24 will order you to install it where it is not
25 economic to do so?

1 MS. WHITE: I believe that's a very great
2 fear, a real fear.

3 COMMISSIONER DEASON: Well, how does that
4 stifle growth?

5 MS. WHITE: Well, I think that you've just
6 limited three companies from the market. You've
7 just foreclosed the market. You've said all
8 these other people don't have to worry about
9 regulations. They don't have to answer to
10 anyone but the FCC or to their own shareholders,
11 but these three companies, Verizon, Sprint, and
12 BellSouth, not only have to answer to their
13 shareholders and the FCC on the interstate part,
14 but they also have to answer to the Florida
15 Public Service Commission.

16 COMMISSIONER DEASON: So you think there's
17 no responsibility on your part if -- if a
18 customer wants broadband service and he can't
19 get it from satellite, he can't get it from
20 cable, and he can't get it from wireless, his
21 only opportunity is from his incumbent LEC. And
22 if he has the right type loop and he's within
23 the correct distance from the central office,
24 how then if we order you to do that and it's
25 economic, how does that stifle growth?

1 MS. WHITE: Well, but I think when it's a
2 competitive service, which it is, you're going
3 to say, "Okay, what are the neighborhoods that
4 are going to give the most bang for my buck?"

5 I mean, you know, it's not a dirty thing to
6 say that people are in this business and in the
7 Internet service provider business to make
8 money. There's nothing wrong with that. And so
9 you're going to go to the neighborhoods where
10 you believe that you're going to get -- the most
11 people are going to say, "Yes, I want it." It's
12 not going to be one person out of the entire
13 neighborhood that wants it, so you put all that
14 network in and all that deployment. Plus,
15 because it is a competitive service and because
16 resources are limited, you're really going out
17 to where you're going to get the most money for
18 your investment dollar.

19 COMMISSIONER BAEZ: Ms. White?

20 MS. WHITE: Yes, sir.

21 COMMISSIONER BAEZ: I need you to clarify
22 something for me. You said at the start that
23 BellSouth -- and I don't want to round up
24 everybody else on this, but you at least, your
25 company doesn't provide DSL service it end

1 customers. You provide it to ISPs.

2 MS. WHITE: Through the interstate tariff,
3 that's right.

4 COMMISSIONER BAEZ: Now, is it -- so
5 there's no contractual -- there's no contractual
6 relationship there? I mean, what position is
7 the ISP in when they're buying DSL and then
8 turning it back over to the -- I mean, it's got
9 to get to the end customer --

10 MS. WHITE: Of course.

11 COMMISSIONER BAEZ: -- through someone.

12 MS. WHITE: Of course. There's a couple of
13 ways to answer that. The ISPs are buying it,
14 from BellSouth at least -- and that's all I can
15 speak for in this instance, but they're buying
16 it from BellSouth pursuant to the FCC tariff.
17 It's tariffed at the FCC.

18 If they have a problem, I don't know,
19 pricing, something like that, their avenue is to
20 go to the FCC. If their end user has a problem,
21 then the end user -- it's kind of like an ALEC
22 situation where somebody is buying service from
23 us and reselling it. The end user goes to the
24 ISP, to their ISP provider and says, "Something
25 is wrong with my service." The ISP usually

1 comes to BellSouth, you know, and we work it out
2 that way and try to get the issue resolved.
3 Just like an ALEC who is reselling BellSouth's
4 service, their end user would go to the reseller
5 and say, "My service isn't working," and the
6 reseller would look on their end to see if
7 there's anything wrong and then would work with
8 BellSouth on seeing what the problem was and how
9 to fix it.

10 BellSouth is not interested in having end
11 users without service, whether they be
12 BellSouth.net customers or anybody else's
13 customers. I mean, the way to make money in
14 this is to keep the service up, to keep it
15 running, to have a good reputation. So, I mean,
16 there's no incentive to not respond to the
17 questions and to the issues.

18 COMMISSIONER JABER: BellSouth.net is an
19 ISP?

20 MS. WHITE: That is correct.

21 COMMISSIONER BAEZ: And that's the only --
22 and I guess that is one of many alternatives for
23 -- you know, if I was in a territory that
24 BellSouth.net --

25 MS. WHITE: That's correct.

1 COMMISSIONER BAEZ: -- was offering
2 service, I would have to go through
3 BellSouth.net to get ostensibly DSL service
4 that's being provisioned by --

5 MS. WHITE: You as an end user.

6 COMMISSIONER BAEZ: As an end user, right.

7 MS. WHITE: If you want to use
8 BellSouth.net as your ISP, yes, you would go
9 through them to get the service, or you could go
10 to any other ISP.

11 COMMISSIONER BAEZ: Could I switch from
12 BellSouth.net to another ISP provider --

13 MS. WHITE: Sure.

14 COMMISSIONER BAEZ: -- and still have DSL
15 service?

16 MS. WHITE: If that ISP provider provides
17 DSL service pursuant to the tariff, sure.

18 COMMISSIONER BAEZ: Now, if DSL was
19 tariffed intrastate, would that create a
20 requirement for you to now offer the service
21 directly to end customers? I mean, is that part
22 of the -- is that part of the package?

23 MS. WHITE: I'm not sure. I guess it would
24 depend on what the tariff said and on what you
25 said as to --

1 COMMISSIONER BAEZ: Well, and here's a
2 question for staff. Is the end result that you
3 would like to see based on this recommendation
4 that somehow a tariff substantially similar to
5 that which is filed at the FCC be filed with the
6 state, be filed with the PSC?

7 MS. WHITE: And if that's the case --

8 COMMISSIONER BAEZ: And maybe I'm
9 oversimplifying.

10 MS. WHITE: -- then it's a wholesale
11 tariff, because essentially what BellSouth has
12 at the FCC is a wholesale tariff. We only
13 provide to end users -- excuse me, to ISPs
14 through the interstate tariff. If you file the
15 same identical thing at the state level, you
16 would only be providing to ISPs, not to end
17 users.

18 COMMISSIONER BAEZ: Is that --

19 MS. SIMMONS: Well, staff's recommendation
20 is that the affected companies would file
21 tariffs at the intrastate level that would
22 mirror their FCC tariffs. That's our point of
23 departure.

24 COMMISSIONER BAEZ: So what we're getting
25 is a wholesale tariff, essentially, what we

1 would be requiring.

2 MS. SIMMONS: At which time the tariffs
3 would be filed, I think then there could
4 possibly be other questions, but that's our
5 starting point.

6 COMMISSIONER JABER: Shouldn't we know what
7 those questions are before we go down this
8 road? I think Ms. White raises a very
9 legitimate concern about if we require that they
10 file tariffs, then we better be ready to address
11 the concerns about access to certain areas. We
12 better be ready to address concerns associated
13 with universal service maybe related to that
14 access. Where is it you draw the line?

15 MR. DOWDS: May I answer -- respond to some
16 of the points she made first and then respond?
17 It's the same point.

18 COMMISSIONER JABER: David, actually, I
19 think we interrupted them.

20 MR. DOWDS: I'm sorry.

21 COMMISSIONER JABER: Mr. Chairman, do you
22 want Ms. Caswell to finish?

23 CHAIRMAN JACOBS: We're about 25 minutes.
24 How far along are we?

25 MS. WHITE: I'm done, and I will turn it

1 over to Ms. Caswell.

2 MS. CASWELL: Yes, and I just have a few
3 brief comments.

4 CHAIRMAN JACOBS: I appreciate it.

5 MS. CASWELL: Of course, we concur in
6 Ms. White's remarks, because it was a joint
7 presentation, but I wanted to make a couple of
8 Verizon-specific comments.

9 But first I wanted to emphasize that while
10 Verizon has never conceded that its ADSL service
11 is jurisdictionally intrastate, neither has it
12 raised that point with the Commission to try and
13 prevent it from becoming involved in resolving
14 any ADSL complaints. Verizon has always treated
15 ADSL complaints just like any other Commission
16 complaint and has not tried to limit the
17 Commission's involvement in the process. And
18 staff has never indicated to Verizon that there
19 has been any lack of cooperation on Verizon's
20 part, so that part of the recommendation came as
21 somewhat of a surprise to the people that handle
22 the complaints in our company.

23 Verizon has 18,700 subscribers to its ADSL
24 service, and 17 of those customers have
25 complained to this Commission. With regard to

1 those 17 complaints, I don't think you'll see
2 any market trend toward to any particular kind
3 of problem. Like BellSouth, Verizon has had
4 some problems with service rollout because it's
5 a new service and because of the high demand,
6 but we expect to have those problems resolved.
7 And tariffing, if anything, will make these
8 problems worse, in our opinion, because -- I'm
9 sorry.

10 CHAIRMAN JACOBS: Go ahead and finish. It
11 sounded like you were going to --

12 MS. CASWELL: Yes. Tariffing would limit
13 -- tariffing would mean we can't move as
14 quickly, as efficiently, and as freely as our
15 competitors do in this market, and the end
16 result would be that competition is not as
17 robust as it otherwise would be and as it is
18 now.

19 COMMISSIONER DEASON: Let me ask you a
20 question on that point. It's tariffed now at
21 the FCC.

22 MS. CASWELL: Yes.

23 COMMISSIONER DEASON: So if you're going to
24 do any changes to your service, you have to
25 change it at the FCC; correct?

1 MS. CASWELL: Yes.

2 COMMISSIONER DEASON: Now, are you saying
3 that we're slower here at the FPSC than the FCC
4 is?

5 MS. WHITE: Absolutely not.

6 MS. CASWELL: No.

7 MS. WHITE: Absolutely no.

8 COMMISSIONER JABER: Good answer.

9 CHAIRMAN JACOBS: wonderful answer.

10 MS. CASWELL: In any event, if the point of
11 the recommendation is to ensure resolution of
12 complaints that come to the Commission, I'm not
13 sure we have any problem here, at least from
14 Verizon's perspective. And it's certainly not a
15 problem that would require the extreme solution
16 of intrastate tariffing of a service that the
17 FCC has clearly said is interstate in nature.

18 As Verizon told the FCC in its ADSL docket,
19 if Verizon does offer an intrastate ADSL
20 service, it will tariff that service in the
21 intrastate jurisdiction. And in other states,
22 we have had instances where we offer under
23 contract an intrastate ADSL service, and in most
24 cases, we will require the customer to certify
25 that at least 90% of the traffic is intrastate.

1 If it's not, then the customer has to take out
2 of the interstate tariff.

3 Again, it's an either/or question with
4 regard to the tariffing and the way service is
5 offered. Either it's interstate or intrastate,
6 and there's no room in the FCC orders for a dual
7 tariffing of the nature that's recommended here.

8 Those are all the comments that I have,
9 Commissioners. Thank you.

10 CHAIRMAN JACOBS: Mr. Rehwinkel.

11 MR. REHWINKEL: Yes, Commissioners, nimble,
12 speedy, and efficient Commissioners, I might
13 add. My name is Charles Rehwinkel. I'm here
14 on behalf of Sprint-Florida. I have a very few
15 comments to make. I want to say we do sell
16 directly to end users under our interstate
17 tariff. We also sell on a wholesale basis to
18 ISPs.

19 My comments mirror Ms. Caswell's comments
20 as far as our willingness, history, and track
21 record of working with staff on resolving these
22 complaints no different than any POTS complaint
23 or other service complaint.

24 I guess kind of to take my opportunity to
25 respond to some of the questions, especially

1 Commissioner Deason's about tariffing, we view
2 tariffing as being tantamount to asserting
3 regulatory authority, and that drives you down
4 the road to saying, "How are you going to
5 regulate?" And there's a clear flavor in the
6 staff recommendation that regulation of the
7 service with respect to service intervals,
8 repair, and installation would be no different
9 than POT service. We think that you need to ask
10 the question that Commissioner Jaber asked,
11 which is, "Where are we going to end up with
12 this recommendation?"

13 Looking at the ex parte comments that have
14 been filed here, I think I am drawn to say,
15 "Look at the Pandora's box of issues that are
16 being opened here." I think the staff's concern
17 is with regulation and tariffing of our
18 relationship with our end users, and I think
19 what you're going to see here today is wholesale
20 providers coming and asking you to intercede on
21 their behalf, and I don't think that's the
22 direction the staff is looking for.

23 I have strong opinions about what the
24 statute authorizes with respect to you ordering
25 us to deploy advanced services in our territory.

