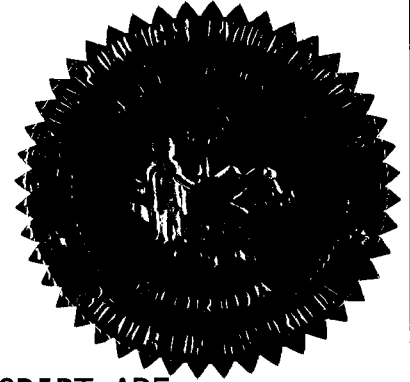


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020412-TP

In the Matter of

PETITION FOR ARBITRATION OF
UNRESOLVED ISSUES IN NEGOTIATION
OF INTERCONNECTION AGREEMENT WITH
VERIZON FLORIDA, INC., BY
US LEC OF FLORIDA, INC.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER BRAULIO L. BAEZ
Prehearing Officer

DATE: Monday, October 14, 2002

TIME: Commenced at 1:30 p.m.
Concluded at 1:53 p.m.

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

REPORTED BY: LINDA BOLES, RPR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER - DATE

11225 OCT 16 02

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1 APPEARANCES:

2 MARTIN P. McDONNELL, Rutledge, Ecenia, Underwood,
3 Purnell and Hoffman, P. O. Box 551, 215 South Monroe Street,
4 Suite 420, Tallahassee, Florida 32302; and MICHAEL L. SHOR
5 (participating telephonically), Swidler, Berlin, Shereff,
6 Friedman, LLP, 3000 K Street, N.W., Suite 300, Washington,
7 DC 20007, appearing on behalf of US LEC of Florida, Inc.

8 AARON M. PANNER and SCOTT H. ANGSTREICH, Kellogg,
9 Huber, Hansen, Todd & Evans, P.L.L.C., 1615 M Street, N.W.,
10 Suite 400, Washington, DC 20036, appearing on behalf of Verizon
11 Florida, Inc., participating telephonically.

12 ADAM TEITZMAN and LEE FORDHAM, Florida Public Service
13 Commission, Office of the General Counsel, 2540 Shumard Oak
14 Boulevard, Tallahassee, Florida 32399-0870, appearing on behalf
15 of the Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER BAEZ: Okay. We'll go on the record.
3 Counsel, read the notice.

4 MR. TEITZMAN: Pursuant to notice issued
5 October 14th, 2002, this time and place has been set for a
6 prehearing in Docket Number 020412-TP, petition for arbitration
7 of unresolved issues in negotiation of interconnection
8 agreement with Verizon Florida, Inc., by US LEC of Florida,
9 Inc.

10 COMMISSIONER BAEZ: Thank you. We're going to take
11 appearances starting with our guests on the telephone line.
12 Mr. Shor, you can, you can start.

13 MR. SHOR: This is Michael Shor with the law firm of
14 Swidler, Berlin, Shereff, Friedman in Washington, DC, counsel
15 for US LEC of Florida, Inc.

16 COMMISSIONER BAEZ: Thank you. Mr. Panner.

17 MR. PANNER: This is Aaron Panner of Kellogg, Huber,
18 Hansen, Todd & Evans, and I have with me Scott Angstreich.

19 COMMISSIONER BAEZ: Thank you. Mr. McDonnell.

20 MR. McDONNELL: Marty McDonnell of Rutledge, Ecenia,
21 Purnell & Hoffman, and I'm here on behalf of US LEC of Florida.

22 MR. TEITZMAN: Adam Teitzman and Lee Fordham on
23 behalf of the Commission.

24 COMMISSIONER BAEZ: Okay. Thanks. We've got some --
25 we've got one preliminary matter that I'm showing. Do you want

1 to take up the joint motion first?

2 MR. TEITZMAN: Yes. The parties filed on Friday a
3 joint motion to continue hearing and, looking into it, staff
4 has reserved February 6th as a rescheduling date.

5 COMMISSIONER BAEZ: Okay. I'm going to grant the,
6 I'm going to grant the continuance. I'm sorry. Mr. Panner, do
7 you have any issue -- staff has found a date, February 6th, to
8 reset the hearing. Offhand do you know any -- do you have a
9 problem with that date?

