

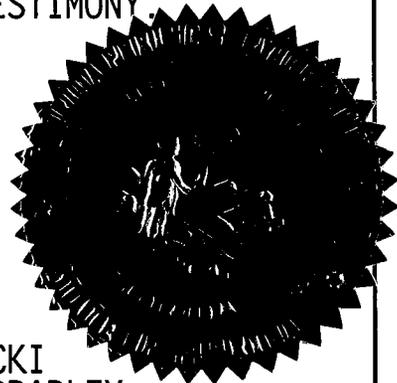
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990649B-TP

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In the Matter of
INVESTIGATION INTO PRICING
OF UNBUNDLED NETWORK
ELEMENTS (SPRINT/VERIZON TRACK)

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PROCEEDINGS: SPECIAL AGENDA CONFERENCE

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Monday, October 14, 2002

TIME: Commenced at 9:30 a.m.
Concluded at 1:05 p.m.

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

REPORTED BY: JANE FAUROT, RPR
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1 PARTICIPATING:

2 BETH KEATING, FPSC General Counsel's Office,

3 LAURA KING, ANN MARSH, DAVID DOWDS, JASON-EARL BROWN,

4 TODD BROWN and STEPHANIE CATER, FPSC Competitive Markets and

5 Enforcement.

6 PETE LESTER and PAT LEE, FPSC Economic Regulation.

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P R O C E E D I N G S

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2 CHAIRMAN JABER: While we are just waiting on a few
3 staff people, I will make an announcement. Commissioners, I
4 apologize for doing this at the last minute, but frankly, I
5 just made the decision. As it relates to the second part of
6 the special agenda, Sprint, I am deferring it. And let me
7 explain why so people don't overreact. I have read the record,
8 read the recommendation, and just have a lot of questions. But
9 I don't want anyone to misunderstand or overreact, I just need
10 more time to understand the record and Sprint and the
11 recommendation. And it occurs to me to ask a number of
12 questions I have today may create confusion and it is just not
13 necessary. So for the sake of administrative efficiency, I
14 would rather defer the Sprint recommendation. And I hope,
15 Commissioners, that doesn't cause inconvenience to you all. I
16 think it is a recommendation we can put back on a regular
17 agenda in the very near future. I don't need a lot of time.

18 COMMISSIONER DEASON: That's a shocker, Madam
19 Chairman. I wish I had known that this week while I was
20 preparing.

21 CHAIRMAN JABER: I know. I wish I did, too.

22 COMMISSIONER DEASON: It would have made the week at
23 least half as unbearable as it was.

24 CHAIRMAN JABER: So with that, we have got the first
25 part of the special agenda.

1 MS. KING: Good morning, Commissioners. Item 1 of
2 today's special agenda is staff's recommendation regarding
3 unbundled network element rates for Verizon Florida. Staff is
4 prepared to proceed issue-by-issue or in whatever manner you
5 wish. I believe Legal has something to discuss prior to going
6 through the issues, though.

7 MS. KEATING: Commissioners, we did want to bring to
8 your attention that on October 9th, Verizon submitted a letter
9 to the executive director identifying what they characterized
10 as mathematical errors in staff's recommendation. On October
11 11th, the ALEC coalition filed a motion to strike the letter,
12 and on the same day Verizon filed its opposition to the motion.
13 Staff recommends that the motion be granted. Even though the
14 pleading filed by Verizon is not currently in the record,
15 granting the motion will prevent it from becoming a part of the
16 record which would not be appropriate because much of the
17 letter constitutes argument against staff's recommendation
18 rather than the identification of mere errors.

19 CHAIRMAN JABER: Commissioners, do you have a motion
20 or questions?

21 COMMISSIONER DEASON: I have a question. You are
22 saying -- I don't even know what you're talking about. I
23 haven't seen anything, okay? You say it goes beyond just
24 correcting errors?

25 MS. KEATING: There were certain typographical errors

1 which have been taken into account, but the bulk of the letter
2 submitted by Verizon was essentially argument against staff's
3 recommendation. Philosophical points, not just the mere
4 identification of something, not identification of something
5 like two plus two is eight. They were philosophical
6 disagreements, and we believe they would be more appropriate in
7 another pleading, perhaps a motion for reconsideration or
8 something like that.

9 COMMISSIONER PALECKI: Were there any mere arithmetic
10 and mathematical mistakes pointed out at all?

11 MS. KEATING: There were a couple of typographical
12 errors which staff has taken into account.

13 COMMISSIONER PALECKI: And they have been corrected?

14 MS. KEATING: Yes.

15 COMMISSIONER PALECKI: So to that extent we would
16 grant the motion, or is that unnecessary?

17 MS. KEATING: Well, the motion to strike is actually
18 to prevent the letter itself from becoming a part of the
19 record. And the letter as it stands right now is not
20 technically a part of the record, because it was not submitted
21 in the docket. It was not recognized by the Commission at
22 hearing. However, granting the motion to strike will prevent
23 it from ever becoming a part of the record which would prevent
24 on-going responsive pleadings going back and forth, because
25 really the vast majority of the letter was more like a brief.

1 COMMISSIONER PALECKI: Thank you.

2 CHAIRMAN JABER: So is staff's recommendation just to
3 make clear that the letter is not part of the record and not an
4 appropriate filing?

5 MS. KEATING: Yes.

6 CHAIRMAN JABER: Commissioners, I think it is
7 probably just cleaner to grant the motion to strike so that to
8 the degree anyone questions whether the letter became part of
9 the record, we have clarified that it is not, never was, and
10 will not be.

11 COMMISSIONER BAEZ: And I have just have one
12 question. I don't disagree with that, but what is the
13 company's recourse beyond this? You mentioned something that
14 reconsideration was still available, but it would have to be
15 based on the record, not this letter necessarily.

16 MS. KEATING: Correct.

17 COMMISSIONER BAEZ: Okay.

18 COMMISSIONER DEASON: I can move staff's
19 recommendation to grant the motion to strike.

20 COMMISSIONER BAEZ: I can second.

21 CHAIRMAN JABER: There has been a motion and a second
22 to grant staff's recommendation to strike the -- what was the
23 date of the letter, Beth?

24 MS. KEATING: October 9th.

25 CHAIRMAN JABER: The October 9th letter from Verizon.

1 COMMISSIONER BRADLEY: (Inaudible. Microphone not
2 on.)

3 CHAIRMAN JABER: Commissioner Bradley, the letter was
4 never given to the Commissioners because it was an
5 inappropriate pleading, so the letter is not found anywhere.
6 That is the whole point, it is not in the record. So, we don't
7 have a copy of it. All those in favor say aye.

8 (Simultaneous affirmative vote.)

9 CHAIRMAN JABER: Opposed, nay. Okay. That resolves
10 that issue and that takes us to Issue 1. Staff, how do you
11 intend to handle this? Do you have a general introduction, or
12 do you want to go issue-by-issue?

13 MS. MARSH: Issue-by-issue is fine, if that is your
14 wish.

15 CHAIRMAN JABER: Okay. Commissioners, are there any
16 questions on Issue 1, or a motion?

17 COMMISSIONER PALECKI: I can move staff on Issue 1.
18 Actually, I have a general question I would like to ask staff
19 before I do that, though, and that is, how do the rates
20 proposed in this recommendation compare to the company's
21 current UNE rates?

22 MR. DOWDS: In general, we don't know. To my
23 knowledge, this Commission has only set rates for two elements
24 for Verizon. Let me qualify that. Verizon and AT&T had an
25 arbitration back in 1996, certain rates for various elements

1 were set back then. I could not tell you what they are. In
2 '97/'98 time frame, in order to comply with the deaveraging
3 rule the Commission set interim deaveraged UNE loop rates for
4 Verizon but only for two elements, a two-wire voice grade loop
5 and a four-wire loop. I do know, subject to assuming my memory
6 is accurate, that the proposed rates in this staff
7 recommendation for a two-wire loop are less than the current
8 interim rates for a two-wire voice grade loop. Beyond that, I
9 honestly don't know, because my presumption is that post-1996
10 there have been numerous negotiations between Verizon and other
11 companies, and I just don't know what rates are in the
12 agreements. Another wild card is that due to the merger, there
13 were some peculiar merger requirements that probably affect UNE
14 pricing, as well.

15 COMMISSIONER PALECKI: Thank you.

16 COMMISSIONER BAEZ: I have a question. Mr. Dowds, as
17 part of the staff's conclusion, you state that rates should not
18 be compared to those set in other rates. Is that something
19 that we have consistently applied, and another question, by
20 saying that are we, in fact, foreclosing that type of evidence
21 from ever being relevant as part of these types of proceedings?

22 MS. MARSH: You are asking about comparing to rates
23 in other states?

24 COMMISSIONER BAEZ: Yes.

25 MS. MARSH: I don't know that I intended to totally

1 foreclose that, but the comparison that was laid out, the
2 methodology that was laid out here by the ALEC witness to use a
3 model and specifically apply that isn't what the FCC has
4 advocated. They have just used that as a more general approach
5 to see if things fall within the realm of reason, but not as a
6 last resort. So my intent was not to totally foreclose ever
7 making any comparison.

8 COMMISSIONER BAEZ: I guess my concern would be that
9 we at least try and maintain all options available in order to
10 arrive at a reasonable decision. That we are not necessarily
11 setting any precedent that we will not entertain whatever
12 alternative theories there may be.

13 MS. MARSH: If we perhaps took that one sentence out
14 of the recommendation statement, would that resolve your
15 concern?

16 COMMISSIONER BAEZ: That would work for me, or if
17 there is some clarifying language that Legal can come up with
18 as part of the order, you know, that kind of makes it clear
19 that we are not necessarily rejecting any particular theory,
20 but it is up to us to find out what is consistent and
21 reasonable for us.

22 MS. MARSH: And that sentence is, rates should not be
23 compared to those set in other states, so, that would be
24 removed.

25 COMMISSIONER BAEZ: Okay.

1 COMMISSIONER DEASON: I have a question along those
2 lines. Not as it relates to comparison of rates in other
3 states. My question concerns the position that we may and
4 perhaps should compare rates within the state for different
5 companies. And, of course, that is with the caution that we
6 ensure that such rates are truly comparable, and I guess that
7 is my concern. How do we ensure that the rates are truly
8 comparable when we have different models?