1 I don't think that beyond our carrier of last
2 resort obligation that the statute sets out that
3 you have that authority. I'm not here today to
4 say -- you know, to stick my finder in your eye
5 and say you can't do something. I'm asking you
6 to be very cautious in rushing to do something
7 that will draw you down a path of no return.
8 You are being drawn into the open access debate
9 that you've seen around the country at the local
10 government level with the FCC, and I don't think
11 -- I think your comments back in November said
12 you were not going to get into that debate.

13 COMMISSIONER JABER: Mr. Rehwinkel, let's
14 say we did want to travel that road. Do we have
15 the statutory authority to require that you file
16 a tariff for the DSL service?

17 MR. REHWINKEL: I've contemplated that
18 question in the last week or so since I've seen
19 the recommendation, and I'm not sure that you
20 do. I'm not sure that you have ordered a
21 company to file a tariff to introduce a service
22 since 1995. I could be mistaken about that, but
23 I don't recollect that you have, especially a
24 service that would not be characterized as
25 basic. So I can't say for certain that you

1 don't, but I tend to think that you do not.

2 I think in that -- my opinion is based on
3 the principle of administrative law that the
4 Supreme Court has affirmed in this state that a
5 legislative body does not have -- an agency does
6 not have any authority that it is not
7 affirmatively granted.

8 Thank you.

9 COMMISSIONER DEASON: Let me ask you a
10 question. You mentioned the carrier of last
11 resort obligation. To what service does that
12 obligation -- what services are you required to
13 provide under that obligation?

14 MR. REHWINKEL: Basic local exchange
15 telecommunications service, which is single line
16 business and residential service, POT service.

17 COMMISSIONER DEASON: As defined in the
18 statute; correct?

19 MR. REHWINKEL: Correct.

20 COMMISSIONER DEASON: Okay. Thank you.

21 MS. SIMMONS: Commissioners, I'm sorry.
22 Could I just interject one little small point,
23 and that is concerning this notion of the
24 Commission ordering a company to provide a
25 service. I think this is a somewhat different

1 situation. The company is already providing the
2 service, and we're just trying to assert that we
3 think it should be also tariffed in the state
4 jurisdiction.

5 CHAIRMAN JACOBS: Okay.

6 MS. SIMMONS: So I see a distinction
7 there.

8 CHAIRMAN JACOBS: Thank you.

9 MR. SHINE: Commissioners, my name is
10 Richard Shine. I'm with the Greenberg Traurig
11 law firm here in town, and I'm appearing on
12 behalf of FISPA. We have a number of members
13 here.

14 CHAIRMAN JACOBS: Could you tell us what
15 FISPA stands for?

16 MR. SHINE: That's the Florida Internet
17 Service Provider Association, and it's -- there
18 are a number of members who have traveled from
19 across the state to address the Commission this
20 morning, as well as other parties who have
21 similar concerns who may not be members of
22 FISPA. And I would simply ask that they be
23 given an opportunity to address the Commission
24 very briefly on some of the points that they
25 believe are of quite tantamount importance to

1 their staying in business and being able to
2 provide the service.

3 CHAIRMAN JACOBS: Very well. We allotted
4 substantial time for the ILECs to present, so we
5 will. But I would also reiterate that if your
6 comments have been spoken earlier, please feel
7 free to adopt those.

8 MR. SHINE: Okay. Dustin Jurman of Rapid
9 Systems is going to lead off for us, and I'll
10 simply give my seat up.

11 CHAIRMAN JACOBS: Could you give us your
12 name again, please?

13 MR. JURMAN: My name is Dustin Jurman, with
14 Rapid Systems Corporation of Tampa, Florida.

15 Prior to starting off, I would like to ask
16 if it was okay to read a -- what it's like to --
17 something from our help desk to you guys, what
18 it's like to provision DSL for a customer.

19 CHAIRMAN JACOBS: Is that something that
20 you provided to us in an e-mail? You didn't
21 provide that in an e-mail already?

22 MR. JURMAN: No, I didn't.

23 CHAIRMAN JACOBS: Okay. They've given us
24 copies of that, so -- feel free to go ahead if
25 it's relatively brief.

1 MR. JURMAN: Yes, I believe it is.

2 This customer had waited -- their
3 particular -- three to four weeks to get their
4 service ordered from the LEC. They ordered the
5 service from the ISP, and we in turn ordered it
6 through our wholesale account.

7 It starts off with receiving the first call
8 from one of our engineers, Gary Sessoms. The
9 ADSL install date was today. As usual, Verizon
10 did not meet their due date. Called the EPAC
11 center and spoke with Anita at extension 2946.
12 She said that the order was still pending and
13 that there was no DSLAM assignment. The
14 customer, which I'll leave the name out, says
15 that he has a Fujitsu modem with a single green
16 light. The customer -- we called the customer
17 back to inform him that we were unsure of when
18 his service would be up and running.

19 The engineer, Gary, spoke with Don at
20 extension 2979. He shows a new due date, which
21 we were uninformed of. Now, after the customer
22 had ordered service in December, the new due
23 date is 2/26. He gave me the order number and
24 says the order had never reached his side of the
25 department.

1 1/31. Called San Angelo DSL Order
2 Operations Center. Spoke with Mary Garcia,
3 extension 3024. She says the order was not
4 completed due to the modem type not specified.
5 She will escalate and call me back with
6 additional information. Called and left a voice
7 mail with Tom Walthrop, who is Verizon
8 management director of DSL operations. Gary did
9 not receive a call back from Tom and then called
10 Armando, who is Tom's boss.

11 We have escalated as much through Verizon
12 as possible to fix these problems, and this is
13 one of a series of help desk tickets that is an
14 everyday issue of provisioning for our company.

15 CHAIRMAN JACOBS: Now, you're an Internet
16 service provider; correct?

17 MR. JURMAN: Yes, sir.

18 CHAIRMAN JACOBS: And the underlying DSL
19 was being provided by Verizon?

20 MR. JURMAN: We have a wholesale contract
21 where we provide our IP services. I'm not going
22 to say Internet. We provide IP services on top
23 of their modulation or their DSL --

24 CHAIRMAN JACOBS: There wasn't a CLEC
25 involved?

1 MR. JURMAN: There's no CLEC involved. This
2 is a wholesale contract between us and -- we're
3 not allowed to provide -- one of the statements
4 made earlier, if I can just jump off on a quick
5 tangent, we're not allowed to provide services
6 in Verizon territory on top of a CLEC's line.

7 COMMISSIONER JABER: What services do you
8 provide?

9 MR. JURMAN: We provide IP services for
10 DSL, the ISP services for DSL.

11 COMMISSIONER JABER: What does IP stand
12 for?

13 MR. JURMAN: Internet protocol, without the
14 Internet side of it.

15 CHAIRMAN JACOBS: Why aren't you allowed to
16 provide it with a CLEC?

17 MR. JURMAN: They won't provision the
18 service.

19 COMMISSIONER DEASON: They being Verizon?

20 MR. JURMAN: Yes.

21 CHAIRMAN JACOBS: And that's per some
22 written --

23 MR. JURMAN: That's per Verizon.

24 CHAIRMAN JACOBS: Okay. Thank you.

25 MS. CASWELL: I'm not quite sure what he's

1 talking about, what sort of situation, but we
2 sell out of our federal tariff to ISPs, CLECs,
3 so I'm not sure why this situation is
4 occurring.

5 MR. JURMAN: well, this is a side note to
6 one of the comments that you guys had made. But
7 if a CLEC had the POTS line, we could not
8 provision DSL services on top of the CLEC's POTS
9 line. It would have to be a Verizon POTS line.

10 Can I continue?

11 CHAIRMAN JACOBS: Yes. Now, is that -- let
12 me kind of pursue that for a moment. Is that
13 what line sharing is supposed to address?

14 MR. JURMAN: I think you would have to ask
15 the LEC that.

16 CHAIRMAN JACOBS: Okay.

17 MS. CASWELL: I think it does, and I think
18 that's a whole separate issue.

19 CHAIRMAN JACOBS: Okay. Let's not go off.
20 Let's keep here.

21 MR. JURMAN: Okay. Mary Garcia called back
22 at 6:30 that evening and said that Verizon had
23 an IR problem. She says she talked with Linda
24 Sue about their problem, and Mary could offer no
25 additional info about when the customer will be

1 up and running. She says the problem is being
2 bumped up the chain.

3 Then later on Armando, who is one of the
4 very high in management people there --

5 COMMISSIONER BAEZ: Tom's boss.

6 MR. JURMAN: Tom's boss. Called on the
7 speaker phone with Matt Cummings, who is the
8 main engineer of Verizon Advanced Data Services
9 for provisioning. They talked about the order
10 processing, how customers are getting the wrong
11 modems shipped to them, was under the impression
12 that there were some things in ordering that
13 were happening that are not. They pledged to
14 look into the matter and see if this can be
15 corrected.

16 A couple of days later, Marquita called
17 with some information, but just left a voice
18 mail. Gary went and then called back and spoke
19 with Charles Williams in the San Angelo DSL
20 Order Operations Center. He says that they are
21 working on the customer, but had no idea when
22 the new FOC, firm order confirmation, for the
23 customer will be. He says we can specify the
24 DSL modem type on the initial order, part of a
25 side conversation that they started.

1 On 2/1, I received a called from Matt
2 Cummings at 8:00 in the evening on my way out
3 the door, and Matt said that he was going to
4 personally walk the customer's order through the
5 system manually and that the customer should be
6 up and running the next day.

7 The next day, the customer called. His
8 ADSL is still not working, and he still only has
9 one green light.

10 Finally, the following day, our
11 provisioning center, after making several phone
12 calls, found out the order never made it to the
13 ILEC. When the error clears -- the DLEC can't
14 access something out of band -- which should be
15 tonight, they will issue a new order, and the
16 customer will go through the waiting process
17 again, and we'll make a whole new run at this.
18 They're going to call back tomorrow morning and
19 see if it actually can fall through the order
20 process.

21 COMMISSIONER DEASON: Let me ask you --
22 are you finished? Is that the scenario, or --

23 MR. JURMAN: No, it gets better. I've got
24 three more to go.

25 CHAIRMAN JACOBS: Are they fairly similar?

1 Are their experiences fairly similar?

2 MR. JURMAN: Well, I've got three more to
3 go on this experience, just three more quickly.
4 I can tell you that every one of our orders is
5 this way, and that's why I'm here.

6 CHAIRMAN JACOBS: Okay. If I could ask you
7 to kind of summarize.

8 MR. JURMAN: I'm going to just -- I've got
9 a paragraph and a half here.

10 Matt Cummings, who has been very helpful to
11 us, called Gary and said that he had lied to
12 Dustin. Matt is now saying that the order was
13 put in by wholesale markets with the wrong phone
14 number, so they supplemented an order for the
15 changes to the order. The supplemental order is
16 trying to go through the system, but the two
17 orders are contradicting, so everything now is
18 on hold, and the customer can't even fall
19 through cracks and reorder. Michelle is trying
20 to get the order resolved directly with the
21 customer. They will call back in hopes that the
22 order processes and will recontact the ILEC.

23 The next day Matt calls back, the guy who
24 lied. Matt called and says he has a systems
25 error. To get this customer a DSLAM assignment,

1 just the assignment on the box, the ILEC needs
2 another order. We have to submit yet another
3 order, or we can wait for the system to be
4 fixed.

5 As of today, this customer is still --
6 still has no order. There has been no order
7 replaced because we can't place another order,
8 and they've waited three months for high-speed
9 service from my company, which we have not been
10 able to provide.

11 COMMISSIONER DEASON: Okay. Let me ask a
12 question. What portion -- given this scenario
13 that you just described, what portion of their
14 FCC tariff did they violate?

15 MR. JURMAN: Of --

16 COMMISSIONER DEASON: I mean, you just
17 recounted a story. There were a lot of problems
18 and miscommunications, and --

19 MR. JURMAN: I think we're asking for where
20 -- we're asking you to assert jurisdiction,
21 because we have no recourse.

22 COMMISSIONER DEASON: Well, answer my
23 question, please. What portion of their FCC
24 order -- I mean their FCC tariff did they
25 violate?

1 MR. JURMAN: I can't answer that. I'm not
2 a lawyer.

3 COMMISSIONER DEASON: Okay. Well, let me
4 ask you this question. It's our staff's
5 recommendation that we would require them to
6 file a mirror tariff, FCC tariff, which I assume
7 is going to be basically the same thing, with
8 the state Commission. If they didn't violate
9 any of their FCC tariff, they won't violate any
10 of their Florida tariff, so what are you looking
11 for to us do?