10 MR. PANNER: No. No, Your Honor. I, I don't see any
11 conflict right now.

12 COMMISSIONER BAEZ: Okay. Thank you.

13 Mr. McDonnell, you and your client are okay with the
14 date as proposed?

15 MR. McDONNELL: I'm okay. Mr. Shor --

16 COMMISSIONER BAEZ: Mr. Shor, I'm sorry, I forgot
17 you.

18 MR. SHOR: That's okay. Your Honor, given the lead
19 time, I can't envision there being any difficulty. I'm not
20 aware of any conferences or other items that may be out there,
21 but I can't envision it creating a problem for US LEC.

22 COMMISSIONER BAEZ: Well, we're going to go ahead and
23 set it, set February 6th as the hearing date, subject to
24 whatever process it's subject to in the future. But go ahead
25 and make the changes to the, to the, I guess it's the

1 procedural order or the CASR.

2 MR. TEITZMAN: Yes. We'll make a modification to the
3 order establishing procedure.

4 COMMISSIONER BAEZ: Okay. Great. Any other
5 preliminary matters?

6 MR. TEITZMAN: Along with that there has been mention
7 of extending the discovery date.

8 COMMISSIONER BAEZ: And, again, I mean, given, given
9 the, the time frame, I don't think that's unreasonable. I
10 would --

11 MR. TEITZMAN: Yeah. Currently we --

12 COMMISSIONER BAEZ: You don't have to set those here
13 right now though. I know you've got a lot of juggling of dates
14 to do. But if you'll -- if staff will come back to me with
15 revised, revised deadlines, we can go ahead and work that out
16 off-line.

17 MR. TEITZMAN: We will do that.

18 COMMISSIONER BAEZ: Thank you. Moving along.

19 Procedural matters, I've got two standards, two
20 standard procedural matters. One is opening statements. To
21 the extent that the parties feel the need to give opening
22 statements, we're going to limit it, we're going to limit it to
23 ten minutes per side, and use your time accordingly.

24 Secondly, the order of witnesses, if there aren't any
25 objections, we're going to take the witnesses, we're going to

1 take both direct and rebuttal together. Any objections from
2 the parties?

3 MR. McDONNELL: No, sir.

4 MR. SHOR: No, no objection.

5 COMMISSIONER BAEZ: Okay. Great. Let's move on
6 to -- and I apologize. I'm -- I've got a big, big head cold,
7 so I may not be coming across as clearly or less muddled as
8 normal.

9 We're going to go over the draft prehearing
10 statement -- prehearing order, I'm sorry. And what I'll do is
11 we can go through the first few sections quickly. If there
12 aren't any changes that need to be made, we can just get those
13 out of the way and move along to, move along to the prehearing,
14 to the statement of positions on the parties.

15 Mr. Teitzman, but for the changes, I don't know if
16 the -- I'm not sure if the draft already reflects the two
17 procedural changes, but if they don't, can you please make
18 those changes?

19 MR. TEITZMAN: Those will be added.

20 COMMISSIONER BAEZ: Okay. Great.

21 Moving to -- I guess it's Page 5. Mr. Shor,
22 Mr. Panner, I don't know if you're holding an electronic copy.
23 I'm on Page 5 of a draft order, but I'm looking specifically at
24 Section 6, order of witnesses.

25 MR. SHOR: I have that.

1 COMMISSIONER BAEZ: Are we there? Okay. Any changes
2 to the order of witnesses?

3 MR. SHOR: The only thing that I would, I would
4 suggest, and I really haven't had a chance to talk with
5 Mr. Panner about it prior to today and I apologize for that, we
6 have had two hearings already, and I think we have found it
7 somewhat useful to present the witnesses to try to, to the best
8 possible way, track the issues as opposed to the witnesses so
9 that we have --

10 MR. PANNER: I would agree with that, Your Honor.
11 This is Aaron Panner speaking. So what we would -- just to
12 clarify, the way -- the order that we've used in past hearings
13 has been that Mr. Hoffman has gone, Mr. Hoffman and Mr., and
14 Ms. Montano have testified on Issues 1 and 2, and then our
15 witness has testified on those issues. Issues 1 and 2 are
16 really quite closely related issues; they're really one issue.
17 And then have the remaining issues dealt with by Ms. Montano
18 and then --

19 MR. SHOR: And then Mr. Haynes.

20 MR. PANNER: -- but really only has testimony as to
21 one. And we found that that helped to keep the record a little
22 bit more, a little bit clearer because it meant that we were
23 dealing with one topic all at one time and then we'd go on to
24 the next topic.