9 MS. MARSH: Well, that is a difficult question.

10 COMMISSIONER DEASON: Well, let me say this, too.
11 And maybe this is a preface for some general discussion. Are
12 we going to continue to allow companies to utilize different
13 models, or is the ultimate course of action we should take to
14 come up with a model with all of its flaws that may exist, but
15 have one model for all of the companies to use so that
16 everybody knows what the rules are going in, and when the model
17 is run for different companies, then you really do have
18 comparable rates and maybe you can then hone in onto why there
19 are differences? Perhaps it would be differences in companies
20 in the way their cost structures are different as opposed to
21 companies just using different models. I just throw that out
22 for some feedback.

23 MR. DOWDS: There may be merit to entertain such a
24 proposal. We, frankly, haven't considered it because it wasn't

25 --

1 COMMISSIONER DEASON: Let me be clear. I'm not
2 proposing that we scrap what is in front of us now. I'm
3 thinking about the long-term. And I don't know how often we
4 are going to go through these UNE dockets, but I can tell you
5 if this is going to be a yearly thing, and with all of this
6 massive information and all of this second-guessing and this
7 and that, we need some basis where all of the companies are
8 treated the same and everybody -- they may not agree with the
9 model, but everybody knows what model is going to be used up
10 front. Is there any merit in that?

11 MR. DOWDS: Yes.

12 COMMISSIONER DEASON: So what is staff's position,
13 that we ultimately should get to a point where there is one
14 model that is used for all of the companies?

15 MR. DOWDS: To be candid, I don't think we have a
16 position one way or the other. We really haven't discussed it
17 at the staff level. As you know, the Catch-22 of cost models
18 is they are very labor-intensive both for those who have to
19 file them and those who have to review them. They are
20 inordinately complex. They are extremely expensive to develop,
21 and we have not even discussed at the staff level who would do
22 the developing, whose model would we require. An example is
23 that -- I think like we have indicated in various places that
24 we think models that use geocoded data in principle are
25 superior, but geocoding is an extremely expensive process, as I

1 understand. There are just so many other questions that we had
2 not really thought through the ramifications.

3 COMMISSIONER DEASON: Should we think through the
4 ramifications? I think we need to -- and, Madam Chairman,
5 maybe there is some discussion.

6 CHAIRMAN JABER: Yes. I'm smiling because this is
7 some of the difficulty I had on the -- I'm smiling because this
8 is deja vu from 30 minutes ago.

9 COMMISSIONER DEASON: Okay.

10 CHAIRMAN JABER: And I think --

11 COMMISSIONER DEASON: Well, you know, they say great
12 minds think alike.

13 CHAIRMAN JABER: Apparently, I don't know. Certainly
14 your mind is great, I always question my mind. Commissioner
15 Deason, those are the questions I would like to have an
16 opportunity to engage staff in. And, again, not necessarily --
17 this is why I kept saying, please don't overreact as it relates
18 to these recommendations. But long-term, where do we go from
19 here to provide certainty to the companies? Those were the
20 kinds of questions I would love to have some feedback from
21 staff on. And maybe it comes back in a written form or maybe
22 they just walk around and get feedback from the Commissioners.
23 But that is the difficulty I was having, where do we go from
24 here, why are the models different, is that okay, is that not
25 okay. And it's how do you provide certainty to the industry so

1 that they can bank on the decisions the Commissioners are
2 making, and they are not being revisited every year.

3 COMMISSIONER DEASON: I also think that obviously the
4 industry has got to be included. Maybe the first step would be
5 for staff to have some informal discussions with the industry,
6 both the ALEC community and ILEC community and any other
7 interested groups. I don't know if a workshop would be in
8 order. I'm just sitting here today saying that there is a
9 great deal -- I have experienced a great deal of frustration
10 trying to work through this recommendation. And all the
11 frustration would not be cured by the utilization of one model,
12 but I think it would help.

13 I know that the industry reaction, and I haven't
14 talked to any of them, but my guess would be that they have
15 certain systems that are consistent with the way they manage
16 and operate their companies, and their cost models are
17 consistent with the overall way they have their computer
18 systems, information systems, and other things set up. And
19 that to impose a particular model on them would be burdensome
20 and costly. And I am sensitive to that, but it is burdensome
21 and costly to the intervenors, and to the staff, and to the
22 Commissioners to have to have -- to analyze different cost
23 studies for every company we regulate. And maybe there is
24 something in the middle, I don't know, but I think it is a fair
25 question to ask.

1 CHAIRMAN JABER: And I think staff will have time to
2 think about it at least as it relates to the next
3 recommendation. And certainly the workshop idea is a great
4 idea. And don't forget, Commissioners, three of us voted on
5 the BellSouth proceeding, and we instructed our market
6 monitoring staff to think about these issues, as well, and come
7 back within a 12 to 18-month time frame. So perhaps some
8 partnering there among our staff for good creative ideas is the
9 way to go. But I think to overlay what you just said, it is
10 fair for the Commission to provide guidelines and parameters of
11 what we think a cost model should include. You know, what are
12 the elements we think are important. And that, again, staff
13 needs to think about that.

14 Commissioner Bradley.

15 COMMISSIONER BRADLEY: Since we are on the issue of
16 cost models, on Page 18 under staff analysis, under the staff
17 analysis of the Telecommunications Act of 1996, how do we
18 reconcile A1 in order to fairly deal with B in order to not
19 have a situation that creates A2 under a cost model that we may
20 use? And maybe you all can't answer that, but that is
21 something that I think we need to give consideration to when we
22 start to think about a cost model that might be what
23 Commissioner Deason just mentioned, one that might serve as a
24 guiding light so that we can have something to work from as it
25 relates to every instance that comes before us that deals with

1 setting UNE rates. Do you see what I'm referring to?

2 MS. MARSH: Are you talking about the act up here at
3 the top of the -- the first part of the recommendation?

4 COMMISSIONER BRADLEY: Yes.

5 MS. MARSH: Certainly you would want to include
6 considerations of that in the model, and I think that is what
7 all the parties attempt to do in their modeling and in their
8 critiques of those models. This is just the very basic
9 guidance, and the FCC has expanded upon that act through its
10 rules, its orders, and then the court has had a lot to say
11 about it, as well. So we considered all of those factors in
12 developing our recommendation.

13 COMMISSIONER BRADLEY: Would these be the guidelines,
14 the guiding principles in order for us to come up with a cost
15 model?

16 MS. MARSH: These are the most minimal guidelines,
17 and then they have been expanded from the act. This is the act
18 that started the whole ball rolling as far as the competition
19 and developing UNEs, and so this is the basic premise that we
20 start with.

21 CHAIRMAN JABER: One of the questions I had later on
22 as it relates to looking at UNE rates in another 12 months, 18
23 months, whatever that time period is, are you bound to look at
24 rates using the same model? David, do you analyze rates going
25 forward based on the same model that is used initially, or is

1 there some flexibility to recalculate rates based on a model
2 that is found to be more appropriate, more relevant, more
3 TELRIC compliant?

4 MR. DOWDS: To my knowledge there is no FCC or
5 Florida PSC rule or order that limits the Commission in that
6 way.

7 COMMISSIONER PALECKI: Have any other states gone in
8 that direction with the uniform model for the entire state for
9 all of the ILECs within the state?

10 MR. DOWDS: I do not know.

11 CHAIRMAN JABER: Commissioner Deason.

12 COMMISSIONER DEASON: Well, Commissioners, let me say
13 that I'm just throwing it out, I'm not saying that we should.
14 And there is probably many reasons why we should not, but I
15 think it is a fair question that should be asked as to whether
16 there should be a uniform model or at least some uniform
17 guidelines as to what should be contained within the model.

18 MR. DOWDS: And we agree, and there is precedent for
19 this sort of thing as you are aware. Back in the '80s, the
20 Commission at one time had a private line special access cost
21 study manual that spelled out the methodology for doing cost
22 studies for those elements -- excuse me, for those services.

23 COMMISSIONER PALECKI: Commissioner Deason, I agree
24 with you completely. I think your concerns are underlined by
25 the staff's concerns that they express in Issue 7A where they

1 talk about the ICM-FL and the fact that under the most recent
2 Supreme Court decision it doesn't appear to be TELRIC
3 compliant. So, it seems that this is something that the
4 Commission should look at, at the very least, and I think a
5 workshop would be a very appropriate way to start off the
6 process.

7 COMMISSIONER DEASON: Having said all of that, Madam
8 Chairman, if there has been a motion to approve staff, I can
9 make a motion to approve staff on Issue 1 with the modification
10 which was discussed with Commissioner Baez.

11 COMMISSIONER PALECKI: Second.

12 COMMISSIONER BAEZ: Second.

13 CHAIRMAN JABER: A motion and a second to approve
14 staff's recommendation on Issue 1 with the deletion of the
15 sentence, rates should not be compared to those set in other
16 states. All those in favor say aye.

17 (Simultaneous affirmative vote.)

18 CHAIRMAN JABER: Okay. Issue 1 is approved. Issue
19 2A. Questions? I only had -- no. Questions on 2A? Motion?

20 COMMISSIONER PALECKI: I can move staff on Issue 2A.

21 COMMISSIONER DEASON: Second.

22 CHAIRMAN JABER: A motion and a second to approve
23 staff on Issue 2A, all those in favor say aye.

24 (Simultaneous affirmative vote.)

25 CHAIRMAN JABER: 2A is approved. 2B.

1 COMMISSIONER DEASON: Move staff.

2 COMMISSIONER PALECKI: Second.

3 COMMISSIONER BAEZ: Second.

4 CHAIRMAN JABER: All those in favor say aye.

5 (Simultaneous affirmative vote.)

6 CHAIRMAN JABER: 2B is approved. 3A and 3B.

7 COMMISSIONER PALECKI: I can move staff on both 3A
8 and 3B.

9 CHAIRMAN JABER: Commissioner Palecki, I have a quick
10 question. On Page 38, staff, you point out that Covad in its
11 brief suggested that Verizon be ordered to guarantee that the
12 loops that the ALECs request from Verizon not be rolled over
13 into fiber. And I know we did something similar to that in
14 BellSouth. I don't recall if we did that in the UNE rate
15 docket or in an arbitration, do you recall?

16 MS. LEE: In the May special agenda, the first one,
17 the first part, yes, you did. I think you approved what Covad
18 is asking for here. However, on the 120-day filing BellSouth
19 came back and said, we are offering a nondesigned loop that
20 will have all of these features in it, so we don't need this.