12 MR. JURMAN: We're looking for -- I guess
13 we're looking for several things. I mean, this
14 is what a typical consumer goes through, and the
15 LECs keep saying that growth is being stifled.
16 We don't -- we believe that we're being stifled
17 as a provider of services in content and
18 delivery. I can't answer your question on --
19 through the legal grounds.

20 COMMISSIONER DEASON: Well, see, we have to
21 do things that we have jurisdiction over, and we
22 may be asserting jurisdiction maybe, according
23 to Ms. White, where we don't have jurisdiction.
24 And maybe that could be worked out.

25 I'm trying to understand that -- if we

1 assert jurisdiction and we require them to file
2 a mirror tariff, what are we saying? what are
3 we going to be doing? I'm not so sure.

4 See, it seems to me that if you've got a
5 problem, which it sounds like you do, it seems
6 like right now it's the FCC's problem. why
7 don't you file a complaint with the FCC and get
8 your problem resolved? Have you done that and
9 that doesn't work, the FCC is not responsive?

10 MR. JURMAN: I can defer that to one of the
11 other folks, if I may, please.

12 COMMISSIONER DEASON: See, I'm not
13 surprised that you said the FCC is not
14 responsive, but they're the ones that say they
15 have jurisdiction and we don't.

16 MR. JURMAN: Okay.

17 COMMISSIONER DEASON: It's like we're in a
18 no-win situation as well.

19 MR. PERRINE: Commissioner Deason --

20 CHAIRMAN JACOBS: Excuse me. We need you
21 to introduce yourself.

22 MR. PERRINE: Oh, I'm sorry. Ed Perrine,
23 Network Tallahassee.

24 I could relate similar litanies, and in
25 fact you have several comments in an e-mail that

1 I sent last evening when I was made aware of
2 this hearing. To specifically answer your
3 question, most local ISPs here in Florida do not
4 take recourse with the FCC, simply because we
5 don't have the resources and the time to invest
6 in going through that process. We have found
7 the local PSC to be more responsive to our needs
8 and complaints, and that's why we believe that
9 it's important that this be moved to a level
10 where we do have recourse and where we do have
11 someone that we can go to without having to
12 retain an attorney in Washington or count on a
13 very long and drawn out process.

14 COMMISSIONER BAEZ: But, Mr. Perrine -- and
15 forgive me for interrupting you.

16 MR. PERRINE: Sure.

17 COMMISSIONER BAEZ: The problem that I see
18 -- and I read your e-mail. The problem that I
19 see is that most of the complaints right now are
20 coming from -- call them providers, I mean,
21 actually middlemen in this whole chain. And I
22 guess I would be curious. I will just throw out
23 this question out there. The example that
24 Mr. Jurman related to us now from the end user's
25 perspective, is that the same experience? Is

1 that the same kind of delay that the companies
2 themselves are going through, those that provide
3 DSL service to end users directly? I would like
4 an answer to that.

5 But back to your comment, Mr. Perrine. It
6 seems that -- I mean, I have to agree with
7 Commissioner Deason. I don't know what it is
8 that we're doing. If it hasn't been established
9 that there's a violation of a tariff, any
10 tariff, then the argument that we're going to be
11 more responsive or less responsive can't be
12 evaluated on a fair basis. I don't know that I
13 can be more responsive, you know, if something
14 is not being done in violation of a tariff.
15 There hasn't been any claim that there has been.

16 MR. D'HAESELEER: Commissioner?

17 CHAIRMAN JACOBS: Just a second, Walter.
18 Are you done, Commissioner Baez?

19 COMMISSIONER BAEZ: For now, yes.

20 CHAIRMAN JACOBS: Let's let Mr. Perrine
21 finish.

22 COMMISSIONER BAEZ: I apologize.

23 CHAIRMAN JACOBS: No, no, you're fine.
24 You're fine. I wanted to make sure Mr. Perrine
25 had a chance to respond back to Commissioner

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Baez.

MR. PERRINE: The issues certainly that I raised in my e-mail and the issues that -- the multitude of horror stories which I think everyone here could tell relate to the experience that we're having in dealing with the ILECs in providing service and providing a competitive environment for high-speed services.

More than 15 years ago, the rule of law in this country became that a monopoly in telecommunications services was not a good thing for the consumer. The companies that we sit and oppose today exist solely because of that ruling. What we are seeing now is a de facto monopoly being established by these companies.

They tell you that there's competition. They don't mention that NorthPoint went bankrupt two months ago, that Covad, which has been mentioned, has already disbanded their primary Florida presence in the form of BlueStar, and most analysts say Covad won't survive a year.

They don't tell you that alternative technologies in bundling together high-speed, high bandwidth communications, they don't mention that these aren't the same. Satellite

1 service is not the same as DSL service is not
2 the same as cable modem service. There are good
3 reasons why all these technologies exist, but
4 you can't just lump them into one bundle and say
5 if there's a cable carrier in your market that
6 there's competition.

7 They tell you that it's not POTS. They
8 don't mention that at least in the Sprint
9 market, you cannot get DSL unless you have a
10 Sprint POTS line, period, been there and done
11 that. We have customers who have KMC service.
12 Sprint will not install the SL over a KMC
13 carrier circuit. Line sharing, to the contrary,
14 they will not do it, absolutely. In point of
15 fact, I have anecdotal evidence that they won't
16 let KMC co-install DSL services in their SLCs,
17 their subscriber line concentrators, unless they
18 meet exceedingly stringent requirements.

19 They are attempting to freeze out their ISP
20 partners, and I put that word in quotes, by
21 creating road blocks at every turn. Some of
22 these may not be intentional. Some of these may
23 be the result of internal miscommunications,
24 but there's an awful lot of them. And for all
25 these things to face us and to challenge us is

1 going to effectively drive us all out of the
2 market.

3 COMMISSIONER JABER: You know, I have two
4 responses to that.

5 CHAIRMAN JACOBS: I had suggested that
6 Walter --

7 COMMISSIONER JABER: You're going to let
8 Walter speak before I get to speak?

9 CHAIRMAN JACOBS: Never mind.

10 MR. D'HAESELEER: He knows.

11 COMMISSIONER JABER: Two responses. How
12 much of that network failure and the company
13 failure had to do with poor management
14 decisions? And secondly, how much of it had to
15 do with regulatory uncertainty?

16 You are asking the State Commission to step
17 in when there is a current federal law, and that
18 creates regulatory problems, and that creates
19 delay. Some of this is just going to have to
20 take time. We have to give the market the
21 opportunity to work.

22 Don't get me wrong. There are problems
23 with the ILEC systems. We're addressing those
24 in separate dockets. But I don't know that what
25 you're asking us to do is really what you want.

1 CHAIRMAN JACOBS: Walter.

2 MR. D'HAESELEER: Commissioners, it has
3 been mentioned two or three times now about what
4 that tariff consists of and what it doesn't do.
5 I think what we were getting at was to exercise
6 jurisdiction. Once we had that through the
7 tariff, then we would decide the extent to which
8 we would exercise jurisdiction. You know,
9 somebody has alluded to that we have quality of
10 service standards. We may or may not propose
11 that to the Commission. There may be other
12 things that we're looking at that -- you know,
13 we need to make sure everybody understands that
14 we have jurisdiction before we go down that
15 road.

16 CHAIRMAN JACOBS: Let me ask a question.

17 MR. D'HAESELEER: That's all the tariff was
18 for, to exercise jurisdiction.

19 CHAIRMAN JACOBS: Mr. Perrine, I assume
20 that your arrangement with your -- your
21 arrangement in your territory is similar to
22 Mr. Jordan's, in that you have a wholesale
23 contract with the ILEC to acquire DSL. Is
24 that --

25 MR. PERRINE: Yes, sir, that's correct.

1 CHAIRMAN JACOBS: Now, so when you go to
2 sell your ISP service, you're selling -- you are
3 indeed selling --

4 MR. PERRINE: Sprint service.

5 CHAIRMAN JACOBS: Sprint's DSL service.

6 MR. PERRINE: Yes, sir.

7 CHAIRMAN JACOBS: Now, when you -- no, not
8 when you. When your customer that you sell to,
9 when they get DSL installed, they pay the DSL
10 service to you?

11 MR. PERRINE: Directly to us, yes, sir.

12 CHAIRMAN JACOBS: Now, how do they get
13 installation?

14 MR. PERRINE: Similar, although, frankly,
15 based on some of my conversations with my
16 colleagues, we're a little bit more fortunate.
17 Sprint appears to be doing a little bit better
18 job.

19 An order is placed with us. We in turn
20 place an order with a specific representative at
21 Sprint's Wholesale Services Group. That order
22 is processed through their system. The circuit
23 is provisioned. In other words, everything is
24 put in place to deliver the service all the way
25 to the end user's home, and at that point we

1 receive notification that the circuit is in
2 place.

3 And in theory, we notify the customer, they
4 pick up their DSL equipment, whether it's a
5 modem, a bridge, a router, whatever it might be,
6 and plug it in and turn it on. In practice, it
7 doesn't always work that well, but that path I
8 think has been discussed. At that point, the
9 customer, traffic goes from their home to us,
10 and thence to wherever the final destination is.

11 Addressing the one-call/two-call argument,
12 about 90% of our traffic now, it's one call.
13 It's all coming to us. It never leaves
14 Tallahassee, because we using caching servers.
15 In order that we can efficiently serve our
16 customers, we load the traffic locally on very
17 large arrays of hard disks, and the traffic
18 never leaves town. So I think that that
19 argument is certainly open to challenge as far
20 as it being interstate traffic. Much of it
21 stays local.

22 COMMISSIONER BAEZ: Mr. Perrine, do you
23 have a contract with Sprint?

24 MR. PERRINE: Yes, we do.

25 COMMISSIONER BAEZ: Does that contract

1 contain any service standards?

2 MR. PERRINE: No, it does not.

3 COMMISSIONER BAEZ: Does it contain any
4 language that limits the area -- that addresses
5 the area of service or the speed at which Sprint
6 is going to roll out availability of DSL?

7 MR. PERRINE: There was no language in the
8 contract. I believe my e-mail addresses some
9 issues where we feel there was some
10 misrepresentation of that, but it was with all
11 due speed that they would cover as much of the
12 territory as possible.

13 COMMISSIONER BAEZ: I guess what I'm
14 getting at is that perhaps the -- you know, and
15 this is something that I mentioned earlier, is
16 that there's a contractual relationship in many
17 of these cases that offers you a forum to, I
18 would assume, address things that the company is
19 not doing under the terms of its contract.

20 MR. PERRINE: Well, I think Commissioner
21 Jaber was definitely on point in saying that
22 some of this is the result of business decisions
23 on both sides. The contracts that we were
24 offered -- and we had a choice, accept it or
25 not, were -- they were boilerplate contracts as

1 to the provisioning of a service. Specifics of
2 deployment times, deployment areas, and things
3 like that were not covered. And I understand
4 that at that point, Sprint, in our case,
5 couldn't make those, you know, guarantees until
6 they saw where cable ran.

7 I mean, we talk about 18,000 feet of cable
8 that was mentioned. 18,000 feet isn't always
9 18,000 feet. Sometimes you get lucky and you
10 can stretch it 19,000. And sometimes you can
11 literally be ten blocks down the street from a
12 central office, and because of technical issues,
13 you can't provision DSL there. So they really
14 couldn't go into that kind of detail.

15 We were faced with do we enter this market
16 and compete, knowing we weren't signing an ideal
17 contract, or do we cede this market to the ILECs
18 and to -- at the time we thought we were facing
19 competition from BlueStar and some others. We
20 made a decision to compete, but we feel that
21 we're not being asked to compete on a level
22 playing field. That monopolistic position is
23 part of why we support the staff
24 recommendation.

25 COMMISSIONER BAEZ: Because one of the

1 allegations that you're making is that somehow
2 Sprint service, Sprint's direct service is
3 occurring faster and easier than the service is
4 being brought to --

5 MR. PERRINE: Well, we know that Sprint is
6 offering superior arrangements to EarthLink, who
7 is kind of their sweetheart partner in the case
8 of Sprint. If you sign up with Sprint EarthLink
9 service, you're offered free equipment. We're
10 not given the opportunity to participate in
11 that. There's --

12 COMMISSIONER BAEZ: Let's hold off on that
13 for a second. I'm talking about delays.

14 MR. PERRINE: As far as delivery?

15 COMMISSIONER BAEZ: Yes. I would like to
16 focus on that for a moment.

17 MR. PERRINE: Okay. I can offer -- I can
18 only offer anecdotal comments. We have had
19 cases where college roommates came to us. One
20 ordered with us, and one ordered with the other.
21 Don't ask me why two roommates order two
22 services. Lots of Napster music files is my
23 best guess.