25 COMMISSIONER BAEZ: Well, what it seems to me that

1 you're suggesting is merely to change, just rearrange the
2 witnesses so that they follow each other.

3 MR. SHOR: Well, in essence what happens is Ms.
4 Montano is called to the stand twice. She's called to the
5 stand first with respect to Issues 1 and 2. Ms. Montano and
6 Mr. -- generally Mr. Hoffman goes first, then Ms. Montano.
7 Then it would be Verizon's witness, who's identified here as
8 Mr. Munsell. Then that would really, that would complete all
9 the testimony for Issues 1 and 2. Then Ms. Montano comes back
10 to the stand for the balance of US LEC's testimony on the
11 remaining issues, followed by Mr. Haynes.

12 COMMISSIONER BAEZ: Can you -- you all mentioned two
13 previous hearings. Were those here before this Commission or
14 --

15 MR. SHOR: No. One was in Pennsylvania, Your Honor,
16 and the other was in Maryland.

17 COMMISSIONER BAEZ: All right. Because what, what,
18 what you're proposing is sort of giving me a little bit of a
19 headache with the moving. We had said earlier that we were
20 going to take issue -- we were going to take witnesses rebuttal
21 and direct at the same time. Now if what you want to do, for
22 ease of, for ease of tracking the issues as a compromise, is to
23 change the order of the witnesses, seeing that there's only
24 four witnesses, we can probably work with that. But the, the
25 taking of witnesses, bringing them up twice, I guess, as you

1 said in the case of Witness Montano, I don't think we're going
2 to do that. So is there an order to the witnesses that you
3 would feel comfortable does better at tracking the issues?

4 MR. SHOR: I think the best thing to do then would be
5 to put Mr. Hoffman first.

6 COMMISSIONER BAEZ: Okay.

7 MR. SHOR: Ms. Montano second, Mr. Munsell third and
8 Mr. Haynes fourth.

9 COMMISSIONER BAEZ: Is that all right with opposing
10 counsel?

11 MR. PANNER: You know, perhaps Mr. Shor and I can
12 work it out. I think it might make more sense and we should
13 just talk about it, if it's all right to leave it somewhat
14 open, Your Honor. I think it might make more sense to have the
15 order be Hoffman, Munsell, Montano, Haynes.

16 COMMISSIONER BAEZ: I tell you what, we're --
17 we'll -- I would agree with you. I think we can hold it open
18 for now. We're going to leave the order of witnesses as it is
19 in the draft prehearing statement. And I think since it's a
20 limited number of witnesses, we can probably make arrangements
21 at hearing time as, as you all decide.

22 MR. SHOR: Okay.

23 MR. PANNER: Thank you, Your Honor.

24 MR. SHOR: And, again, depending upon what happens
25 with Docket 0075 --

1 COMMISSIONER BAEZ: Exactly.

2 MR. SHOR: -- it may be truncated even more.

3 COMMISSIONER BAEZ: It may have an impact. Exactly.

4 Moving on. Basic positions. US LEC, do you have any
5 changes to make on your basic position?

6 MR. SHOR: No. I think it accurately sets forward
7 our basic position. We, we just approached the summaries
8 somewhat differently than Verizon. I don't, I don't feel a
9 need to go back and summarize each position.

10 COMMISSIONER BAEZ: And we appreciate that.

11 Verizon, any changes? And really we're just looking
12 at, you know, if there were any misstatements or anything that
13 you want to clarify now.

14 MR. PANNER: No, sir, Your Honor.

15 COMMISSIONER BAEZ: No changes? Okay. Then we're
16 going to go quickly through issues, and either of you speak up
17 if you have any changes to the individual issues.