21 CHAIRMAN JABER: And we agreed with that?

22 MS. LEE: Yes. That was with BellSouth, okay. Now,
23 if you want to do what you originally did with BellSouth, which
24 if I recall correctly, I think it was given the option to
25 BellSouth to come back and ask for a rate. And I shudder to

1 suggest this, but to come back and request a rate if one is
2 necessary for that guarantee.

3 CHAIRMAN JABER: I'm not suggesting that we modify
4 the recommendation here at all, Commissioners, to include this,
5 because obviously I am sensitive to the fact that this wasn't
6 part of the record. There is no record evidence to go ahead
7 and require it here, but for the purpose of encouraging parties
8 to get together and negotiate on this issue, I have to tell you
9 that I thought it worked really well with BellSouth. What the
10 Commissioners decided after a hearing process was that it is up
11 to ALECs to order whatever loops they find necessary to meet
12 their provisioning needs, and I think there was record evidence
13 to suggest that as long as the commitment was there, that the
14 loops wouldn't be rolled over. That is all the ALECs needed.
15 They didn't need a special DSL loop, they didn't need
16 necessarily a special price, they just needed consistency in
17 the delivery of the service. And as far as I know, that has
18 worked really well with BellSouth. So whatever worked there, I
19 would encourage the parties, Verizon, to think about what they
20 can offer outside this docket.

21 MS. LEE: And Verizon does offer a nonqualified or a
22 nondesigned loop to the ALECs, and the ALECs choose the loop
23 that they want, and it doesn't matter to Verizon what
24 technology is provided over that.

25 CHAIRMAN JABER: And to the degree Covad or any other

1 ALECs continue to have concerns related to this issue, they can
2 file a complaint or negotiate through an interconnection
3 agreement, I suppose, this issue.

4 MS. LEE: Correct.

5 CHAIRMAN JABER: Commissioners, any other questions
6 on 3A or 3B?

7 COMMISSIONER DEASON: No. I can second the motion.
8 I believe there was a motion.

9 CHAIRMAN JABER: There was, yes. A motion and a
10 second to approve staff on Issues 3A and 3B. All those in
11 favor say aye.

12 (Simultaneous affirmative vote.)

13 CHAIRMAN JABER: Issues 3A and 3B are approved. 4A.

14 COMMISSIONER DEASON: Move staff.

15 COMMISSIONER BAEZ: Second.

16 CHAIRMAN JABER: All those in favor say aye.

17 (Simultaneous affirmative vote.)

18 CHAIRMAN JABER: Issue 4A is approved. 4B.

19 COMMISSIONER DEASON: Move staff.

20 COMMISSIONER BAEZ: Second.

21 CHAIRMAN JABER: All those in favor say aye.

22 (Simultaneous affirmative vote.)

23 CHAIRMAN JABER: Issue 4B is approved. Issue 5.

24 COMMISSIONER DEASON: Move staff.

25 COMMISSIONER PALECKI: Second.

1 CHAIRMAN JABER: There is a motion and a second to
2 approve staff on Issue 5. All those in favor say aye.

3 (Simultaneous affirmative vote.)

4 CHAIRMAN JABER: Issue 5 is approved. Issue 6.

5 COMMISSIONER DEASON: Madam Chairman, I have a
6 question on Issue 6. Staff, your bottom line recommendation is
7 that the inclusion of nonrecurring costs in recurring rates may
8 be considered where the resulting level of nonrecurring charges
9 would constitute a barrier to entry. Did we make that finding
10 anywhere later in this recommendation?

11 MR. J. BROWN: What finding are you speaking of?

12 COMMISSIONER DEASON: The finding that if there was
13 not an adjustment to take amounts from nonrecurring and place
14 it in recurring, that there would be barrier to entry. Have we
15 made adjustments in subsequent issues to follow through with
16 the recommendation that in those situations where there would
17 be a barrier to entry, that there has been a reallocation of
18 costs between recurring and nonrecurring?

19 MR. DOWDS: No. No party recommended that such
20 adjustments be made in this proceeding. In other words, there
21 are no --

22 COMMISSIONER DEASON: Well, I didn't recall any,
23 quite frankly. The reason I asked the question, I didn't
24 recall any, and I guess my question is, what is the
25 significance of this issue? Is it kind of a policy issue?

1 MR. DOWDS: Yes. When the issues for these three
2 companies were set, they were all mirrored a couple of years
3 ago, whenever it was done. And the recommendation here is
4 consistent with that which was made in BellSouth, even though
5 it was effectively a nonissue in that it didn't affect
6 anything, because nobody was proposing to recover nonrecurring
7 costs in any recurring rates. That was true in BellSouth, that
8 is also true here.

9 COMMISSIONER DEASON: Well, let me follow up with
10 another question. I am looking at Page 53 of the
11 recommendation, in the middle of the page, and there is a
12 reference to testimony from Verizon Witness Dye. And in that
13 testimony, he basically indicated that there were two
14 exceptions that could be considered. One was if you had a
15 contract, and the other was is if you were reasonably certain
16 the revenue producing life is expected is such that -- I'm
17 sorry, that the item could be reusable by different customers
18 such that it would give some reasonableness to the revenue
19 producing life. I guess some certainty to cost-recovery is
20 what that really boils down to. Do you all agree with that, or
21 do you think there are other exceptions other than these two?

22 MR. DOWDS: I believe -- we are not aware of any
23 offhand other than these, but we are essentially in agreement
24 that these are instances.

25 COMMISSIONER DEASON: Well, I guess my concern is I

1 don't want to go too far with this issue until I get something
2 specific in front of me, and someone says, this is an example
3 of where there is a barrier to entry and there is no contract
4 and there is no certainty there is going to be cost-recovery,
5 but you should make this allocation anyway. Then when I can
6 see that, I can make an informed decision. I am just
7 comfortable making general policy decisions without having
8 some, I guess, real world or issue where it kind of illustrates
9 it as to what the impacts are. So, you know, I agree with
10 Verizon Witness Dye that those certainly are two exceptions,
11 and I guess the bottom line is that I just don't want to do
12 anything that is going to jeopardize the recovery of costs or
13 to shift those costs from one customer to another. Because if
14 you shift it to recurring, well, then there are going to be
15 customers paying for that who perhaps did not cause the
16 nonrecurring costs to be incurred. And I think those raise
17 some very significant policy questions, too. I guess you all
18 agree with that.

19 MR. DOWDS: Yes.

20 COMMISSIONER DEASON: So by approving your
21 recommendation, we are not -- what exactly are we doing if we
22 approve your recommendation?

23 MR. J. BROWN: In our recommendation, we state that
24 the Commission may set the recurring rates that are recovered.

25 COMMISSIONER DEASON: It's something we could

1 consider in the future. Is that basically what it is?

2 MR. J. BROWN: Right. It is just permissive.

3 COMMISSIONER DEASON: If that is all it is, I can
4 move staff.

5 COMMISSIONER PALECKI: Second.

6 COMMISSIONER BRADLEY: Before we do that, I have a
7 question. So help me understand this now. Recurring rates are
8 rates that would be in perpetuity, and it would seem to me that
9 nonrecurring rates would be terminal at some point. And if we
10 roll nonrecurring rates into recurring rates, aren't we
11 creating perpetuity for nonrecurring rates?

12 COMMISSIONER DEASON: Well, I think you are right,
13 Commissioner, in that it boils down to a question of whether
14 you are shifting the requirement to pay for costs from one
15 customer group to another. Because, you know, in an ideal
16 situation, if someone causes a nonrecurring cost to be imposed,
17 that individual or that company in this case should pay for
18 that cost and it should be paid up front. And then the
19 recurring cost of providing the service on a monthly basis,
20 that should be part that constitutes the monthly rate and that
21 is paid as long as the subscription continues for that
22 particular service or element.

23 There is a concern that the up-front costs could be
24 so high that it could deter someone from even making the order
25 for a service because the rate is so high up front. And that

1 is a real concern, but at the same time you have the concern of
2 then if you shift some of those costs to recurring rates, then
3 is that an inherent subsidy in itself that is going on in
4 perpetuity as you say. And I don't think we have a situation
5 in this recommendation, or at least I don't recall one and I
6 don't think staff can point one out, but where we have got a
7 situation when someone has said, this is a situation where you
8 need to reallocate costs between nonrecurring and recurring.
9 And I'm just uncomfortable coming out with a general policy
10 statement that is too firm on this without having some real
11 world examples of where it is necessitated, and that is what my
12 concern is.

13 COMMISSIONER BRADLEY: Well, may then allows us to
14 consider each instance and to determine the fairness.

15 COMMISSIONER DEASON: I think, yes, we can do that on
16 an a case-by-case or an element-by-element basis if it ever
17 arises in the future, and we can make a determination. But I
18 share with you up front, I have a real concern about doing this
19 because I think it just -- I'm not saying I would never vote
20 for it, there may be an extreme circumstance, but generally I
21 think as a principle we would not generally want to defy.

22 CHAIRMAN JABER: Nor do we want to prejudge. I think
23 the real effect of this issue, Commissioner Deason, and correct
24 me if I'm wrong, is putting parties on notice that there may be
25 circumstances where this would occur. Okay. There is a motion

1 and a second. All those in favor say aye.

2 (Simultaneous affirmative vote.)

3 CHAIRMAN JABER: Issue 6 is approved. Issue 7A.

4 COMMISSIONER PALECKI: I have a question on Issue 7A.
5 Staff, on Page 82 of your recommendation, you question -- and I
6 quote, whether on balance it can be concluded that ICM-FL
7 yields costs based on the most efficient telecommunications
8 technology currently available and the lowest cost network
9 configurations. On the previous page, you questioned whether
10 ICM-FL is, in fact, fully TELRIC compliant. And I am concerned
11 that we are effectively setting ourselves up for reversal on
12 appeal because basically what you say after that is, well,
13 there is nothing else in the record, so we kind of have to set
14 it based upon the model that was filed. Either that or we will
15 have to ask Verizon to completely refile a new model. What is
16 our exposure for reversal on appeal?

17 MS. KEATING: I guess you're looking to me. Staff
18 did, however, make modifications, though, to the inputs in the
19 ICM model that make staff more comfortable with the results
20 from it. So even though staff is initially uncomfortable with
21 ICM itself, we think that we have made modifications that make
22 the results acceptable and supportable on appeal.