24 COMMISSIONER BAEZ: One less question.

25 MR. PERRINE: And, you know, the consumer

1 that ordered from Sprint gets his service before
2 ours does, although we're told they were ordered
3 at the same times, sometimes a matter of a week
4 or ten days. We aren't facing three-month
5 delays here. I don't want to represent that or
6 misrepresent that. Our typical install time is
7 about three weeks. Supposedly, the EarthLink
8 install times are guaranteed at two weeks.

9 CHAIRMAN JACOBS: It strikes me this is a
10 very interesting scenario. If you were a CLEC
11 and you signed an interconnection agreement --

12 MR. PERRINE: We would be in federal court
13 like EarthLink right now trying to enforce our
14 interconnect agreement. I believe there's an
15 EarthLink representative here, but they --

16 CHAIRMAN JACOBS: But interestingly
17 enough --

18 MR. PERRINE: I'm sorry. ElectroNet.

19 CHAIRMAN JACOBS: Interestingly enough,
20 you also could file a complaint with us,
21 couldn't you, on the interconnection agreement?

22 MR. PERRINE: We have never gone the CLEC
23 path as a business decision, so I don't know. I
24 can't say what my options would be. I don't
25 have a clue.

1 COMMISSIONER BAEZ: Would you accept that
2 you could be in here on the --

3 MR. PERRINE: Oh, sure, absolutely, yes.

4 CHAIRMAN JACOBS: On the flip side of that,
5 the idea of following that policy is to force
6 you -- in order to address these concerns is to
7 force you to become a CLEC.

8 MR. PERRINE: If all providers faced that
9 same situation, if the playing field were indeed
10 level under that scenario, we would have no
11 objection to that. And that's a fairly heavy
12 statement for us to make, because it involves an
13 investment. But if with that came an assurance
14 that everybody played by the same rules, that
15 everybody faced the same service issues, that
16 everybody had the same delivery times, then we
17 would be willing to pursue that path. We aren't
18 seeing that in the CLEC market now.

19 CHAIRMAN JACOBS: So your course was to --
20 rather than try and go and establish a whole new
21 chain on the underlying facilities, you simply
22 wanted to deal directly with the ILEC to
23 provision their service.

24 MR. PERRINE: Until DSL, we have enjoyed a
25 superb relationship with Sprint, and we felt

1 that letting Sprint do what we felt Sprint did
2 well and letting us do what we did well on the
3 Internet side represented the best business
4 decision we could make. To this day, on all
5 issues with Sprint except DSL, we enjoy good
6 service, good support, and a good relationship.
7 DSL has become a huge thorn and continues to be.

8 CHAIRMAN JACOBS: Now, I don't know that
9 I've heard a clear answer yet on whether there
10 are provisions in this tariff to address service
11 quality. I assume, though, that there are not.
12 Can anyone give me a clear answer on that?

13 MR. AUDU: Commissioner, I would not
14 suppose that there would be provisions in the
15 FCC tariff that would go directly to address
16 quality of service issues. However, when this
17 Commission does -- I mean, assumes jurisdiction,
18 the one thing that that will do is that that
19 basically goes on to open this up for the
20 quality of service rules that we do have, and
21 that goes on to address that portion of it.

22 CHAIRMAN JACOBS: Okay. Let me ask this
23 question. By the letter, the companies have
24 acceded to our -- well, let me not put it that
25 way. They have acceded to processing their

1 complaints pursuant to our complaint rule, and I
2 assume that is simply their voluntary offer of
3 handling that complaint. Can we -- but it
4 sounds like there's nothing we can do to respond
5 to those complaints.

6 MR. D'HAESELEER: Commissioner, we did have
7 discussions, and there's a letter that they've
8 agreed to sign that we could send them
9 complaints, and they would resolve the
10 complaints. But it doesn't address any of the
11 underlying issues, and that is, if we took
12 exception to what they reported, if we wanted to
13 do some kind of investigatory process because of
14 the complexity of the complaints or one thing or
15 another. It's all silent on that, and that's
16 why that letter didn't appeal to us, to staff.

17 COMMISSIONER PALECKI: well, that's
18 question I have to BellSouth, Verizon, and
19 Sprint. What are you -- what is the commitment
20 that you're giving in this letter?

21 Mr. Rehwinkel?

22 MR. REHWINKEL: well, Commissioner, the
23 commitment was that we would respond the same,
24 with the same speed and diligence and effort on
25 behalf of the customer to a complaint,

1 regardless of whether it was a DSL or a POTS or
2 a feature issue or a billing issue. I mean,
3 Mr. D'Haeseleer is correct. There are no
4 standards there to sit there and say, "well, we
5 don't like the way you did this. You have this
6 criteria, and here's how your performance was,
7 and it didn't measure up to this criteria, so
8 there's an infraction or a violation of a rule,"
9 because there are no standards out there
10 applicable to this service. So we weren't
11 saying, "well, we will agree that there are a
12 certain set of criteria that we will abide by."

13 And I think -- I don't know what triggered
14 this, but I don't think that with respect to us
15 that there was any dissatisfaction. Certainly
16 there are unhappy people out there everywhere in
17 the state because DSL service is brand new.
18 Everybody is struggling with providing it,
19 whether it's the ILEC, the wholesale -- I mean
20 the ISP or a CLEC. So, I mean, I don't know --
21 there was nothing beyond what was in this
22 letter.

23 COMMISSIONER PALECKI: Are you agreeing by
24 this commitment to comply with the Commission
25 rules when you have complaints by wholesale

1 providers as well as end users?

2 MR. REHWINKEL: No. Commissioners, there's
3 no basis for a wholesale -- for ISPs to come and
4 say you should establish standards. CLECs,
5 yes. If you are a CLEC, yes, you can come in,
6 and you can enforce -- you can arbitrate terms
7 and conditions in a contract and have them
8 enforced. The Commission can establish
9 performance measurements for a CLEC and an ILEC
10 to live up to in their relationship.

11 But with respect to ISPs, no, that was --
12 that was even asked. And quite frankly, I don't
13 even see that being an issue in the
14 recommendation. That's an issue that came up
15 with these e-mails and the presentation here
16 today, and I don't even think that's what the
17 staff was going for when they brought this
18 recommendation to you.

19 COMMISSIONER JABER: Let me ask staff --
20 oh, I'm sorry.

21 COMMISSIONER PALECKI: Ms. White, with
22 regard to BellSouth, you provide no service to
23 end users, it's my understanding, so what does
24 this commitment mean with regard to BellSouth?
25 Is it any commitment at all?

1 MS. WHITE: Oh, it is a commitment. I
2 mean, the bottom line is that we receive -- a
3 lot of the BellSouth.net end user complaints
4 somehow end up in our lap, and that would be the
5 ones we would be dealing with, as well as
6 complaints from end users of other companies.

7 I agree with Mr. Rehwinkel, this was not
8 intended as a panacea for wholesale providers,
9 because we believe that issue is going to be
10 dealt with in performance measurements on the
11 wholesale side. This was strictly for end
12 users. BellSouth does get some of these
13 complaints. They get them from the company, the
14 subsidiary, the affiliate that provides the
15 service, BellSouth.net.

16 COMMISSIONER PALECKI: What recourse does
17 the wholesale provider have?

18 MS. WHITE: Well, they -- with regard to
19 BellSouth's selling of ADSL service to Internet
20 service providers, it's my understanding that
21 they buy that out of the tariff. They buy it
22 pursuant to the interstate tariff, and their
23 recourse would be to the FCC.

24 CHAIRMAN JACOBS: You have to agree that to
25 have not only the ISP provider, but the ISP

1 provider's customer have to hire counsel to file
2 a complaint with the FCC --

3 MS. WHITE: I disagree with that. I would
4 not accept that. I think that -- no more so
5 than they have to do it before this Commission.
6 I think that the FCC is set up to handle and can
7 handle and does handle individual customer
8 complaints. They do it all the time with
9 interexchange and long distance customers who
10 complain about something. I don't necessarily
11 agree that it's going to be more money, more
12 work, and more time to take a complaint to the
13 FCC than it would be to take one to the Florida
14 Public Service Commission.

15 MS. RICKERT: May I speak to that? May I
16 speak to that, please? My name is --

17 CHAIRMAN JACOBS: Yes. I'm sorry.
18 Introduce yourself. I assume you're one of the
19 ISP providers also?

20 MS. RICKERT: I am.

21 CHAIRMAN JACOBS: Okay. Did you have a
22 question?

23 COMMISSIONER JABER: I have one of staff --

24 CHAIRMAN JACOBS: Hold on a second.

25 COMMISSIONER JABER: --quickly. Do you

1 know if the Policy Division has looked at this
2 recommendation at all, Dr. Bane?

3 DR. BANE: No.

4 COMMISSIONER JABER: So we haven't done a
5 policy review of this issue at all?

6 DR. BANE: Not that I'm aware of.

7 COMMISSIONER JABER: Okay.

8 CHAIRMAN JACOBS: Okay. Proceed.

9 COMMISSIONER PALECKI: I have a question
10 kind of along those same lines. Are you aware
11 as to whether or not there is anything that is
12 coming up before the next session of the
13 Legislature that might relate to this issue?
14 Because to me, this seems like a legislative
15 issue more than a Public Service Commission
16 issue, and I'm not sure this isn't something we
17 should not seek direction from the Legislature
18 on.

19 DR. BANE: There was a joint meeting
20 yesterday of the Utilities and
21 Telecommunications Committee and the New
22 Technology Committee, and they had a number of
23 presenters who addressed issues with regard to
24 high-speed broadband access. At that point in
25 time they didn't -- the Committee did not

1 indicate whether they planned to take any action
2 or not, but they were hearing from a number of
3 different parties. They heard from the LECs.
4 They were hearing from ISP providers. So as far
5 as I know, I've heard of nothing that the
6 Legislature is planning at this time.

7 COMMISSIONER PALECKI: Because I would feel
8 much more comfortable in asserting jurisdiction
9 or in not asserting jurisdiction with more
10 direction from the Legislature. I don't really
11 believe that the DSL service was really
12 envisioned as telecommunications service at the
13 time of the Act. And I would certainly feel
14 more comfortable not taking any action until
15 perhaps this session of the Legislature has --
16 is over and see if we can perhaps request the
17 Legislature to give us some direction.

18 DR. BANE: With regard to the broadband
19 service, certainly it was not addressed in the
20 '95 legislation as one of the basic services.
21 But at that time the Legislature left open that
22 they could redefine what they considered to be
23 the portion that was basic service or necessary
24 for universal service over time. But I don't
25 know that they will even address that issue

1 during this session, so you may or may not get
2 any guidance on this issue.

3 MS. SIMMONS: Commissioners, one concern
4 staff really has is that -- and I think
5 Mr. Moses can perhaps explain this to you a
6 little bit more than I can, but a concern we
7 have is with xDSL service, that you have voice
8 -- can have voice and data commingled on the
9 same loop, and that is of concern. I think
10 Mr. Moses did come up to the table, and perhaps
11 he can explain that a little bit further.

12 CHAIRMAN JACOBS: Before you answer that
13 question, can xDSL be provisioned to an end user
14 by an ILEC?

15 MR. MOSES: Certainly.

16 CHAIRMAN JACOBS: Do we have any -- and in
17 fact, I think I've heard that there are some
18 80,000 for BellSouth and 1,800 for Verizon; is
19 that correct?

20 MR. MOSES: Sprint provides it directly to
21 end users. BellSouth has chosen to go through
22 a subsidiary to call it something different,
23 but --

24 CHAIRMAN JACOBS: So in that instance, we
25 would have jurisdiction for one side of that

1 service, and the customer could call us if they
2 know that the voice is wrong. But if the DSL
3 goes bad, they can't call us for that service.

4 MR. MOSES: In my opinion, it depends on
5 your decision today whether you would have that
6 ability or not. Right now, the way DSL works --
7 and they're trying to package this thing like
8 it's something totally new. It's nothing more
9 than a transport device. It gets you from point
10 A to point B. It has nothing to do with the
11 Internet. It can be used for access to the
12 Internet. It can also be used for access to
13 other things.