18 Issue 1. Issue 2. That goes for you too,
19 Mr. McDonnell.

20 MR. McDONNELL: Yes, sir.

21 COMMISSIONER BAEZ: I didn't mean to leave you out.
22 And staff as well, if they need to clarify a position.

23 Issue 2. Issue 3. Issue 4. Issue 5. Issue 6.
24 Issue 7. Issue 8. And I see that Issue 9 has been settled.
25 Any changes to the exhibit list, Section 9?

1 MR. SHOR: Your Honor, it's not a change. I have a
2 question. I don't know whether Verizon is supposed to or,
3 rather, parties are supposed to prefile copies of exhibits that
4 are identified. The only exhibits we intend to use are
5 probably going to be used in cross-examination, which is why we
6 did not identify them.

7 COMMISSIONER BAEZ: You don't need to identify those.
8 You introduce them at hearing as you --

9 MR. SHOR: And I have no problem -- Verizon has
10 identified the hearing transcripts from Pennsylvania and
11 Maryland. And I understand those are the full transcripts, and
12 US LEC has no problem with that. I would just like to see the
13 pages from US LEC's Florida Local Exchange Price List
14 identified as Verizon Exhibit 4; pages from the local service
15 section of US LEC's web site, Verizon Exhibit 5; and, I'm
16 sorry, the map of Florida LATA boundaries, Verizon Exhibit 1.
17 I don't envision having any difficulties with it. I'd just
18 like to know what they are.

19 MR. PANNER: Well, Your Honor, we, we took your order
20 to be that if we had any exhibits that we intended to
21 introduce, and it didn't have any limitation regarding direct
22 or cross-examination exhibits, that we should describe them in
23 our prehearing statement, and that's what we did. But -- and
24 these exhibits are really ones that we intend also to introduce
25 on cross, not, not on direct. We have, of course, prefiled

1 direct testimony, and there are some exhibits attached to
2 those. But that's what Mr. Shor is talking about since he
3 already has copies of those.

4 COMMISSIONER BAEZ: Well, Mr. Panner, I commend you
5 on being so thorough. Usually cross-examination exhibits are
6 brought up at hearing, and obviously opposing counsel is given
7 ample opportunity to inspect and, and challenge them as
8 necessary. So your, your action in listing your exhibits was
9 fine.

10 I'm hearing counsel for US LEC basically ask for
11 advance copies of it. I don't, I don't intend on ordering
12 that. But to the extent that Verizon feels charitable, you
13 know, all that's really going to get taken care of at hearing,
14 Mr., Mr. Shor.

15 MR. SHOR: If that's, if they're cross-exam exhibits,
16 I don't disagree that as long as I'm provided with them at the
17 hearing --

18 COMMISSIONER BAEZ: Right.

19 MR. SHOR: -- and I have an opportunity to examine
20 them or question them then, that's sufficient.

21 COMMISSIONER BAEZ: And you will get that
22 opportunity --

23 MR. SHOR: That's fine.

24 COMMISSIONER BAEZ: -- during the course of the
25 hearing.

1 MR. SHOR: That's fine.

2 COMMISSIONER BAEZ: Okay. So no, no changes to the
3 exhibits.

4 Mr. Teitzman, there's no proposed stipulations.

5 MR. TEITZMAN: That's correct.

6 COMMISSIONER BAEZ: And no pending motions.

7 MR. TEITZMAN: Well, the addition to that would be
8 the joint motion that was filed on Friday that we just ruled
9 on.

10 COMMISSIONER BAEZ: We just ruled on. Okay. We can
11 take care of that.

12 Confidentiality matters, I see nothing pending.
13 Anything change from that?

14 MR. TEITZMAN: That is correct.

15 COMMISSIONER BAEZ: Okay. In terms of this list of
16 decisions that may impact the resolution of issues, to the
17 extent the parties have any changes, they can get them --

18 MR. SHOR: Your Honor, I'd like to ask a question
19 about that.

20 COMMISSIONER BAEZ: Yes.

21 MR. SHOR: Because it seems that in two instances now
22 Verizon and US LEC have interpreted the, the order, your order
23 somewhat differently.

24 We interpreted the request pertaining to decisions
25 that have a potential impact to go towards decisions that

1 impact the Commission's jurisdiction, not that US LEC relies on
2 in support of its position. And so we listed none because we
3 were not aware of any decisions that would impact the
4 Commission's jurisdiction to issue relief or to resolve a
5 particular matter. And it appears that this list that was
6 provided by Verizon reflects decisions that Verizon believes
7 support its position on the substance, which is, which is just
8 a different thing.