23 COMMISSIONER PALECKI: I see what you are saying, but
24 it seems that that is secondary to the fact that there is
25 nothing else in the record and that is the only model that has

1 been filed.

2 COMMISSIONER DEASON: Well, let me just say that I am
3 looking at Page 71 of the recommendation, and at the bottom of
4 the page here there is reference to -- that the ICM-Florida
5 model -- models 22 percent fewer sheath feet than are currently
6 in place. I think that provided some comfort to staff, did it
7 not, that it is a forward-looking model?

8 MR. DOWDS: That is one of the three reasons that we
9 cite as to why we recommend that on balance rates should be set
10 nevertheless with the ICM-FL with our recommended adjustments.

11 COMMISSIONER BRADLEY: (Inaudible. Microphone not
12 on.)

13 MR. DOWDS: The three reasons are enumerated on Page
14 82. First, there is no alternative in this record. It was the
15 first one. The second one was that we had some comfort
16 because, as Commissioner Deason pointed out, ICM-FL produces 22
17 percent fewer sheath feet than are actually in place, which
18 tends to imply that the model does generate certain economies
19 that are not present in the existing network. And the third
20 reason was due to the broad range of recommended adjustments
21 discussed in other issues, we believe that on balance the
22 results will be reasonable. In other words, we did enumerate
23 over on Page 81 certain misgivings we have based upon claims
24 made by Verizon witnesses. But nevertheless, on balance, we
25 think the results are reasonable and should be TELRIC

1 compliant.

2 COMMISSIONER DEASON: See, I think this is a good
3 example, Commissioner, of why we need to at least consider
4 perhaps some guidelines, if not exact models. The same model,
5 but at least some guidelines. Maybe one of these guidelines is
6 the use of geocoded data or not, and we can explore how costly
7 it is, is it really meaningful, do you get any better
8 information using that than some other assumption or input to
9 the model. And I don't really know the answer to those
10 questions.

11 COMMISSIONER PALECKI: I agree with you, and I was
12 just going to suggest that perhaps I can go along with the
13 staff recommendation here and now because it is all we have in
14 the record. We have nothing else to base a rate upon. But I
15 think it more than points out the need for the type of workshop
16 and analysis that you have suggested already. With that, I
17 could move the staff recommendation with that reservation, and
18 with the hope that we will see some further analysis and
19 perhaps a workshop in the future.

20 COMMISSIONER DEASON: I can second the motion.

21 CHAIRMAN JABER: There is a motion and a second to
22 approve staff's recommendation on 7A. All those in favor say
23 aye.

24 (Simultaneous affirmative vote.)

25 CHAIRMAN JABER: 7A is approved. 7B.

1 MS. LEE: Commissioners, on Issue 7B, I do have two
2 corrections that need to be made. On Page 92, Table 7B-1.

3 COMMISSIONER BRADLEY: (Inaudible. Microphone not
4 on.)

5 MS. LEE: Page 92, Table 7B-1, circuit equipment.
6 The staff-recommended life for circuit equipment should be nine
7 years rather than eight years. And for the account poles, the
8 staff recommended life should be 36 years rather than 35 years.

9 CHAIRMAN JABER: Questions, Commissioners, or a
10 motion?

11 COMMISSIONER DEASON: Well, I have a general
12 question. I don't know if there is an answer to it or not.
13 How significant is this issue? Do we have the model run with
14 depreciation rates as proposed by Verizon and then the
15 depreciation rates as proposed by the ALECs, and what is the
16 sensitivity? Does this have a significant impact, or is it
17 marginal?

18 MS. LEE: It does have a significant impact,
19 Commissioner. I think it is Appendix A. It is the appendix
20 that shows the comparison of Verizon's proposed rates to staff
21 recommended rates. Part of that difference you will see there
22 is due to depreciation. Of course, other differences or
23 other --

24 COMMISSIONER DEASON: Well, that is my question.

25 MS. LEE: It can range anywhere from a dollar or two

1 dollars.

2 COMMISSIONER DEASON: It can have that much impact?

3 MS. LEE: It can, yes.

4 COMMISSIONER DEASON: Because it seemed to me that
5 this may be in future proceedings. This is something that
6 parties could stipulate to, is what depreciation rates are
7 going to be utilized. And maybe it's a big issue and it is
8 going to have a big bottom line effect. I just wasn't so sure
9 that the differences between the depreciation rates was going
10 to have that much of an effect. But maybe it does. You know,
11 I was not privy to the sensitivity analysis which shows
12 utilization of different depreciation rates.

13 MS. LEE: It can, Commissioner, especially on the
14 loop rates.

15 COMMISSIONER DEASON: Especially on the loop rates?

16 MS. LEE: In the loop rates, right.

17 COMMISSIONER DEASON: Capital intensive.

18 MS. LEE: Yes. And I agree with you, I would hope
19 that in the future this would be something that the parties
20 could agree with.

21 CHAIRMAN JABER: Although we would note that there
22 are plenty of issues that led at least me, as one Commissioner,
23 to that same conclusion, that there were plenty of issues
24 parties could stipulate to in the future.

25 MS. LEE: Correct.

1 COMMISSIONER DEASON: The best information we have is
2 the BellSouth rates. Is that the bottom line?

3 MS. LEE: Yes, sir, that is the bottom line. I have
4 to say that Verizon's proposed rates, if you recall, were based
5 on a benchmarking type of analysis, and the Commission
6 previously in the BellSouth case said benchmarking could be
7 useful as a tool if you knew, or if you understood, or were
8 aware of all of the assumptions going into the depreciation
9 rates you were benchmarking against. Verizon's witnesses were
10 not aware of any of those assumptions, had not asked any of
11 those assumptions. In fact, the only testimony Verizon
12 provided regarding depreciation were on the lives of the
13 technology-sensitive accounts which would be circuit equipment,
14 the fiber and copper cable accounts, and digital switching.
15 For all the other accounts, there is nothing in the record.
16 There is no testimony in the record, there is no evidence in
17 the record on any kind of life or salvage value. This was
18 requested of Verizon, and Verizon's response to the discovery
19 was the support is based on the testimony of our witness, which
20 did not address any other account except digital switching
21 circuit and the copper and cable -- copper and fiber cable
22 accounts.

23 COMMISSIONER DEASON: So let me see if I understand.
24 You're saying that Verizon didn't meet their burden of proof as
25 to what the appropriate depreciation rates should be?

1 MS. LEE: That is my opinion, yes, sir.

2 COMMISSIONER DEASON: And so then you are looking for
3 something to utilize which you consider to be reasonable, and
4 that is the BellSouth rate?

5 MS. LEE: That is the BellSouth, correct. In fact,
6 the ALEC coalition, one of their recommendations in their
7 alternative was for the Commission to adopt the lives and
8 salvage values as you had in the BellSouth proceeding.

9 COMMISSIONER DEASON: And what was the basis for the
10 BellSouth decision? Was it the rates presented by BellSouth or
11 was there --

12 MS. LEE: I'm sorry. It was a modification of the
13 rates of the lives and salvage values provided by BellSouth.
14 It was predicated on a depreciation study that BellSouth had
15 provided, the support that they had provided for their lives
16 and salvage values, and staff recommended certain modifications
17 to those lives and salvage values, but it was based on a pretty
18 in-depth analysis on the staff part.

19 COMMISSIONER DEASON: And then explain to me why you
20 could not make adjustments to the Verizon filing to get
21 reasonable rates.

22 MS. LEE: Because I did not have any of the data. I
23 didn't have any of the analysis or any of the support, I guess
24 you would say, as to how Verizon determined or came up with its
25 proposed lives and salvage values in order to make an

1 adjustment. In asking Verizon what types of things did you
2 consider or how did you arrive at your recommended lives and
3 salvage values, over and over again the response was
4 benchmarked against other companies. So then we asked --

5 COMMISSIONER DEASON: What other companies are
6 utilized to determine the benchmark?

7 MS. LEE: Pardon me?

8 COMMISSIONER DEASON: What other companies do they
9 benchmark against?

10 MS. LEE: One of them was AT&T, one was WorldCom, I
11 think Intermedia, and there were several others. In fact, they
12 were the same companies that BellSouth had used in its
13 analysis.

14 COMMISSIONER DEASON: Well, let me direct you to Page
15 84 of the recommendation, the middle paragraph. About middle
16 ways there, there is a statement that says, Verizon's
17 recommended depreciation inputs reflect those it uses for
18 financial reporting purposes, and then there is a transcript
19 reference. I suppose that is Witness Sovereign.

20 MS. LEE: Yes.

21 COMMISSIONER DEASON: What extent does Verizon's
22 recommended rates reflect those that are used for financial
23 reporting purposes?

24 MS. LEE: For Verizon or for other companies?

25 COMMISSIONER DEASON: For Verizon. I'm just reading

1 this one statement.

2 MS. LEE: Right. The lives and the salvage values
3 that Verizon proposed in the UNE proceeding are the ones that
4 it uses for financial reporting purposes.

5 COMMISSIONER DEASON: They are exactly the same.

6 MS. LEE: They are exactly the same.

7 COMMISSIONER DEASON: And why is that inappropriate?

8 MS. LEE: Well, typically your financial reporting
9 lives are shall we say more -- the lives tend to be --

10 COMMISSIONER DEASON: Aggressive?

11 MS. LEE: Yes. More aggressive, thank you. That was
12 the word I was looking for. Tend to be more aggressive.

13 COMMISSIONER DEASON: Is that for tax purposes or --
14 this is just financial reporting. They have different lives
15 for tax purposes.

16 MS. LEE: Exactly. And for financial reporting
17 purposes, there are a lot of other things that go into your
18 determination. Tax is one thing, being more aggressive to
19 recoup their capital much faster for financial reporting
20 purposes is another one. There are a lot of --

21 COMMISSIONER DEASON: They have to also balance that
22 with the fact that if they are recovering capital faster, it
23 also deflates their bottom line while they have higher rates in
24 effect. And so there is a counterbalancing aspect to it there.
25 So they have to be fairly reasonable in what rates they are

1 reporting for financial purposes, do they not?

2 MS. LEE: I don't think so. Yes, you can make that
3 determination, but I don't think they are realistic. And the
4 reason I don't think they are realistic is when I look around
5 the industry in general, okay, the lives that we are
6 recommending -- well, that we recommended in the BellSouth
7 phase and then we are recommending also for Verizon are
8 generally in line with everybody with the exception, I think,
9 of digital switching. We may be a little bit high there. But
10 in general, the lives that we are recommending for Verizon are
11 in line with the financial reporting lives of the companies
12 that we have looked at, including Intermedia, AT&T, and
13 WorldCom.