14 The thing that needs to be remembered is
15 that if it's going to be used to provide your
16 sole means of getting dial tone, which is
17 incorporated in that data stream, if you vote
18 that you don't have jurisdiction and somebody
19 calls on me to help you with a dial tone, I
20 can't do anything about it. I can't assist them
21 with their complaint.

22 COMMISSIONER BAEZ: why would someone use
23 it -- I'm sorry, Mr. Chairman. I just -- why
24 would someone use it as the sole means of
25 getting dial tone?

1 MR. MOSES: That's the beauty of the
2 service. It uses one cable pair to go to your
3 home. The companies are not going out there and
4 putting in more and more facilities all the
5 time, because the technology is constantly
6 changing.

7 COMMISSIONER BAEZ: But I heard you say if
8 -- now, maybe I'm misreading what you're saying.

9 MR. MOSES: Let me back up and --

10 COMMISSIONER BAEZ: That I'm getting dial
11 tone trough DS -- that I'm using voice over DSL?

12 CHAIRMAN JACOBS: Right.

13 COMMISSIONER BAEZ: I mean, is that --

14 CHAIRMAN JACOBS: No, it would be voice
15 over the Internet.

16 MR. REHWINKEL: That's not being offered
17 today.

18 MS. WHITE: That is not being offered.

19 MR. REHWINKEL: Voice over DSL is not being
20 offered.

21 COMMISSIONER PALECKI: Let me ask the --

22 CHAIRMAN JACOBS: Let me ask my question.

23 COMMISSIONER PALECKI: What if it were --

24 CHAIRMAN JACOBS: Excuse me. If someone
25 were using voice over the Internet, would not

1 that be voice over DSL?

2 MR. MOSES: Let me just comment on this
3 thing.

4 CHAIRMAN JACOBS: Let him answer.

5 MR. REHWINKEL: I think that's an issue in
6 the 00075 docket, I believe.

7 MS. WHITE: Yes, it is.

8 CHAIRMAN JACOBS: Okay.

9 MR. REHWINKEL: Yes. And I think the short
10 answer is, the rolling out of voice over DSL
11 might hinge on how regulatory treatment was --

12 CHAIRMAN JACOBS: For voice over the
13 Internet.

14 MR. REHWINKEL: Yes.

15 CHAIRMAN JACOBS: Okay. Mr. Moses.

16 MR. MOSES: Look at the diagram that
17 BellSouth gave you. Do you not see a 5ESS
18 switch sitting there with dial tone that's going
19 into the DSL data stream? That's where you get
20 your dial tone. If you're ordering -- you're
21 getting dial tone from the 5ESS. If it was not
22 for them not providing dial tone, the 5ESS
23 wouldn't be on that picture. You don't need it
24 to go to the Internet provider.

25 CHAIRMAN JACOBS: So the public switch,

1 network switch that provides POTS dial tone, if
2 that is not there, then you can't run DSL. Is
3 that what you're saying?

4 MR. MOSES: No, you can run DSL. DSL can
5 run by itself without a dial tone service being
6 hooked to it.

7 MS. WHITE: Sure it can.

8 MR. MOSES: That's one service.

9 MS. WHITE: That's right. All this diagram
10 shows -- and excuse me for interrupting, but all
11 this diagram shows is somebody who has phone
12 service plus --

13 COMMISSIONER BAEZ: Plus DSL.

14 MS. WHITE: -- a computer. You can
15 eliminate the phone set completely. I mean, we
16 are not --

17 MR. MOSES: That's what I just said.

18 MS. WHITE: -- providing voice service over
19 ADSL, period.

20 MR. REHWINKEL: They are not commingled.
21 They are separated in the -- the pipe that
22 Mr. Moses is talking about is -- part of the
23 spectrum carries POTS, and part of it carries --

24 CHAIRMAN JACOBS: Mr. Rehwinkel, I think
25 you're off.

1 MR. REHWINKEL: Part of the -- the pipe
2 that Mr. Moses is talking about, the DSL and the
3 POTS service, the voice service are segregated
4 in there. They are not commingled.

5 MR. MOSES: They don't go to the same cable
6 pair?

7 MR. REHWINKEL: They do. They are --

8 COMMISSIONER BAEZ: They don't know.

9 CHAIRMAN JACOBS: I need you to wait. Let
10 him answer your question first.

11 MR. MOSES: Commissioner --

12 CHAIRMAN JACOBS: Excuse me. Commissioner
13 Palecki, did you have a question?

14 COMMISSIONER PALECKI: Yes, I have a
15 question to Mr. Moses. We've heard from
16 wholesale providers as to some specific problems
17 they've been having. What relief will we be
18 able to afford those providers as a Commission
19 if we assert jurisdiction here?

20 MR. MOSES: If you treat this as a
21 transport the same as you would a T1 that's in
22 their tariff, or an OC3, or any other transport
23 facility that they've got in their tariff, then
24 the Commission can certainly address the
25 complaint. We don't necessarily have to have

1 due dates that they have to install it, but if
2 we can show to the Commission that there's a
3 pattern from a particular company, that they're
4 continually delaying the installation or
5 something, we could bring the pattern to you for
6 a show cause purpose or whatever it may need to
7 get it implemented.

8 CHAIRMAN JACOBS: If they were buying T1 --

9 MR. MOSES: Pardon me?

10 CHAIRMAN JACOBS: If they were buying a T1
11 instead of a DSL, what would happen?

12 MR. MOSES: The T1s are in the tariff.

13 COMMISSIONER JABER: Could we use that
14 tariff to deploy -- to require the companies to
15 deploy DSL in rural areas in certain parts of
16 Florida?

17 MR. MOSES: I don't know.

18 COMMISSIONER JABER: So what's the purpose
19 of the tariff?

20 MR. MOSES: The tariff is to give the
21 Commission staff and the Commission the ability
22 to at least work with the companies with a
23 problem. Without it, you have essentially said,
24 "we're not going to deal with these things.
25 Send them to the FCC."

1 COMMISSIONER JABER: Okay. So --

2 COMMISSIONER PALECKI: And the tariff --

3 COMMISSIONER JABER: So that tariff gives
4 us jurisdiction over the provision of DSL at
5 least as it relates to these three companies.

6 MR. MOSES: I believe it does.

7 COMMISSIONER JABER: So that tariff is not
8 a limited tariff, and I could use it to get some
9 deployment of DSL, which, of course, we should
10 encourage under 706 of the Act to deploy to
11 certain areas in Florida; right?

12 MR. MOSES: I would agree with that.

13 MR. DOWDS: May I interject a moment,
14 Commissioner? Are you asking does the mere
15 existence of a tariff give the Commission the
16 authority to order a LEC where to deploy
17 facilities?

18 COMMISSIONER JABER: That's my question.
19 what is the --

20 MR. DOWDS: I don't think so under the new
21 -- under 051 anymore, but then I would have to
22 defer to counsel. But I think that would be a
23 separate decision by the Commission.

24 COMMISSIONER JABER: But that's a question
25 that we haven't fully analyzed. Here's my

1 problem with this entire recommendation. There
2 are public policy concerns that we have not
3 fully analyzed, and that tariff cannot be
4 limited to say we're going to use this tariff to
5 address service quality concerns.

6 It's regulation. If you ask a State
7 Commission to become the regulator over a part
8 of the service, you are saying that, "Regulator,
9 you need to be the surrogate for competition."
10 What we've heard today is there is competition
11 in this area. So then my question becomes: Are
12 we trying to regulate a problem as opposed to a
13 service? But I don't know the answer to any of
14 that, because I don't know what as a matter of
15 policy it is we're trying to address.

16 MR. MOSES: Commissioner, I misunderstood
17 your question a while ago. For instance, take
18 T1, which I don't think anybody questions here
19 that it's in the tariff. That doesn't mean that
20 we're going to tell them, "You've got to put in
21 T1 everywhere." That has never been the case
22 and never been the intent. All it does is say,
23 "Here's the service, here's what it's going to
24 cost, here's" -- it just lays out a business
25 plan, so to speak, as far as the T1. If a

1 customer calls in and has a problem, we can
2 refer to the tariff and be able to assist them
3 in some manner. But it also asserts your
4 jurisdiction.

5 MR. DOWDS: Just to follow up on what
6 Mr. Moses was saying, the existence of a tariff,
7 especially since all our incumbent LECs run at
8 price regulation, merely is a holding out. It
9 specifies the rates, terms, and conditions that
10 they offer to provide a service, and by so
11 having a tariff on file, they are obligated to
12 meet the rates, terms, and conditions that they
13 offer. It doesn't give this Commission per se
14 any authority to go order them to adhere to 706
15 standards. That's a whole different animal.
16 It's very, very modest. So all we're saying to
17 file a tariff is -- is to mirror for the present
18 what you're doing on the interstate side. We
19 haven't reached all the other decisions of what
20 further regulation, if any, might be
21 appropriate.

22 COMMISSIONER JABER: David, then if the
23 wholesale provider -- what's his name? Mr. --
24 what was the gentleman's name that --

25 MS. CASWELL: Perrine from Nettally?

1 MR. REHWINKEL: Nettally.

2 MS. CASWELL: Mr. Perrine from Nettally.

3 MR. DOWDS: Mr. Perrine?

4 COMMISSIONER JABER: Mr. Perrine. If he's
5 got a problem with the contract, then are we
6 going to arbitrate that agreement? You said the
7 DSL tariff gives you authority over rates,
8 service. Will we arbitrate the contract similar
9 to the --

10 MR. DOWDS: Well, we don't normally
11 arbitrate tariffs, I wouldn't believe, but we do
12 have recourse if there's a tariff violation.
13 And I presume what they're doing is, they're
14 reselling the tariffed service as opposed to a
15 fully arbitrated contract, because he indicated
16 he's not a CLEC.

17 COMMISSIONER PALECKI: Would we exercise
18 jurisdiction over the wholesale providers?

19 MR. DOWDS: Well, let me rephrase your
20 question. What we would do is, we -- well, we
21 don't exercise jurisdiction over them per se
22 unless they choose to be certificated. What we
23 do -- what we would be doing is, we would be
24 acknowledging, in staff's opinion, that this
25 Commission does have jurisdiction over the

1 provision of a -- what is, in essence, a special
2 access offering, as Mr. Moses was saying.

3 There's nothing new under the sun with DSL.
4 It's been around 25 years. It's another special
5 access offering that connects an end user to a
6 fixed location, which may be an Internet service
7 provider's modem bank. It may be the Florida
8 Public Service Commission's LAN, which is a very
9 common application for DSL. It's nothing new.
10 It's not rocket science.

11 We regulate on the intrastate side numerous
12 kinds of special access facilities, so the
13 question that comes to my mind is: what's so
14 unique about DSL other than the way it happens
15 to be marketed?

16 And there's a lot of miscommunication going
17 on that, quote, we're advocating regulating the
18 Internet. We're not talking about anything like
19 that. We're not anywhere near that. It's just
20 a special access facility. It's the kind of
21 things the Commission has required tariffing for
22 35 years, and there's nothing new.

23 COMMISSIONER JABER: But after the Act,
24 after deregulation, I mean, isn't that special
25 access offering the benefit of a deregulated

1 environment? wasn't that a new technology and
2 an innovation --

3 MR. DOWDS: No.

4 COMMISSIONER JABER: -- that deregulation
5 was supposed to bring?

6 MR. DOWDS: No.

7 COMMISSIONER JABER: Why not?

8 MR. DOWDS: That has nothing -- the issue
9 is do you or do you not have jurisdiction over
10 certain kinds of offerings. I read 364 that
11 says you have jurisdiction over intrastate
12 telecommunications for hire. So question number
13 one is: Does DSL meet that requirement?

14 We argue that it's -- in certain instances,
15 it's clear that there's an intrastate
16 component. We're not denying that there's an
17 interstate component. We're not debating the
18 one-call/two-call issue. We're not prejudging
19 that. We don't have to. All we're arguing is,
20 there is a inherent intrastate component;
21 therefore, we think you have jurisdiction.

22 What you choose to do with it is a whole
23 different animal. We haven't gone very far in
24 this recommendation on that. All we've said
25 was, for the time being, mirror your interstate

1 tariff, and then we'll figure out how to
2 proceed.

3 If you don't even do that, we can't apply
4 364 to the provision of this service, so we
5 couldn't even in principle address any of the
6 complaints of these ISP providers, assuming you
7 wanted us to do it. We are precluded from doing
8 it. We just close up shop when it comes to DSL,
9 and we send them to the Feds. That's really all
10 we're doing.

11 It's a very modest recommendation. What
12 you want us to do or not to do down the road,
13 that we will seek further guidance.