9 COMMISSIONER BAEZ: Okay.

10 MR. SHOR: And so if your, if your direction is for
11 substantive decisions, then I think we would have some cases
12 that we would add to the list. If it was just going to
13 jurisdiction, then, then I don't know that the, any of these
14 cases go to that.

15 COMMISSIONER BAEZ: That -- I'm sorry. That was Mr.
16 Shor; right?

17 MR. SHOR: Yes. I'm sorry, your Honor.

18 COMMISSIONER BAEZ: Mr. Shor, first I'm going to ask
19 staff counsel to kind of clarify the purpose of this list of
20 cases and, and certainly clarify for me what the opportunity to
21 amend and/or for Mr. Shor, as he stated, to, to submit
22 additional case law depending on what the focus of it is going
23 to be.

24 MR. TEITZMAN: Okay. Well, the -- let me read -- the
25 order establishing procedure stated, "A statement identifying

1 any decision or pending decision of the FCC or any court that
2 has or may either preempt or otherwise impact the Commission's
3 ability to resolve any of the issues presented or the relief
4 requested in this matter."

5 Verizon did proffer these in their prehearing
6 statements. It doesn't explicitly say jurisdiction; however,
7 it does say ability to resolve, which would tend to mean
8 jurisdiction.

9 MR. PANNER: And, Your Honor, this is Aaron Panner.
10 I certainly see how the, the -- I certainly see how Mr. Shor
11 read that direction. I think we read it in a somewhat more
12 expansive way in talking about the, you know, the Commission's
13 resolution. But we certainly -- you know, the parties will
14 have ample opportunity to brief these issues and explain our
15 reliance on any of these cases, and we would be perfectly -- we
16 certainly wouldn't attempt to put any obstacle in the way of
17 Mr. Shor citing any case he thought relevant. And we do not
18 contend, as I told -- Mr. Shor asked me about this today and,
19 as I let him know, we do not contend that any of these cases
20 would preempt or pose an obstacle to, simply to resolving the
21 issues that have been put before the Commission in this case.

22 COMMISSIONER BAEZ: Yeah. Mr. Shor, first I want to
23 make it clear that whether you did submit cases or not doesn't
24 foreclose you from doing them at any point and referring to
25 cases as you see fit. But if I can just get staff counsel to

1 finish answering my question, because I think the answer will
2 become evident as to what your opportunities, what US LEC's
3 opportunities and certainly what even the purpose of the list
4 is. I mean, it doesn't, it doesn't seem to me -- and, again --
5 and I want to say this, this is, this is perhaps the second
6 time that I've seen it. It's never been quite clear to me, is
7 what the intention of asking for, for these cases in advance --

8 MR. FORDHAM: Commissioner, this is Lee Fordham for
9 the record. This was added as, if you will, as boilerplate
10 language a few months back when at a certain hearing counsel
11 for one of the parties sprung a brand new case that no one had
12 ever heard of that drastically altered a position. And
13 basically the intent of this was just to -- if there are any
14 new cases or unique cases that we may not have been aware of or
15 that the Commission may not be aware of, we would like to know
16 about them in advance if they're going to waive them in front
17 of us at the hearing.

18 COMMISSIONER BAEZ: But, but am I, am I correct in,
19 in characterizing this as an informational list and it is not
20 to be an all-inclusive --

21 MR. FORDHAM: Absolutely.

22 COMMISSIONER BAEZ: I mean, it doesn't create any
23 limitations whatsoever from even getting, getting a new case
24 sprung on you.

25 MR. FORDHAM: That is totally correct, Commissioner.

1 This is just an effort to facilitate a smoother flow at the
2 hearing.

3 COMMISSIONER BAEZ: Right. So I guess, Mr. Shor, if
4 you should take anything from this, you know, whatever,
5 whatever opportunities you've ever had to either add to this
6 list or use cases other than what you submitted, which I
7 understand is, is zero at this point, none of that has been
8 affected. This is really -- this list of authority is really
9 just for staff counsel's and the Commission's convenience more
10 than anything else so that it'll help us smoother flow to the
11 hearing because there won't be more incidents of surprise when,
12 when case law gets brought out.