14 COMMISSIONER DEASON: So you are saying that the
15 rates utilized by Verizon for their financial accounting
16 purposes are an outlier in comparison to other companies' rates
17 utilized for financial reporting?

18 MS. LEE: I'm not sure that I would say they are an
19 outlier. I'm saying that what they are recommending as lives
20 in some respects, yes, can be outliers for some accounts, yes.
21 Yes. And, again, sometimes you are mixing apples and oranges
22 here. For example, your cable accounts. If you note that
23 Verizon is recommending very short lives for copper cable.
24 Well, when they benchmark against, say, the CATV companies,
25 well, cable television companies don't have copper cables.

1 If you look at Intermedia or some of the other ALECs,
2 there is no -- you know, they are reporting for financial
3 purposes is usually just cable, so you don't know whether that
4 is fiber cable, or you don't know whether that is copper cable.
5 Sometimes it is a mixture of cable and wire assets, which would
6 be all of your aerial cable, your underground cable, your
7 mixture of fiber cable and aerial wire, for example, and poles.
8 And you don't know what part of that is specifically cable as
9 it would relate -- that you could fairly compare to Verizon.

10 COMMISSIONER DEASON: So you are saying they don't
11 break that out for purposes of inputs to their model?

12 MS. LEE: Verizon does. What I'm saying is that the
13 companies that are benchmarked against Verizon to determine or
14 to set the reasonableness of Verizon don't break it out.

15 COMMISSIONER DEASON: Let me explain what my bottom
16 line concern is. We are dealing in a competitive area here.
17 You know, UNEs are not rate-based, and there is not a
18 regulatory compact where it is assumed that if you make the
19 investment, we are going to let you depreciate it, and if there
20 is an underrecovery, we are going to allow you to basically
21 recover that stranded investment. And to the extent we allow
22 depreciation rates which are too low and the costs are not
23 recovered during what Verizon considers to be the useful life
24 or the economic life, and their assumptions are correct and the
25 economic life is ten years and we assume it is 15, at the end

1 of ten, they have not recovered it, and basically it is a
2 stranded investment and they have no one else to look to. Is
3 that correct?

4 MS. LEE: Absolutely, and I agree with that.
5 However, when you are looking at very, very short lives -- and,
6 again, I go back to your copper cable accounts because that is
7 probably the account that has the most impact, and you ask
8 Verizon, you know, for these very short lives, certainly there
9 is some planning here. What are you guys doing in outside
10 plant? When are you going to stop placing copper cable? You
11 know, what are your plans? And they come back, and they say,
12 we have none. You know, I guess I came down to, you know,
13 there just wasn't any support for Verizon's lives, and that is
14 a quandary I found myself in.

15 COMMISSIONER DEASON: But they are willing to use
16 those rates for financial reporting purposes, and you put no
17 faith in that whatsoever.

18 MS. LEE: Pardon me?

19 COMMISSIONER DEASON: And you put no faith in that.
20 If it is not good enough -- the fact that they are using these
21 rates for financial reporting, that is of no significance to
22 you. It doesn't give any credibility to those rates?

23 MS. LEE: It doesn't for me.

24 CHAIRMAN JABER: Commissioner Deason, may I ask you a
25 question so I can understand the point you made with respect to

1 stranded investment? In a true competitive environment, which
2 we are trying to get to in this industry, how Verizon recovers
3 potential stranded investment should not be a consequence that
4 we consider here, should it? I mean, part of the creativity
5 that companies will need to have is how will they seek recovery
6 of their costs and that may happen in different ways.

7 COMMISSIONER DEASON: And I'm not trying to do any --
8 I'm just saying that if a company is willing to utilize certain
9 rates for financial reporting purposes and they feel
10 comfortable with those rates, that to me has some significance,
11 first of all. And then second of all, if we impose something
12 different, are we by an act of regulation going to be imposing
13 stranded costs on them which we do not have a mechanism for
14 them to recover? In a rate-based regulated world which does
15 not exist anymore for these companies --

16 CHAIRMAN JABER: It's a business decision they have
17 made.

18 COMMISSIONER DEASON: -- we set the depreciation
19 rates, and oftentimes we set them much different than what they
20 use for financial reporting purposes, but I have comfort in
21 that because we set those rates, and we review them depending
22 on the industry every three years, four years, or five years.
23 And we make adjustments, and it is continually monitored. And
24 if there is a situation where there is a stranded investment,
25 we either make depreciation reserve reallocations or we set up

1 an amortization account and allow them to amortize that over a
2 period of time.

3 In fact, we had such concern about it in the electric
4 industry about certain accounts that were being -- that were
5 languishing on the books that we wanted to get those in line,
6 and we actually allowed some recovery of some depreciation
7 deficiencies and allowed those to be amortized. But there was
8 a mechanism for that, and I think that we were very reasonable
9 in our utilization of our depreciation setting authority and
10 our rate setting authority to come up with a very reasonable
11 way to address those concerns. But we don't have that
12 mechanism in place for these companies any longer, and my
13 concern is I don't want to be party to making a decision which
14 is going to result in stranded investment.

15 CHAIRMAN JABER: Let's talk about the failsafe
16 mechanisms, though, that exist in law. It seems to me any one
17 decision taken in a vacuum may have that effect. I wonder if
18 after analyzing the entire picture that comes out of our
19 decision and giving UNE rates time to be in effect, if
20 companies can exercise the provision in the statute that allows
21 them to petition for change after determining that there are
22 changed circumstances. I mean, it seems to me that the onus
23 should be on the companies to say, this has inadvertently
24 created a situation where there might be stranded investment.
25 Or, Commissioners, you may have thought this rate would foster

1 competition, but, you know what, it doesn't. I wonder are
2 there mechanisms in the law that allow the companies to come
3 back and seek recourse, and it may be establishing a certain
4 rate.

5 MS. KEATING: There are the changed circumstance
6 provisions in 364.051, but those really just apply to tariffed
7 rates. I mean, there is nothing really to prevent them from
8 coming back in at any time for UNE rates, you know, to say that
9 they can't live with those rates. And I think it has always
10 been contemplated that we will go back at some point and look
11 at what these rates have done, maybe not only in the market as
12 a whole but maybe to each individual company. So --

13 MS. LEE: And, Commissioners, let me just point out
14 that we are not saying, Verizon, you need to book these
15 depreciation rates to these lives and salvage values for book
16 purposes. All we are saying is these are the lives and salvage
17 values that should be used as inputs into determining the UNE
18 rates.

19 COMMISSIONER DEASON: I understand that. I
20 understand that distinction altogether, but it doesn't change
21 my concern that when you set the rate, that is the revenue
22 stream which is going to recover the depreciation expense over
23 the economic life of the assets involved in providing the
24 elements. And to the extent that those depreciation rates are
25 not enough to cover, there is the possibility and perhaps even

1 the probability that there could be unrecovered investment at
2 the end of the economic life of those assets.

3 MS. LEE: And I would agree with you, there is always
4 that possibility, there is always that probability just in
5 reverse if the lives are too low -- I mean, too high, excuse
6 me. The lives are too high, then they would be recovering far
7 faster than the using up of that property. All I can say is
8 that the lives that you approved for BellSouth were based on an
9 in-depth study and analysis that BellSouth provided, including
10 all the impacts of technological changes, market competition,
11 all of those factors entered into the recommendation we made on
12 BellSouth. And we believe that those factors would be as
13 applicable to Verizon as they are to BellSouth.

14 COMMISSIONER DEASON: And how are those factors part
15 of the record in this proceeding?

16 MS. LEE: They are -- the factors that we considered
17 with the BellSouth, they are not, quote, part of the record.
18 They are implicit in the lives that are being recommended.

19 COMMISSIONER DEASON: That is another concern that I
20 have, Commissioners.

21 CHAIRMAN JABER: Yes. Ms. Keating, can you answer --
22 that is a very important question from a legal standpoint.
23 What is in the record on that point? Is the BellSouth order in
24 the record and how can --

25 MS. KEATING: The BellSouth order is in the record.

1 We did ask cross-examination questions of Verizon's witnesses
2 about the comparison between the lives, so that information is
3 to that extent in the record.

4 COMMISSIONER DEASON: Commissioner, I hate to be so
5 repetitive, but to me this goes back to the preface that we
6 started this whole discussion with, is that we need guidelines
7 as to how we are going to determine depreciation rates in UNE
8 cost studies and have up front what we expect the companies to
9 file, how they are to file it, how they are to justify it. But
10 I think this record may not be adequate to do what staff is
11 recommending. Now, maybe it can be rectified in future
12 proceedings where parties are put on notice that this is what
13 you have got to provide and here is the information and this is
14 the way it is to be utilized in a cost study, but we don't have
15 that.

16 CHAIRMAN JABER: Commissioner Deason, you are
17 preaching to the choir. I find myself -- and, staff, I'm
18 sounding like a broken record with staff. I don't know what to
19 do, because on the other side, I don't think what Verizon has
20 put forth is sufficiently supported by the record. So, you
21 know, there you go. You have articulated the problems I have
22 been having. I just find myself going, what to do? I am
23 comforted by the fact that I want UNE rates to be established
24 for Verizon for a time period that allows us to have the
25 expertise, Commissioner Deason, to figure out what those

1 guidelines should be; the industry the opportunity to dialogue
2 without impediments with staff. I mean, that is the other
3 reason to get these dockets resolved, because to some degree,
4 the communication has been limited because these things are
5 pending. So, you know, I am comforted by the fact that we need
6 to put something forward to give people an opportunity to react
7 to.

8 We need to get things under our belt and give
9 everyone an opportunity to have experience. The companies to
10 have experience in understanding the effect of their rates, our
11 staff an opportunity to monitor the rates, and the Commission
12 the opportunity to say, this is what I'm looking for based on
13 the good things I have seen in the market and the bad things I
14 have seen on the market. Frankly, I'm not there yet. I wish I
15 could tell them what guidelines I need. Those are the
16 questions I have been asking staff. If I don't know and they
17 don't know, we have got a problem.

18 MS. LEE: Commissioner, you do have the BellSouth
19 order that you can reference which does go into the detail that
20 we looked at in the BellSouth case in how we arrived at the
21 lives for BellSouth.