14 COMMISSIONER BAEZ: David, hold that
15 thought. We ship it off to the Feds except in
16 cases where the ISP has taken a CLEC route and
17 actually has a reseller's agreement. I mean,
18 there's an avenue. And I don't want to make
19 light of it or commingle my terms, but at the
20 flip of a switch, we could -- an ISP could be in
21 here based on a contract as a reseller of DSL
22 service.

23 MR. DOWDS: If the ISP were a certificated
24 CLEC. A Sprint end user who purchased directly
25 DSL, we don't have jurisdiction over him,

1 though. Sprint chose as part of its business to
2 both wholesale and retail its DSL.

3 COMMISSIONER BAEZ: And I guess I'm at a
4 loss. I mean, I don't -- haven't seen where it
5 has been established that there's this great --
6 that there's this crisis with the customers. I
7 mean, if anything, I've heard that customers
8 can't get it. I mean, that's the -- that seems
9 to be the main concern, is that they're not
10 getting it fast enough.

11 MR. DOWDS: The problem --

12 COMMISSIONER BAEZ: And we can't -- and you
13 just said that we can't make them get it any
14 faster.

15 MR. DOWDS: The problem is, why have a
16 regulatory void? As you heard from the
17 providers, they sure don't want to have to deal
18 with the FCC, because it's my understanding, for
19 one thing, if they file a complaint, they
20 probably have to have a filing fee, and then
21 they have to go through all the hoops of calling
22 202 to find a lawyer and all that work just to
23 get a provisioning problem solved.

24 COMMISSIONER BAEZ: I don't think there's a
25 filing fee for a complaint, is there?

1 MS. CASWELL: I don't think so.

2 MR. DOWDS: In certain instances I think
3 they do.

4 COMMISSIONER BAEZ: Really?

5 MS. RICKERT: Maybe I can speak to that. I
6 am an ISP. I am in a Tampa-based area. But I
7 also am a board director --

8 CHAIRMAN JACOBS: You gave us your name
9 earlier.

10 MS. RICKERT: My name is Mary Rickert.

11 CHAIRMAN JACOBS: Thank you.

12 MS. RICKERT: And I work for Internet
13 Junction Corporation in Tampa. We're the
14 largest independent ISP in Florida. I'm on the
15 board of directors for FISPA, which you heard
16 earlier, the Federation of Internet Service
17 Solution Providers Association, expanded beyond
18 Florida right now.

19 But I am involved in bringing to FISPA's
20 attention some of the monopolistic tactics of
21 the ILECs that we deal with and working with
22 their legal counsel to pursue action with the
23 FCC, so I do know something of that. We've just
24 started that procedure, and I don't want to talk
25 about it much more than that if it doesn't

1 violate anything you need from me.

2 But I can tell you that there are practices
3 that they presume to push to us. As an ISP, we
4 are a wholesaler and a retail seller of DSL, and
5 they do -- they have changed their tariff
6 procedures recently under the guise of a product
7 alignment, which really eliminated our ability,
8 as well as most of the other ISPs within
9 Florida, their territory within Florida, to do
10 business as wholesalers. It's no longer
11 cost-effective for us to even offer that as an
12 option, so we've had to back off of that
13 business model, with less than 30 days' notice
14 by them of the specifics of that particular
15 program.

16 In addition, they are able to offer DSL
17 services through their unregulated division of
18 Verizon and offer programs to customers that
19 again we are no longer able to offer nor compete
20 with. In fact, the significance of the
21 difference to the end consumer is a net total of
22 about \$260 ultimately. We would have to eat the
23 cost of that -- it includes the hardware and
24 installation charges -- ourselves in order to
25 compete with the programs that Verizon has

1 offered to their own customers.

2 So we do support the Commission's
3 recommendations. We feel that the ILECs should
4 file intrastate DSL tariffs. The consumers that
5 we have -- we are a consumer of the ILEC's
6 services. We are a customer of theirs, as are
7 all of our end user customers. And to be able
8 to have all these Florida-based consumers, as
9 well as Florida-based businesses, have the
10 recourse of coming to a Public Service
11 Commission within our state is greatly of
12 benefit to us. It's very difficult for any ISPs
13 who are barely managing to be profitable, even
14 after about five years' time in business, to
15 have the wherewithal to pursue legal recourse
16 with the FCC.

17 The Kentucky Public Service Commission
18 found that they were able to find a way to
19 offer, you know, recourse to the ISPs within the
20 state for DSL. And in fact, they were able to
21 successfully negotiate the complaint that IgLou
22 brought to their attention, which your staff
23 mentioned in their report.

24 So we're optimistic that this can be
25 accomplished, that there is a way to do this.

1 we don't feel that it's a disadvantage to be
2 dually tariffed for the ILECs within our state.
3 we feel that it just actually holds them
4 accountable.

5 COMMISSIONER JABER: Ms. Rickert, some of
6 FISPA's members are ALECs; correct?

7 MS. RICKERT: That's correct.

8 COMMISSIONER JABER: So they're ALECs, and
9 they're ISPs.

10 MS. RICKERT: That is correct.

11 COMMISSIONER BAEZ: Should your members
12 file DSL tariffs with the Commission?

13 MS. RICKERT: You know, there are vested
14 interests within our groups. And you're right.
15 You know, there are different camps that would
16 feel differently about that. You know, if
17 you're asking me as a spokesperson for our
18 group, I would have to say that, you know, we
19 all have our individual interests. There are
20 advantages to being able for all of us to come
21 to the Public Service Commission for recourse
22 against -- you know, with our complaints, not
23 only for us, but also for customers. To tell a
24 customer that you have to go to the FCC if you
25 have a problem with the service that we're

1 trying to offer to you, when that's the only
2 recourse that they have, is probably pointless.

3 COMMISSIONER JABER: The Kentucky PSC order
4 you're referring to, wasn't that an order that
5 addressed market abuses?

6 MS. RICKERT: Actually, it's almost exactly
7 the same business practices that we're coming up
8 against right now; right. It's --

9 COMMISSIONER JABER: But our staff's
10 recommendation addresses service of -- quality
11 concerns; right?

12 MS. RICKERT: Yes, that would be fair
13 enough. But what the Kentucky Public Service
14 Commission addressed was discount volume
15 structures that were unfair business practices
16 specifically. And there were some other points,
17 but, yes.

18 MS. WHITE: Just so the record is correct,
19 the Kentucky Public Service Commission has
20 granted rehearing of that original order. They
21 granted that on January 11th.

22 MS. CASWELL: And I would also like to
23 point out that the Kentucky Commission
24 specifically noted that there were no problems
25 with Verizon's wholesale services.

1 COMMISSIONER PALECKI: Ms. Richard, you
2 have mentioned monopolistic tactics of the ILECs
3 and that there was a proceeding that has just
4 been initiated. Where was that proceeding
5 initiated?

6 MS. RICKERT: I've been working with some
7 of the legal counsel from FISPA.

8 COMMISSIONER PALECKI: But is it initiated
9 in the courts, in the FCC? What is the forum
10 for that?

11 MS. RICKERT: It would be the FCC forum.
12 We're in the very early stages of that.

13 COMMISSIONER PALECKI: If there is a
14 proceeding initiated before the FCC and the
15 Public Service Commission also accepts
16 jurisdiction, isn't there a large possibility
17 that you'll have conflicting rulings from this
18 Commission and from the FCC?

19 MS. RICKERT: I'm not sure that we would
20 bring the same complaint against both bodies,
21 but I can say that we would all much prefer that
22 the Public Service Commission were the recourse
23 that we had available to us. It's much more
24 appropriate for us and much easier for us to
25 account for things within our own state than it

1 is to go nationally.

2 COMMISSIONER PALECKI: I can understand
3 that.

4 Has FISPA gone to the Legislature and
5 attempted to ask that the Legislature give the
6 Public Service Commission some directive? I'm
7 just very unsure of the Commission's authority
8 to regulate in this area, and I would be much
9 more comfortable if the Legislature had provided
10 some directive on these issues.

11 MS. RICKERT: ISPs have just recently come
12 to be politically active. I think that -- you
13 know, we don't have the wherewithal to have, you
14 know, the, you know, lobbyists that the larger
15 companies do, so we're not on an equal playing
16 field by any means. We do try to take the time
17 out of our business to notify the Legislature of
18 issues, but I don't think that we've made much
19 inroad, to tell you the truth, just yet. I
20 think that we have a long way to go before we
21 would ever be able to become, you know, the
22 professional lobbyists that are available to
23 those larger companies.

24 COMMISSIONER PALECKI: Do you know whether
25 or not the Legislature or individual legislators

1 are aware of some of the nightmare-like
2 scenarios that we've been informed of today?

3 MS. RICKERT: well, I can only say that I
4 can't believe that any consumers would not have
5 notified their legislator about some of the
6 practices that they've experienced already.
7 It's frustrating to be in the position that
8 they're in sometimes, with their desire to move
9 to broadband and, you know, some of the answers
10 that we have to give them even as a partner with
11 Verizon.

12 But I don't know of any specific
13 circumstances that have been worked with the
14 legislators. I myself have met with some of
15 them. We have an ISP association that
16 represents us nationally that has met with some
17 of them and continues to work on our behalf.
18 But as I said, it's -- you know, it's a small
19 amount of effort for what, you know, we're
20 really up against.

21 COMMISSIONER PALECKI: well, the
22 Legislature is just getting ready to begin their
23 session, and it would seem that it might be an
24 ideal time to make the Legislature aware of some
25 of these problems so that they can address them.

1 MS. RICKERT: I certainly agree with that.
2 But I do hope that, you know, your body chooses
3 to take some control of the situation to allow
4 some visibility within our own state for our
5 consumers and for ourselves to bring issues to
6 your attention so that we have some hope locally
7 of getting these issues taken care of.

8 I certainly think -- you know, I was
9 looking at your number of complaints that were
10 processed, and I noted that one of the ILECs
11 indicated there was a small number of
12 complaints. Well, that's only because your body
13 currently isn't the resource for us to use nor
14 to recommend to our customers. So should we
15 start doing that, you know, I would expect that
16 that trend would still increase.

17 CHAIRMAN JACOBS: Any other questions,
18 Commissioners?

19 COMMISSIONER DEASON: I have a question.
20 I'll address it to Ms. White. Is DSL service a
21 two-way telecommunications service for hire
22 within the state?

23 MS. WHITE: No.

24 COMMISSIONER DEASON: Because it is
25 interstate in nature?

1 MS. WHITE: Yes.

2 COMMISSIONER DEASON: If it were not for
3 the question of interstate nature, is it a
4 two-way telecommunications service that you
5 sell?

6 MS. WHITE: I -- I mean, I guess I'm
7 limited --

8 COMMISSIONER DEASON: Is DSL subject to --

9 MS. WHITE: -- by my technical knowledge.
10 I mean, you're going to -- I can only speak from
11 my experience. You know, I'm going through my
12 ISP. I'm getting to the net. I'm looking up
13 things. I'm usually not getting information --
14 I mean, I'm usually not getting a communication
15 back. It's usually one-way from me to the
16 Internet. I mean, maybe I'm looking at this too
17 simplistically. I may make Ms. Caswell answer
18 this question.

19 MS. CASWELL: And I can't answer it.

20 COMMISSIONER JABER: Commissioner Deason, I
21 didn't hear your question. What was it?

22 COMMISSIONER DEASON: The question is: Is
23 DSL service a two-way telecommunications service
24 for hire to the public within the state? And I
25 think she answered no, because it's not within

1 the state. She says it's interstate. And then
2 my next question is: well, putting aside the
3 argument of whether it's intra- or interstate,
4 is it a two-way telecommunications service?

5 MS. WHITE: I don't think it's two-way.

6 COMMISSIONER DEASON: It's not two-way.

7 MS. WHITE: I don't think so.

8 COMMISSIONER DEASON: Okay. Then how do we
9 regulate, for example, T1 then? How do we have
10 the basis of having a tariff on file for T1 if
11 it's not a two-way telecommunications service?
12 I mean, staff just indicated it's the same
13 service being provided. It may be a different
14 technology. Maybe it provides different speeds
15 or things of that nature, but it's still the
16 basic -- it's still basic two-way
17 telecommunications service or access.

18 MS. WHITE: I have seen no help from the
19 back of the room for me, so I cannot answer your
20 question. I'm sorry. And I'm seeing no help
21 from my cohorts in the back of the room. Forget
22 it, Tracy.