13 MR. SHOR: I thank you for that, Your Honor. I
14 appreciate your clarification. We just -- we were kind of just
15 scratching our heads somewhat befuddled trying to figure out,
16 you know, was it supposed to be apples, oranges or fruit salad.

17 COMMISSIONER BAEZ: Yeah. And, again, it's subject
18 to interpretation. I don't think anyone -- I wouldn't have
19 objection to either interpretation really. And seeing as how
20 this is more a matter of convenience than anything else, you
21 know, for the next time you'll know where, you'll know what the
22 question is.

23 MR. SHOR: And I was not, by the way, objecting to
24 Verizon's list.

25 COMMISSIONER BAEZ: Oh, I know. I know. In any

1 case, I'm not -- staff, correct me if I'm wrong. I mean,
2 there, there is still -- to the extent that Mr. Shor has any
3 cases that he wants to pass along, I mean, this is still
4 available to him to be included in the, in the draft?

5 MR. TEITZMAN: It could still be included in the --
6 it could still be included in the draft.

7 COMMISSIONER BAEZ: If he should so choose, give him
8 a reasonable time to do that, and you all can get together
9 off-line, Mr. Shor, in the event that you have anything you
10 feel compelled to include.

11 MR. SHOR: Thank you, Your Honor.

12 COMMISSIONER BAEZ: Anything else?

13 MR. TEITZMAN: I believe that's it, Your Honor.

14 COMMISSIONER BAEZ: Is that it? Thank you all for
15 attending.

16 MR. McDONNELL: Commissioner, I'm sorry.

17 COMMISSIONER BAEZ: Sure, Mr. McDonnell.

18 MR. McDONNELL: There is one more matter, and I'm not
19 sure whether you wanted to do this off-line or not based upon a
20 comment you made previously.

21 COMMISSIONER BAEZ: Well, you tell me and I'll figure
22 what I want to do.

23 MR. McDONNELL: Okay. There is, as we speak,
24 outstanding discovery. Verizon has made some requests of US
25 LEC. Right now the responses are due October 21st. The

1 responses may very well be implicated by what this Commission
2 rules at the petition for reconsideration in the generic
3 docket. The questions have to do with --

4 MR. PANNER: I'm sorry. Could I hear that again,
5 please?

6 COMMISSIONER BAEZ: Mr. McDonnell, can you repeat
7 yourself and speak into the mike so that Mr. Panner can --

8 MR. McDONNELL: Yes. I'm sorry. I'm sorry. Some of
9 the discovery responses due October 21st may be implicated by
10 this Commission's ruling in the generic docket regarding those
11 two issues, and it's US LEC's preference to only answer this
12 discovery once.

13 MR. SHOR: We already discussed that, Marty. We'll
14 get together and put up dates with the staff. We've already
15 agreed to postpone discovery.

16 COMMISSIONER BAEZ: Well, and specifically as part of
17 our discussion that wasn't specifically addressed. But my
18 answer to you, Mr. McDonnell, is that, you know, certain
19 discovery deadlines will be moved. To the extent that that
20 falls in, I think you're going to get to address it with staff.

21 MR. McDONNELL: Okay. That's fine.

22 COMMISSIONER BAEZ: And we'll get back when we have
23 to amend the order.

24 MR. McDONNELL: Okay.

25 COMMISSIONER BAEZ: Okay?

1 MR. McDONNELL: Thank you.

2 COMMISSIONER BAEZ: All right. Is there anything

3 else from the parties? No?

4 Staff?

5 MR. TEITZMAN: That is it from staff.

6 COMMISSIONER BAEZ: All right. Great. Thanks.

7 Thank you, everyone, and have a great day.

8 MR. SHOR: Thanks very much.

9 COMMISSIONER BAEZ: We're adjourned.

10 (Prehearing Conference concluded at 1:53 p.m.)

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STATE OF FLORIDA)

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CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 16th DAY OF OCTOBER, 2002.



 LINDA BOLES, RPR
 FPSC Official Commissioner Reporter
 (850) 413-6734