22 COMMISSIONER DEASON: But do we have any evidence in
23 the record that says BellSouth's rates are appropriate for
24 Verizon? I mean, sure, the order is there, and the order
25 speaks for itself, but that order was for BellSouth, that order

1 was not for Verizon.

2 CHAIRMAN JABER: Ms. Keating, what you said about the
3 cross-examination on the BellSouth rates, elaborate on that.
4 Is that sufficient? Is that the same as there is evidence in
5 the record that BellSouth's rates are appropriate for Verizon?

6 MS. KEATING: We consider that it was because we look
7 at it from the perspective that we believe Verizon has the
8 burden of proof in this situation. And so what we were doing
9 was trying to see whether their lives were supportable. So
10 what we did as a counterbalance was we looked at what was done
11 in the BellSouth case, and we asked Verizon to explain what the
12 differences were. We looked at what we did in BellSouth and
13 what we could tell had been done in Verizon, and this is the
14 conclusion that staff had reached.

15 COMMISSIONER DEASON: And maybe in future proceedings
16 we could say, here is the default rates, depreciation. And if
17 you don't agree with X, Y, or Z, put evidence as to why it
18 should be 10 years and not 15. And then focus on what is at
19 issue. That is another problem that this recommendation is,
20 and I'm not critical of staff, is that we need to -- I just
21 kept reading this recommendation, and I kept saying, get to the
22 point. What is significant, what is the policy question,
23 instead of page after page after page of what seemed to come
24 out of a telecommunications engineering textbook. It was very
25 frustrating, Madam Chairman.

1 CHAIRMAN JABER: I know. Ms. Keating, back on the
2 testimony from the ALEC coalition. One of the witnesses, I
3 think it was Ankum, says you should use the BellSouth rates
4 because Verizon does not face more risk. Now, mind you, as you
5 know, I completely agree with Commissioner Deason on this
6 point, but in an effort to move this forward and try to get
7 this under our belt -- and maybe, Commissioner, the other
8 question we are not asking is, do we have an alternative? If
9 staff acknowledges the record is not adequate in certain areas,
10 is there something else we want to require here? I mean, maybe
11 my effort to get this decision behind us is premature. Do we
12 want to send staff back to develop a record on given issues?
13 We should think about that. But, Ms. Keating, on the specific
14 testimony from the ALEC coalition that Verizon doesn't face
15 more risk than BellSouth, therefore it is appropriate to use
16 BellSouth's rates, is that sufficient? Is that correct, do you
17 agree with it, and is that sufficient to use the depreciation
18 rates that BellSouth relied on?

19 MS. KEATING: I would have to defer to Ms. Lee as to
20 whether she agrees with that point, but that is another basis
21 for staff's recommendation. And I believe it is, you know,
22 just more testimony in the record that the way staff used the
23 BellSouth lives was appropriate to offset what Verizon had
24 testified to.

25 MS. LEE: And I would agree with that. And I will

1 also refer you to Page 88 of the recommendation. The quote
2 from the Supreme Court decision is the very last part of that
3 paragraph where the decision is addressing depreciation. It
4 says this is significant because the FCC found as a general
5 matter that federally prescribed rates of depreciation and
6 counterparts in many states are fairly up-to-date with the
7 current state of telecommunications technologies as to
8 different elements. If you recall the ALEC coalition, their
9 initial recommendation was to approve lives and salvage values
10 that were within the FCC prescribed ranges. In the
11 alternative, they recommended the Commission adopt those that
12 they had approved for BellSouth. The lives and salvage values
13 you approved for BellSouth are lower in some cases than those
14 in the prescribed ranges of lives and salvage values prescribed
15 by the FCC. On balance, we believe that the ones that you
16 approved for BellSouth would be an appropriate proxy in this
17 case.

18 COMMISSIONER PALECKI: Ms. Lee, is there any reason
19 that the lives of these assets would differ from one company to
20 another?

21 MS. LEE: There could be depending on a company's
22 planning. We have seen lives, even when we were rate-based
23 regulated we would see lives differ based on a company's
24 projected planning. For example, in switching, which is a very
25 good example, you could have a company whose investment in

1 switching was all tied up with one specific switch, and their
2 plans over the next five years were to retire the switch or
3 replace the switch with something else. In that case you would
4 see a very short life for that particular company. That is one
5 of the reasons why we were asking Verizon for its planning
6 along those lines for switching. But typically you could see
7 companies within a pretty tight range. Their live patterns
8 were in a pretty tight range with each other. The variations
9 would always be predicated on unique circumstances based on
10 planning for that given company, which you did see from time to
11 time.

12 COMMISSIONER PALECKI: So in this docket where we are
13 trying to set UNE rates, you are just trying to come up with
14 the most accurate depreciation that you possibly can and the
15 most accurate lives for these assets that you can in order to
16 set these rates as accurately as you possibly can. In the
17 financial reporting that may be done by the company, if it is
18 out of whack, it won't allow you to get to the most accurate
19 rate, correct?

20 MS. LEE: Well, that is correct, Commissioner.

21 COMMISSIONER PALECKI: And you don't have a lot of
22 confidence in the lives that are set forth in the financial
23 reporting --

24 MS. LEE: I don't have a lot of confidence in the
25 lives that are used for financial reporting purposes for the

1 reason that Verizon was unable to give me any rationale,
2 reasoning for those financial lives and salvage values.

3 COMMISSIONER PALECKI: And if those particular lives
4 result in some stranded costs for the company, the problem is
5 that the company has never come before this Commission and made
6 the necessary corrections to those lives.

7 MS. LEE: Well, I would think it would be that the
8 company has not come forward with the support needed for those
9 lives.

10 CHAIRMAN JABER: And you did discovery on this issue?

11 MS. LEE: Yes, ma'am.

12 CHAIRMAN JABER: Elaborate on that. You did
13 discovery, you got responses. It's not that you didn't receive
14 responses to discovery.

15 MS. LEE: That is correct. The responses that we
16 received were things of the sort that everything was contained
17 in Witness Sovereign's testimony. All the support for
18 Verizon's lives and salvage values were in Witness Sovereign's
19 testimony. The company had no short-term or long-term planning
20 regarding copper cable. I'm trying to think of some of the
21 other responses. That was probably the gist of it. And
22 Witness Sovereign's testimony only addressed digital circuit
23 switching and copper and fiber cable accounts. In fact, he
24 admitted -- in the deposition he admitted no, they do not file
25 support for the other accounts either on life or salvage

1 values. And when we asked him why that support was not
2 provided, they didn't believe it was necessary because those
3 investments were not the bulk, if you will, of the total
4 investment. The major impacts would be the
5 technology-sensitive accounts and that is the reason why they
6 only addressed those accounts in testimony.

7 CHAIRMAN JABER: And you did that discovery after
8 direct testimony was filed or after rebuttal testimony was
9 filed?

10 MS. LEE: It was after direct testimony was filed.

11 CHAIRMAN JABER: So to the degree that issue was
12 highlighted even further through discovery, was there any
13 reference to it or any other elaboration in rebuttal, anything
14 you could look at in rebuttal that would help us out here?

15 MS. LEE: No, because the rebuttal, all the rebuttal
16 addressed was to Witness Ankum's -- if I recall correctly, it
17 was Witness Ankum's testimony. If you give me a minute, I can
18 pull it.

19 CHAIRMAN JABER: I guess my point, Ms. Lee, let me
20 just shorten this for you. My point is you gave them an
21 opportunity to address the concern in discovery. It wasn't
22 addressed in a fashion that elaborates on what the real concern
23 was. And certainly the planning perspectives from the
24 company's standpoint, and it wasn't addressed in rebuttal,
25 either.

1 MS. LEE: That is correct. And in deposition we
2 asked Verizon, because Verizon was using benchmarking as its
3 main reason for support for its lives. We went through every
4 company that Verizon was using in its benchmarked analysis in
5 deposition, and asked, do you know what the basis is of the
6 lives that are used with this company you are benchmarking?
7 Over and over again, the witness said no. Well, as far as
8 Verizon was concerned, it was not necessary to know the basis
9 of those lives. Well, the Commission already made the decision
10 in the BellSouth case that that type of information is
11 necessary, you need to know the basis of the -- on the
12 assumptions going into your lives so you know you are making an
13 apples-to-apples comparison when you are doing a benchmarking
14 analysis.

15 COMMISSIONER PALECKI: So we could reject Verizon's
16 proposed lives and require Verizon to rerun its cost studies,
17 correct? That is an option available to us, as well, is it
18 not?

19 MS. LEE: Well, I would have to answer that yes. The
20 UNE rates that are shown in Appendix A, I believe, the staff
21 recommended UNE rates are a result of using the depreciation
22 lives and salvage values that staff is recommending in this
23 issue.

24 COMMISSIONER PALECKI: But it sounds to me as if
25 Verizon has failed to meet its burden of proof, and rather than

1 completely rejecting Verizon's proposed lives and then
2 requiring Verizon to rerun its cost studies and come back in,
3 we are opting for another option, and that is the option of
4 adopting the lives and values approved for BellSouth, the order
5 of which was included in the record and was subject to some
6 cross examination questions. It sounds almost similar to what
7 we did in Issue 7A to some extent. We are going with the best
8 that we have available to us now rather than asking Verizon to
9 go ahead and just rejecting the study and making them rerun its
10 study with new lives, salvage lives and with a greater degree
11 of proof. Is that a correct characterization, that we are
12 going with the best we have available to us?

13 MS. LEE: Yes, sir.

14 COMMISSIONER BAEZ: Madam Chairman, a question.
15 There seems to be -- I have been listening to the discussion
16 and the questions, and there seems to be some concern, and the
17 Commissioners can correct me if I'm wrong, but there seems to
18 be some concern as to our ability to just outright adopt the
19 BellSouth lives in this docket based on whatever lack of
20 evidence in the record or lack of record there may be to
21 support it. But there is some significance to the BellSouth --
22 at least to the principles that were set out in reaching the
23 BellSouth results in that docket. Is it available for us --
24 and now a question for staff, is an alternative available for
25 us to send this back to have lives reintroduced that are

1 consistent with the analyses that we had and the factors that
2 we took into consideration in the BellSouth case as an
3 alternative to actually saying these lives are a proxy?