23 MR. REHWINKEL: You used the word "basic"
24 in there. I'm not sure that anyone --

25 COMMISSIONER DEASON: well, I don't mean to

1 say basic, because I know it's not basic.
2 There's a separate definition for basic. I'm
3 trying to -- I'm looking at the definition of a
4 telecommunications company. I'm looking at
5 364.02(12). And just above that is (11), which
6 says, "service," and it says, "'service' is to
7 be construed in its broadest and most inclusive
8 sense." Having laid that as a predicate, then
9 it says, "Telecommunications includes every
10 corporation, partnership," et cetera, et cetera,
11 "offering two-way telecommunications service to
12 the public for hire within this state."

13 MR. REHWINKEL: Commissioner, I could take
14 a stab at it from this perspective, which is, I
15 don't think that some of the people that are
16 appearing here today as ISP providers consider
17 themselves to be telecommunications companies.
18 So in that regard, if what they're providing is
19 DSL access from the end user to the Internet, I
20 don't think they consider that they're in
21 violation of the statute by being an
22 uncertificated provider of telecommunications
23 service.

24 I can't -- I don't have an educated opinion
25 here about whether in the abstract the service

1 is two-way and for hire.

2 MR. DOWDS: May I comment?

3 COMMISSIONER DEASON: Yes.

4 MR. DOWDS: ADSL, which is the interstate,
5 currently interstate tariff offering we're
6 talking about, stands for asymmetric digital
7 subscriber line. And what it is, it's a special
8 access offering from an end user, namely, your
9 house, to the ISP's modem bank. Forget about
10 the Internet. We're not talking about that.
11 And asymmetric means that the upstream speed is
12 not the same as the down speed, downstream
13 speed.

14 COMMISSIONER DEASON: But it's definitely
15 two-way, because you've got one speed in one
16 direction --

17 MR. DOWDS: It's definitely two-way.

18 COMMISSIONER DEASON: -- and another speed
19 the other direction.

20 MR. DOWDS: That's correct. And ADSL is
21 designed so that the download speeds from the
22 ISP modem bank are faster than the upload
23 speeds, and that looks like two-way to me.

24 CHAIRMAN JACOBS: And to be clear,
25 Ms. White did give us a caveat that she was

1 missing support from the back of the room.

2 MS. WHITE: Yes, that I'm ignorant.

3 CHAIRMAN JACOBS: No, I wouldn't say that.
4 But in fact, DSL is often marketed based on the
5 two-way throughput, isn't it?

6 MR. DOWDS: Yes.

7 CHAIRMAN JACOBS: In fact, if I'm not
8 mistaken, most of the DSL marketing I've seen
9 banks on the two-way throughput over cable.
10 That is one of the marketing advantages it
11 promotes over cable modem; isn't that true?

12 MR. DOWDS: Yes, that's correct. There are
13 varying flavors of xDSL technologies. ADSL is
14 the most prevalent. There are also what are
15 called symmetric DSL, where the up- and
16 downstream speeds are identical. But ADSL is
17 what we're talking about here predominantly.

18 COMMISSIONER JABER: David, you've made
19 reference a couple of times to ADSL is not just
20 used for Internet, and that's not what we're
21 talking about here. What kinds of services is
22 ADSL also used for?

23 MR. DOWDS: This is obviously going to be
24 hearsay. It's my understanding that the
25 original motivation for rolling out ADSL, or at

1 least one of them, was by Pack-Bell several
2 years ago out in the Bay Area where they have
3 lots of high-tech companies. And they wanted to
4 do whatever they could to make their employees
5 happy, so what you had was, you had the
6 high-tech companies providing remote LAN access
7 to their employees' homes, and they discovered a
8 cheaper option than buying a T1 for a key
9 employee was to use ADSL. That's a very common
10 application.

11 It's my understanding that there are
12 installations in Florida where they do the same
13 thing, where they connect multiple locations of
14 LANs.

15 COMMISSIONER JABER: Okay. But those
16 aren't the complaints --

17 MR. DOWDS: It's just a different
18 alternative. That's not -- now, needless to
19 say, what we're talking about here is the
20 predominant application. The way it has become
21 in the last few years is for ISP access, to get
22 access to your ISP as opposed to access to the
23 Internet. We're not talking about access to the
24 Internet. We're talking about access to an
25 ISP.

1 MS. CASWELL: Mr. Chairman?

2 CHAIRMAN JACOBS: Let's be honest. I mean,
3 the biggest use of it is to get the broadband
4 capability for Internet access. I mean, we have
5 to be honest about that. But I can agree with
6 you that it is absolutely a mechanism, because
7 someone could dial up an ISP; isn't that
8 correct?

9 MR. DOWDS: Yes.

10 CHAIRMAN JACOBS: As opposed to having DSL.

11 MR. DOWDS: Right.

12 CHAIRMAN JACOBS: And interestingly enough,
13 if they were to use their POTS line to dial up
14 the ISP, but there was a problem with that dial
15 line, that customer, that end use customer that
16 dialed the phone would have recourse with us.
17 Is that true?

18 MR. DOWDS: Yes.

19 MS. CASWELL: Mr. Chairman, I would like to
20 point out, as I stated earlier, that if we did
21 have an application like that that was solely
22 intrastate, we would file a tariff in the
23 intrastate jurisdiction, and that's what we've
24 told the FCC. And in cases where we've done
25 contracts like that, we have had the customer

1 certify that it's intrastate traffic. We
2 haven't done any of those in Florida yet. We
3 prepared one, and we didn't get the contract.
4 But we have done them elsewhere.

5 CHAIRMAN JACOBS: Commissioners, we've kind
6 of been here for a bit, and I know there are
7 some other of the ISP providers who want to give
8 some comments. So unless you have some more
9 pressing questions, I want to try and let them
10 finish.

11 MR. HEINZ: Yes, sir. Thank you. My name
12 is Bill Heinz from Tampa Bay DSL.

13 A couple of statements first. ILECs do
14 sell directly to customers through affiliates.
15 Verizon Online is a wholly-owned subsidiary of
16 Verizon.

17 There are no competitors in the market.
18 For business applications, generally cable is
19 not available. Satellite is not an option, so
20 DSL is the only viable alternative. If we had
21 another provider we could go to in our market,
22 we certainly would look at that, but there is no
23 one else to purchase from.

24 We have called the FCC, and the process is
25 beyond our means to file a complaint with them.

1 Another statement, a POTS line is required,
2 at least in Verizon territory, and from what I
3 understand, in Sprint territory, to place an
4 order for DSL. There has to be a Verizon line
5 accessible for DSL. They will not run that over
6 a CLEC's circuit. We are a reseller of
7 Verizon's wholesale DSL. To provide Verizon's
8 DSL, we are required to purchase a local loop, a
9 T1 or an ATM, from Verizon. They then point the
10 customer to that local loop.

11 We have quite a few businesses that use our
12 service for local communication between offices.
13 Doctors' offices, for example, communicate
14 between two or more offices to share schedules
15 and data. They also use medical programs that
16 transmit data back and forth solely between
17 office A to our router back to office B. The
18 data never goes to the Internet. We also have
19 retail stores that use our service in a similar
20 manner. We have a state corporate office with
21 DSL who have satellite offices. The information
22 goes from the satellite office up the DSL link
23 to our office, back down another DSL link to
24 their corporate office. The traffic never goes
25 to the Internet.

1 The traffic with our customers going to the
2 Internet, the traffic going to the Internet is a
3 completely separate and individual circuit. We
4 can purchase that circuit from the ILEC, we can
5 purchase that circuit from a CLEC, or we can
6 purchase it from a satellite provider, and we're
7 also currently looking into purchasing from a
8 wireless provider. So it's a completely
9 separate circuit.

10 COMMISSIONER DEASON: Let me ask you a
11 question. I thought you said earlier, and I may
12 be paraphrasing, but that the incumbent LEC is
13 basically your only option, and then you just
14 indicated that you can obtain wireless, you can
15 obtain cable.

16 MR. HEINZ: Excuse me. That is for our
17 Internet access only. For us to provide a
18 customer at your home, you would need to have
19 your dial tone coming from Verizon, the ILEC,
20 for us to order the circuit. Then we would need
21 to have a circuit purchased from Verizon to
22 point your circuit to our circuit. So those are
23 two required parts for us to be able to provide
24 service to you. For how our data gets to the
25 Internet, we could purchase that loop from

1 anybody.

2 MS. CASWELL: Commissioner Deason, I --

3 COMMISSIONER DEASON: Oh, from your
4 location to the Internet.

5 MR. HEINZ: Yes, sir.

6 COMMISSIONER DEASON: Okay. I understand.

7 MR. HEINZ: But to get from your house to
8 our office, you need to have a local loop, a
9 dial tone from the ILEC, and we also need to
10 have either an ATM or a T1 from the ILEC.

11 We've obviously covered the repair issues.
12 I don't want to beat that up, but generally with
13 a repair issue, if we have a customer call in,
14 our standard operating procedure is for us or
15 any ISP to call Verizon Advanced Data Group.
16 Verizon Advanced Data Group sends a request out
17 via e-mail or fax to the central office. That's
18 where 90 to 95% of the problems are located.
19 The CO, the general response time from the CO is
20 48 hours. If the Verizon Advanced Data group
21 has made an incorrect request, we are not
22 notified until we call back to check on the
23 ticket, and then the process has to be started
24 afresh. And this usually happens three or four
25 times before there's a resolution to a problem,

1 which obviously can be -- result in a major
2 outage for a business that relies on our DSL
3 circuit for critical mission data.

4 The ordering process as well, virtually all
5 orders that are placed do not meet the firm
6 order commitment, basically the due date. Very
7 rarely do the orders get placed in a timely
8 manner.

9 There is no quality of service guarantee
10 for ISPs. There is no due date guarantee,
11 although if a customer calls the ILEC directly
12 as a residential customer, if they miss that due
13 date, they do get a \$25 rebate or refund. As a
14 business customer, they get a \$100 rebate or
15 refund. We are offered no such service similar
16 to that.

17 That's all I have.

18 COMMISSIONER JABER: David, the problems
19 that Mr. Heinz just described, those are OSS
20 problems. And at least as it relates to
21 BellSouth, our OSS test takes into account or is
22 looking at DSL provisioning; right?

23 MR. DOWDS: I'm not positive. I believe
24 it's looking at the provision of DSL-capable
25 loops. I don't believe it's looking into the

1 provision of the wholesale incumbent LEC DSL
2 offering.

3 COMMISSIONER JABER: Okay.

4 MR. DOWDS: I believe it's also -- they're
5 looking into line sharing, but not a retail
6 product, not the product per se, if that makes
7 sense.

8 CHAIRMAN JACOBS: Any questions? Okay.
9 Thank you, Mr. Heinz.

10 MR. MARLOWE: My name is Rob Marlowe, with
11 Marlowe & Associates Internet Services out of
12 New Port Richey, Florida.

13 I could reiterate all of the same horror
14 stories you've heard before. I will not. I
15 would like to make one point to the Commission,
16 however. Right now my T1s are regulated by the
17 Commission. PRI lines that I have are regulated
18 by the Commission. Those are running on HDSL,
19 which is a flavor of DSL. The Commission is
20 regulating those. They are not regulating ADSL,
21 which is simply another flavor of DSL. It's a
22 distinction without a difference. And I would
23 encourage you to adopt a tariff for the ADSL so
24 that you're regulating all of it the same way.

25 Thank you.

1 CHAIRMAN JACOBS: Thank you.

2 MR. FLEWMAN: My name is Sean Flewman from
3 City.com Communications Services.

4 CHAIRMAN JACOBS: I'm sorry. Your last
5 name again?

6 MR. FLEWMAN: Flewman.

7 Again, I support the staff's recommendation
8 for a tariff on the DSL product. I too could
9 reiterate every single horror story of all my
10 fellow ISPs. I've experienced every one of
11 them.

12 Unlike our Sprint and our BellSouth
13 counterparts, most Verizon ISPs have no contract
14 per se as a wholesale ISP, mainly because their
15 numbers that we are required to attain are
16 unattainable. Based on their own numbers, to
17 get their rate of a million lines, they don't
18 even have that now, so how can they hold us to
19 something such as that?

20 CHAIRMAN JACOBS: So you don't purchase --
21 you don't get a wholesale contract?

22 MR. FLEWMAN: There's no -- there are
23 contracts. However, if you sign on with a
24 contract versus just a year commitment, which is
25 what they offer to any ISP that has the

1 facilities to support it -- you can sign a
2 contract. However, you have to commit to a
3 certain term volume. For example, the largest
4 term volume commitment that they have coming out
5 is, again, 1 million lines. There's not that
6 many combined broadband customers within the
7 State of Florida, based on BellSouth's own
8 numbers of 481,000 lines.