4 MS. KEATING: Are you saying to require Verizon to go
5 back --

6 COMMISSIONER BAEZ: Uh-huh.

7 MS. KEATING: -- and refile using those same -- I
8 don't see why not.

9 COMMISSIONER BAEZ: And I guess my concern is this, I
10 am concerned as well about our lack of record in order to just
11 say, all right, these are the numbers that we are going to
12 take; however, it doesn't diminish the relevance of the factors
13 that we would have taken into account or have taken into
14 account in the past. And I think that maybe -- and I don't
15 know what this does to time lines or if it is an unnecessary
16 delay, but perhaps we can reach that same end. What we want is
17 something consistent. Maybe if we can just require that they
18 be consistent with principles set out, we may get results that
19 are adequate and acceptable to us.

20 CHAIRMAN JABER: Commissioners, I would not disagree
21 with that if that is the pleasure of the Commission, but let me
22 pose this as something to think about, too. Should we balance
23 the cost to everyone of doing that versus accepting staff's
24 recommendation on this issue and seeing what the companies'
25 plural, their reaction is? I wonder if we get to the same

1 place, Commissioners, if we just accept staff's recommendation.
2 Don't get me wrong, I am amenable to doing it both ways. It is
3 just we probably should evaluate the time and the expense and
4 the bottom line result in requiring a new filing or additional
5 testimony versus accepting this and seeing what happens.

6 COMMISSIONER DEASON: Well, let me say my preference
7 is that win, lose, or draw on specific issues, my aim is to
8 have rates established and let them be in existence for awhile
9 before we go through this exercise again. But I'm sure we will
10 be going through this exercise again.

11 COMMISSIONER BAEZ: That was going to be another
12 point. This is going to get hashed out in probably a more
13 appropriate way if that exists at a later date, as well. I'm
14 not sure that we are creating a monster by accepting these.

15 COMMISSIONER DEASON: And let me say this, too, and
16 this is just as a point of reference for future proceedings.
17 If we don't come up with some type of guidelines or whatever,
18 this may be an issue where we need a staff witness, just like
19 we had a staff witness on ROE. And if we had had a staff
20 witness who maybe had said, we think BellSouth's depreciation
21 rates are correct and here are the reasons why, and if they
22 could withstand cross-examination, we would have plenty of
23 record evidence to support your recommendation. But I am
24 concerned that -- I don't have enough -- I'm not totally
25 comforted that we have enough evidence to just simply reach out

1 to another docket and pull those rates in and say they are
2 sufficient for utilization in this docket. And that is
3 nothing -- I am totally satisfied that those were the
4 appropriate rates for that company in the context of that
5 docket. That is my concern.

6 CHAIRMAN JABER: I think we are all saying the same
7 thing. I think we are all struggling with what to do next. Is
8 that a fair assessment? So where does that leave us,
9 Commissioner Deason? You are agreeing with all of us, aren't
10 you? And we are agreeing with you, I think.

11 COMMISSIONER BAEZ: Somehow.

12 CHAIRMAN JABER: Yes.

13 COMMISSIONER DEASON: I am in agreement this has been
14 a frustrating issue for me. I think we need to go forward. I
15 think we need to make a decision today, and we need to have
16 depreciation rates that are inputs to the model, and we need to
17 have rates as a result and that needs to be our decision. And
18 if that is appealed, so be it. But, I, for one, will not vote
19 to put BellSouth rates in effect for this company. I will not
20 do that. But now if that is a four-to-one vote, that's fine.
21 And I'm happy and we can move on to the next issue.

22 CHAIRMAN JABER: But alternatively you would have
23 accepted -- what is the alternative, to accept the financial --

24 COMMISSIONER DEASON: Accept Verizon's rates. They
25 are used for financial reporting purposes, to me that does give

1 them some credibility. I'm not saying that in and of itself
2 means that anytime a company says these are my rates that I use
3 for financial reporting, that means then that we have to accept
4 them. But I think it is the next best alternative that we have
5 in this docket and it is evidence that we have.

6 CHAIRMAN JABER: Okay. And just for purposes of
7 generating discussion and hopefully a motion, I will not
8 support that but for a different reason, and let me tell you
9 why. As the record is weak on the side of what alternative
10 depreciation rate is appropriate, I think the record is also
11 weak in accepting Verizon's proposal and certainly in light of
12 the fact that staff did discovery on this issue, asked
13 questions and there was acknowledgment from Verizon that they
14 didn't have a plan with respect to future construction and
15 future facilities planning. So, for that, I was going to
16 compromise, but it was only going to be a compromise as it
17 relates to accepting the depreciable life we accepted for
18 BellSouth. And frankly, I had a little bit of comfort with
19 respect to the cross examination in that regard. But,
20 Commission Deason, honestly it is only a compromise, and it
21 wasn't, you know, 100 percent perfection or anything like that.

22 COMMISSIONER DEASON: Well, I agree that there is not
23 one simple correct right answer. And, you know, there is a
24 basis for that decision, too, and I respect that.

25 COMMISSIONER BAEZ: Madam Chair, I am willing to move

1 the issue to accept staff's recommendation. I think part of
2 this discussion has come down to a question of style, and
3 perhaps there is a more appropriate way of reaching what would
4 probably be the same numbers if some kind of guidance had been
5 taken from the previous decision. And with that in mind, it
6 may be that at the end of the day it becomes a more efficient
7 course of action to accept what the decision was -- you know,
8 if we accept staff's recommendation here than to have to go
9 through the whole process of resetting them in what would be an
10 optimum way. As I said, I think this is going to become at
11 least a -- it is only a temporary thing in the long run, it is
12 only a temporary decision because it will get addressed at some
13 point in the future. So with that, I can move the staff
14 recommendation.

15 COMMISSIONER PALECKI: Second.

16 CHAIRMAN JABER: There is a motion and a second to
17 approve staff's recommendation on Issue 7B. All those in favor
18 say aye.

19 COMMISSIONER PALECKI: Aye.

20 CHAIRMAN JABER: Aye.

21 COMMISSIONER BRADLEY: Aye.

22 COMMISSIONER BAEZ: Aye.

23 MS. LEE: Commissioner --

24 COMMISSIONER DEASON: Let me have my say. Nay.

25 Thank you.

1 CHAIRMAN JABER: And let me actually call for a vote
2 because I didn't hear the votes. All those in favor of
3 approving staff's recommendation indicate by saying aye. Aye.

4 COMMISSIONER PALECKI: Aye.

5 COMMISSIONER BAEZ: Aye.

6 CHAIRMAN JABER: Opposed, nay.

7 COMMISSIONER DEASON: Nay.

8 COMMISSIONER BRADLEY: Nay.

9 CHAIRMAN JABER: Ms. Lee, what did you want to say?

10 MS. LEE: Certainly this is an item that can be
11 subject to discussion with the ALEC community and the industry.
12 Perhaps this is something that can be -- either we can come up
13 with some guidelines, some things that we want to see in future
14 cost studies, and perhaps it is an issue that can possibly be
15 resolved in ongoing studies, as well.

16 CHAIRMAN JABER: Do remind me at the very end of that
17 vote, of this vote, Commissioners, I do want to talk about the
18 workshop idea. It occurs to me, also, the BellSouth decision,
19 it was just three of us, and as I recall it was Commission
20 Deason, Palecki, and me. So for the benefit of -- is that
21 right? That's right. So for the benefit of Commissioners Baez
22 and Bradley, let me tell you what we have done post the
23 BellSouth decision. We discussed our market monitoring group
24 taking a look at UNE rates in the State of Florida the next 12
25 to 18 months and at some point coming back to us with a

1 presentation or analysis of the effect of those established
2 rates in fostering or affecting the development of a
3 telecommunications market. So things are happening in the next
4 year that may bring it back to us from our staff, but certainly
5 the companies, I would expect, are doing the very same
6 analysis. I think it is a very responsible thing to do.

7 COMMISSIONER BAEZ: And does the market monitoring --
8 does their charge include coming back with a recommendation
9 concerning the appropriateness of -- or we can do that here. I
10 mean, I think we've talked about it enough.

11 CHAIRMAN JABER: Yes, I think --

12 COMMISSIONER BAEZ: Somewhere in there be some
13 evaluation of whether a standardized costing model --

14 CHAIRMAN JABER: Right. We left it open. I said a
15 recommendation where appropriate. It might be initially a
16 presentation and some direction with an offer of direction. I
17 think we left it open, but definitely --

18 COMMISSIONER BAEZ: I didn't mean recommendation in a
19 formal way, just that they be thinking about it and take those
20 things into consideration.

21 CHAIRMAN JABER: Yes. Whatever appropriate action, I
22 think is what I said, would be required. But let's at the very
23 end talk about how a workshop could be fit into that review
24 because I think that is a great way of getting industry and
25 consumer advocates involved. This is also an appropriate time

1 to talk about staff testimony. Commissioner Deason, you
2 brought that up, and I am so glad that two Commissioners are
3 talking about that because I think this is important for staff
4 to hear. You have heard it from me, and now you have heard it
5 from a second Commissioner, and I think you will hear it from
6 Commissioners going forward. This is not -- and,
7 Commissioners, you need to correct me if I'm wrong. This is
8 not just ILEC petitions and ALECs responding to petitions.
9 There is a bigger picture than -- I don't mean this lightly, it
10 is not about who met the burden of proof to me; it is about
11 fostering a competitive market in telecommunications. And what
12 may be important to Z-Tel, or FDN, or KMC Telecom, or a Sprint
13 ALEC may not be all that is important to Florida as a state in
14 fostering a competitive market. So, yet again, I want to say
15 to you all a staff witness may be completely appropriate when
16 you step back and think about what it is the state has to
17 accomplish versus what it is the ALECs are trying to
18 accomplish. This is bigger than did the ALECs challenge an
19 issue therefore we have to defer to what the ILECs put on. If
20 this is not -- it's not a rate case and it is not the
21 traditional way of looking at a case. It is about the end of
22 the day. We are trying to facilitate a competitive market in
23 the State of Florida and sometimes that means our staff will
24 have to step back and rely on their expertise in offering
25 solutions. Commissioners, do you generally agree with that?