9 CHAIRMAN JACOBS: Okay. So if you wanted
10 to provision DSL, we've heard today that you
11 have to do it over a Verizon line.

12 MR. FLEWMAN: That's correct.

13 CHAIRMAN JACOBS: Your customer has to then
14 go and get that DSL?

15 MR. FLEWMAN: They can place the order
16 through myself, or they can place it directly
17 with Verizon and select myself as an ISP.
18 However, if they do that, which there is no
19 reason that they would, because I can't offer
20 them a free modem such as Verizon Online does.
21 Then, you know, they have to have the Verizon
22 phone line. They can't have a Sprint phone line
23 or any other CLEC, an e.spire phone line or
24 anything like that. They have to have Verizon.

25 CHAIRMAN JACOBS: So all of your DSL

1 customers are going to be end use customers of
2 Verizon for DSL.

3 MR. FLEWMAN: That's correct.

4 CHAIRMAN JACOBS: Is that it?

5 MR. FLEWMAN: That was it. I'm sorry.

6 CHAIRMAN JACOBS: Okay. Thank you.

7 MR. SELTZER: My name is Daniel Seltzer,
8 with Rapid Systems.

9 CHAIRMAN JACOBS: I'm sorry. Could you
10 give us your name again?

11 MR. SELTZER: Daniel Seltzer. And I don't
12 want to be repetitive, so I'm just going to read
13 my statement, and I probably will be a little
14 bit.

15 I'm in favor of the Florida state
16 tariffing of xDSL service. This tariff is
17 needed to protect the consumer and ISP, as we
18 are consumers also. We need a mechanism to
19 protect consumers. How is the State of Florida
20 to address and resolve consumer complaints?
21 Imagine the number of complaints ISPs deal with
22 daily, considering the number of complaints the
23 Florida Public Service Commission is receiving.

24 Stated in this docket, the FCC is
25 referenced in orders 98-292 and 98-317. We're

1 led to believe that ADSL service was exclusively
2 marketed to Internet service providers. As of
3 today, more ILECs are themselves becoming ISPs,
4 and as a result of not being regulated, there
5 are many other issues that ultimately affect
6 consumers. With ILECs controlling the actual
7 copper wire, we are seeing anticompetitive and
8 predatory practices as they exert their awesome
9 monopoly in local telephone service to achieve a
10 second monopoly in Internet service,
11 particularly in the broadband DSL. Consumers
12 are not getting quality service, and what we
13 need is -- a specific timetable for a remedy is
14 needed.

15 Thank you.

16 CHAIRMAN JACOBS: Thank you. That's
17 everyone? Mr. Shine, you want to close out?

18 MR. SHINE: That concludes our comments.

19 CHAIRMAN JACOBS: Very well.

20 Commissioners, any other questions?

21 COMMISSIONER JABER: I have a question of
22 staff. I notice that the way the recommendation
23 reads, should the Commission order BellSouth.
24 As one of our choices, can we not take action on
25 this, or do you need -- here's why I'm asking.

1 The comments we've heard from the ISPs are
2 really, at least the way I'm taking it, more
3 related to abuses of market power and concerns
4 in that regard. And not as a criticism. I
5 think the recommendation was more geared towards
6 concerns with quality of service of the end
7 user.

8 I want a little bit more research done. I
9 want to know how severe -- I would like to know
10 a little bit more about how severe the problem
11 is and maybe what other states have done. Why
12 not -- if we're seriously considering tariffing
13 this, why not include the ALECs?

14 And, Commissioner Palecki, I'm also going
15 off of your concern with respect to the
16 Legislature. Well, the Legislature, if we're
17 asking them for direction, they're going to turn
18 back to us and say, "well, what do you think?"
19 And I think that a policy kind of review is in
20 order, a big picture kind of review about what
21 it is we're trying to accomplish.

22 And where I'm tending towards recommending
23 to the Commissioners, Mr. Chairman, is that we
24 not take action on this, but ask our staff to do
25 some sort of policy paper or investigation or

1 research and come back to us.

2 I'm throwing that out there for discussion.
3 I don't want to make a motion and blindsides
4 anybody unnecessarily.

5 COMMISSIONER DEASON: well, I can support
6 that with -- first of all, with maybe a couple
7 of observations.

8 One, you indicated that for staff to review
9 the inclusion of other companies as well to the
10 three identified incumbents LECs, including the
11 CLECs. I guess my question is, if it's good for
12 Bell, Verizon, and Sprint, why isn't it good for
13 all of the incumbent LECs in this state? I know
14 it's only maybe 1 or 2% of the customers, but
15 being one of those 1 or 2% of the customers in
16 this state, why would we be treated differently?
17 I want that addressed.

18 The other thing is that I'm still hung up
19 on jurisdiction. It seems like that's always an
20 important topic when we start talking about
21 something that involves the FCC. I want a clear
22 understanding of what staff feels our
23 jurisdiction is.

24 Now, there's a question as -- if you have
25 jurisdiction, there's a question, a policy

1 question of how you assert that jurisdiction,
2 what means you employ to make sure that you meet
3 your objectives. And I guess that could be
4 subject to interpretation. There's various
5 levels of regulation. But I think jurisdiction
6 is the fundamental question, and there's a
7 question -- if we feel like we do have
8 jurisdiction we need to assert, there's a
9 question of how we assert it. If that can be
10 included --

11 COMMISSIONER JABER: I wholeheartedly
12 agree.

13 MS. KEATING: Could I just clarify what
14 you're intending to do? would you like to
15 indefinitely defer this recommendation and let
16 staff beef this one up or actually make a
17 determination today that you are declining
18 jurisdiction at this time?

19 COMMISSIONER DEASON: I can answer that
20 question. What my understanding is is that
21 we're making no decision. I think that we're --
22 we're not making a decision, or at least I would
23 not support making a decision today that we are
24 declining jurisdiction.

25 MS. KEATING: I'm just trying to make --

1 COMMISSIONER JABER: That's exactly what --

2 MS. KEATING: -- sure that you don't want
3 an order issued.

4 COMMISSIONER JABER: No. That's precisely
5 the point. I don't think we know enough to have
6 an order issued or to make an affirmative
7 decision one way or the other.

8 And to answer your question about is there
9 an expectation on at least my part that you come
10 back with a recommendation, not necessarily. I
11 think if we do that kind of analysis, first to
12 address jurisdiction and then to address policy,
13 we may find that there is nothing more that we
14 need to do.

15 CHAIRMAN JACOBS: I would suggest that we
16 may want to resolve the question ultimately,
17 Commissioner.

18 COMMISSIONER JABER: Well, do we have to
19 say that?

20 CHAIRMAN JACOBS: No, we don't have to do
21 that. We don't have to say specifically now to
22 come back at a particular time and place with a
23 recommendation. But let me say, I would want us
24 to come to some resolution of this, certainly
25 from the jurisdictional standpoint, because if

1 it turns out that we don't have jurisdiction, I
2 think if we decide we don't have jurisdiction,
3 at least these interested parties ought to
4 understand that.

5 And there may be some avenues that can be
6 explored in terms of getting them some recourse,
7 at least with the FCC. I quite frankly think
8 that if we choose not to have recourse that we
9 then ought to go into some discussions with the
10 FCC to get to the bottom of these kind of
11 issues. That sounds like a reasonable place to
12 start.

13 But at any rate, it sounds like we're not
14 asking specifically to hold this recommendation
15 in abeyance before you do that report. It
16 sounds like what we want you to do is go back
17 and do that report and then decide your best
18 policy recommendation from there.

19 MS. KEATING: Do you want something to come
20 to internal affairs, or if we decide that it's
21 appropriate that you need to address it at
22 agenda, can we just put it back on agenda?

23 CHAIRMAN JACOBS: I would go with --

24 MS. KEATING: I mean, we're just trying to
25 figure out how to address this.

1 CHAIRMAN JACOBS: If you feel that a
2 recommendation --

3 MS. KEATING: If you want us to close the
4 docket --

5 CHAIRMAN JACOBS: If you feel that a
6 recommendation for vote is appropriate, I would
7 welcome that docket coming forward, that item
8 coming forward.

9 COMMISSIONER BAEZ: And I just want one --
10 I want to add my two cents here. I think what I
11 was -- what I'm most concerned about is that
12 this recommendation is written from the
13 perspective, or one would infer from the
14 perspective of an end user. And with all due
15 respect to the ISPs here, because I understand,
16 or I accept that you have problems, but I'm not
17 entirely convinced that an ISP, certainly not
18 one that's wholesaling or reselling DSL service,
19 has that same status.

20 And perhaps that's another -- you know,
21 perhaps that just adds one more issue that you
22 have to consider, because I wasn't convinced
23 from the start that there was necessarily a
24 problem with the end user. And certainly from
25 reading the e-mail complaints that the staff

1 provided, it seems to be that we have -- where
2 we have a problem is in the middle of the
3 market, because you keep hearing anti -- you
4 know, claims of anticompetitive behavior or
5 making it difficult for provisioning service to
6 third parties.

7 I think we need to look at that and make up
8 our minds whether we're going to approach this
9 as a consumer issue or we're going to approach
10 it as a competitive issue, because if it is a
11 competitive issue, I think there's an avenue
12 there that's available. And maybe it's harsh to
13 say what an ISP has to do is become a reseller
14 in earnest and get all the protections,
15 competitive protections that the Act -- both
16 federal and the state law allows for ALECs or
17 CLECs. They can get status that way and get
18 protections that way.

19 And it's my feeling that a lot of these
20 problems that we've been hearing today can get
21 addressed in that forum, not as a consumer. I
22 would hope that we don't confuse the two and
23 that we be clear about that.

24 COMMISSIONER DEASON: Just let me say that
25 when I talk about jurisdiction, I'm talking

1 about Chapter 364. I don't think I saw a single
2 mention in your -- anything about 364 in your
3 analysis. Everything was FCC rule and FCC this,
4 FCC that. If I'm mistaken, please point me to
5 it. But for us to assert jurisdiction, we've
6 got to have the ability in Chapter 364 to do
7 that.

8 MS. CHRISTENSEN: Commissioner, I would
9 draw your attention to page 4. There is a
10 jurisdictional statement. I think we can
11 accommodate you, though, with a more detailed
12 analysis of how --

13 COMMISSIONER DEASON: Well, you have a
14 statement that this is our jurisdiction under --

15 MS. CHRISTENSEN: Right. And I --

16 COMMISSIONER DEASON: -- 364, but there's
17 no analysis.

18 MS. CHRISTENSEN: And we can certainly
19 include in anything that we present to you a
20 more detailed analysis, not only as to how we
21 have jurisdiction pursuant to what the FCC has
22 done, because we believe that they have allowed
23 us as well to have dual jurisdiction -- they
24 specifically say it for intrastate -- but as
25 well as an analysis under our own statutes as to

1 why we believe we have jurisdiction.

2 CHAIRMAN JACOBS: Great. For today's
3 purposes, it sounds like we are -- let's defer
4 this docket today, and you make a decision
5 whether or not to bring it back or not. Okay?


6 COMMISSIONER PALECKI: And I would be very
7 comfortable with a deferral as well, especially
8 considering the commitment made by BellSouth,
9 Verizon, and Sprint regarding compliance with
10 the Commission rules. And I would expect that
11 we will hold them to that commitment as well.

12 CHAIRMAN JACOBS: Very well. Thank you.
13 It's been very lively.

14 (Conclusion of consideration of Item 27.)
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2 CERTIFICATE OF REPORTER
3

4 STATE OF FLORIDA)

5 COUNTY OF LEON)
67 I, MARY ALLEN NEEL, do hereby certify that the
8 foregoing proceedings were taken before me at the time
9 and place therein designated; that my shorthand notes
10 were thereafter transcribed under my supervision; and
11 that the foregoing pages numbered 1 through 115 are a
12 true and correct transcription of my stenographic
13 notes.14 I FURTHER CERTIFY that I am not a relative,
15 employee, attorney or counsel of any of the parties,
16 or relative or employee of such attorney or counsel,
17 or financially interested in the action.18 DATED THIS 8th day of February, 2001.
19
2021 
22 _____
23 MARY ALLEN NEEL, RPR
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25 Tallahassee, Florida 32301
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