1 COMMISSIONER DEASON: Yes.

2 COMMISSIONER BAEZ: Yes.

3 CHAIRMAN JABER: Thank you. Okay, next Issue. 7C.

4 COMMISSIONER DEASON: Move staff.

5 COMMISSIONER BRADLEY: I have some concerns about 7C.

6 CHAIRMAN JABER: Okay, Commissioner Bradley.

7 COMMISSIONER BRADLEY: And these are concerns that
8 relate to staff Witness Draper. And I read this several times,
9 and what I'm going to do is basically explain what my concerns
10 are. In order to calculate cost of capital, the staff witness,
11 Draper, must identify criteria for selecting a proxy group of
12 companies that best reflect the publicly traded company whose
13 sole business is the provision of UNEs. Staff Witness
14 Draper -- and I'm going to ask staff a question after I make my
15 statements -- explained that the proxy group of companies he
16 selected excludes companies with less than 75 percent of their
17 annual revenues from telecom operations, also companies with
18 insufficient financial data to perform a financial analysis,
19 and also companies that are subject to on-going merger or
20 acquisition. The exclusion of companies involved in a merger
21 or acquisition is important because mergers and acquisitions
22 cause abnormal fluctuations in a company's stock price. Since
23 stock prices are a key driver in any cost of equity analysis,
24 the exclusion of companies that are subject to a merger or
25 exclusion will prevent -- will help prevent skewed results.

1 While Witness Draper requires the elimination of companies that
2 are subject to an on-going merger or an acquisition, when
3 calculating the cost of capital for Verizon, he did not follow
4 this criterion and includes such companies in his proxy group.
5 In addition, he excluded CBC, which according to his criteria
6 should be included. For example, Draper included AT&T which
7 was merging with Comcast. He also included CenturyTel which
8 had an agreement to merge with ALLTEL. In addition he excluded
9 CBC which should not have been eliminated according to Draper's
10 criteria. My question is this. Staff's recommendation speaks
11 to Verizon's argument that Draper did not adhere to his own
12 criterion. However, the recommendation doesn't explain why
13 staff accepted Draper's analysis despite this flaw. Please
14 help me understand staff's acceptance of Draper's analysis in
15 this regard. And the question also is shouldn't Draper be
16 asked to revise his analysis so that it comports with his own
17 criterion for selecting a proxy group of companies? That is a
18 question to staff.

19 MR. LESTER: Commissioners, I am the staff for that
20 question. I guess on Page 100 of the rec is where I have
21 addressed the comparable group that was used by the staff
22 witness. And the staff witness did state that he removed
23 companies from consideration that were the subject of an
24 on-going merger or acquisition. And in his deposition he was
25 asked questions regarding why he included AT&T and why he

1 included CenturyTel. And he explained that -- well, in the
2 case of AT&T/Comcast that was not a complete merger or merger
3 of entire companies. And in the case of CenturyTel, the
4 information that he had gotten from reading Value Line was that
5 the offer between ALLTEL and CenturyTel for them to merge would
6 have had to increase by 20 or 30 percent for that merger to
7 occur. It is appropriate probably to eliminate companies that
8 are merging because their stock price is going to be distorted
9 relative to what analysts and investors expect the company to
10 earn. And so be that it is a may, the staff witness had to
11 make a judgment call and he chose to include AT&T and
12 CenturyTel, because, like I say, AT&T was not a complete
13 company merger and in CenturyTel it was apparently a dying or
14 nonexistent merger. Now, with regard to SBC, there is an
15 inconsistency. He has stated in his direct testimony that he
16 excluded companies that had greater than -- excuse me, had less
17 than 75 percent revenue from telecommunications operations. In
18 his deposition he did agree, subject to check, that SBC had
19 greater than 75 percent revenue. And so I have just chosen to
20 go with what he put in his direct testimony.

21 COMMISSIONER DEASON: Well, do we know how -- if SBC
22 were included in his analysis, would it have any material
23 impact?

24 MR. LESTER: It would, yes, sir. I have calculated
25 it at 30 basis points.

1 COMMISSIONER DEASON: Thirty basis points higher?

2 MR. LESTER: To the cost of equity, yes, sir.

3 COMMISSIONER DEASON: And what was his explanation as
4 to why SBC should be excluded? I mean, it was the 75 percent
5 revenue criterion, I understand, and did he make a mistake in
6 evaluating that criterion or what was the --

7 MR. LESTER: I don't believe he did. I believe he
8 misspoke in his deposition. But, I mean, it is simply an
9 inconsistency. In his direct testimony he states that he
10 eliminated companies that had less than 75 percent revenue from
11 telecom operations, telecommunications operations, and yet
12 there was the inconsistency in his deposition. It is really --
13 that is essentially it in terms of the record.

14 COMMISSIONER DEASON: Explain for me the
15 inconsistency. What was the question and the answer?

16 MR. LESTER: He agreed; to check at his deposition
17 that SBC had 75 percent or more revenue from telecommunications
18 operations.

19 COMMISSIONER DEASON: And in his analysis -- he did
20 not include SBC in his analysis where he came up with his
21 recommended ROE, correct?

22 MR. LESTER: That is correct.

23 COMMISSIONER DEASON: And if he had it would have
24 been 30 basis points higher?

25 MR. LESTER: That is correct, yes, sir. I did

1 independently check, and SBC does have less -- based on the
2 C.A. Turner Reports. It has less than 75 percent revenue from
3 telecommunications operations.

4 CHAIRMAN JABER: Is that in the record?

5 MR. LESTER: No.

6 CHAIRMAN JABER: It is in the record?

7 MS. KEATING: I think the C.A. Turner Reports are in
8 the record. So staff could use that as a basis. Staff,
9 correct me if I'm wrong, but I believe the C.A. Turner Reports
10 were in the record.

11 MR. LESTER: His work papers were entered, but
12 because the C.A. Turner Reports are copyright and Value Line,
13 that wasn't provided. That is the only place I know they would
14 be.

15 CHAIRMAN JABER: But the fact -- you just said you
16 independently checked and SBC's revenues are 75 percent less.
17 That fact, is that in the record?

18 MR. LESTER: No, ma'am. I'm not aware that it is.

19 COMMISSIONER BRADLEY: What are you using to -- where
20 is the hard data? I mean, what is there that you can show us
21 that indicates that that is true? And what I'm trying to get
22 at is the fact that there appears to me at least to be some
23 inconsistencies, and I'm trying to get at the facts. Let me
24 ask this question. If we revised his analysis to exclude AT&T
25 and CenturyTel and to include SBC, then what would the

1 conclusion be?

2 MR. LESTER: That is the 30 basis points. It would
3 increase the cost of equity from my recommended 11.24 percent
4 to about 11.54 percent.

5 CHAIRMAN JABER: Commissioner Bradley, what did you
6 say, include SBC --

7 COMMISSIONER BRADLEY: Exclude AT&T and CenturyTel
8 and include SBC.

9 CHAIRMAN JABER: Okay. And then that makes that
10 question really, really important with respect to SBC. Is that
11 in the record? Right? I mean that is a critical question,
12 isn't it? Do we have the record evidence to include SBC and
13 exclude CenturyTel?

14 MS. KEATING: You have staff witness' initial
15 testimony in which he said that he excluded SBC because he
16 believed it had less than 75 percent revenues from
17 telecommunications. You have the competing deposition
18 testimony also in the record, but you can weigh those two
19 competing testimonies and see which one you think was correct,
20 which one to rely upon.

21 COMMISSIONER BRADLEY: Say that again, please.

22 MS. KEATING: You do have the staff witness' initial
23 testimony in the record in which he explained why he had
24 excluded SBC in the first place, which was that he understood
25 SBC to have less than 75 percent revenues from

1 telecommunications.

2 COMMISSIONER PALECKI: And we also have in the record
3 the testimony of Dr. Ford where he recommends a range of 8 to
4 8.5 percent. So this Commission can adopt any number in
5 between what is being requested by Verizon of 12.95 percent
6 down to the 8 percent as recommended by Dr. Ford, correct? I
7 have a question for Mr. Lester.

8 CHAIRMAN JABER: Was that a yes?

9 MS. KEATING: Yes, ma'am.

10 COMMISSIONER PALECKI: And my question is based more
11 on just instinct and common sense. I went to look at a
12 long-range certificate of deposit the other day for a \$50,000
13 certificate, and the interest rate was 1-1/2 percent. Why are
14 we talking in terms of 11 to 12 to almost 13 percent in this
15 docket? Why are these numbers lagging so far behind what I am
16 seeing in the real world today?

17 MR. LESTER: I believe the numbers that form the
18 basis of my recommendation are coming from a capital asset
19 pricing model and a discounted cash flow model, and those are
20 very heavily influenced by stock prices. And, of course, the
21 stock market has gone down. And generally speaking, with lower
22 stock prices, the cost of capital is higher. And with the
23 trend downward in the stock market throughout 2001, and I think
24 most of the witnesses used late 2001 data, then that was the
25 result.

1 COMMISSIONER DEASON: It's a question of risk and
2 return, is it not? I mean, if people are willing to take
3 \$50,000 out of the stock market and invest it at 1-1/2 percent,
4 they are saying that is an insured investment and things are so
5 uncertain right now, risks are so high for equity investors,
6 I'm willing to take that 50,000 out of the stock market and
7 only get 1-1/2 percent because I am guaranteed 1-1/2 percent
8 instead of maybe a negative 12 percent return in the stock
9 market.

10 MR. LESTER: I think you are correct. Of course, now
11 the 1-1/2 percent, too, is probably the feds trying to simulate
12 the economy.

13 COMMISSIONER DEASON: So that is impacting it.

14 MR. LESTER: And that is certainly impacting it.

15 COMMISSIONER BRADLEY: And I agree with Commissioner
16 Deason, I don't think that we can compare apples and oranges.
17 Stocks are much different from certificates of deposits in
18 terms of risk.

19 COMMISSIONER PALECKI: Do you think that that cost
20 rate in the staff's recommendation of 7.22 percent is
21 accurately reflective of the real world cost of debt for
22 Verizon right now or do you think that they could go and get
23 that money at a lower rate? I suspect that they could find
24 money at a lower rate than 7.22 percent.

25 MR. LESTER: Based on the record, I think the 7.22

1 percent is solid. But the way the markets fluctuate and
2 currently with low inflation, it is very possible that
3 long-term debt costs would be lower.

4 COMMISSIONER PALECKI: I think the staff's
5 recommendation is a good, fair compromise and it is where the
6 rate of return should be today. It might be a little bit high,
7 but I think staff did a good job. I would move the staff's
8 recommendation.

9 COMMISSIONER BRADLEY: At this point I don't think we
10 have been presented the hard data that we need to have in order
11 to accept staff's recommendation. Is there some way of
12 producing the data that would allow us to deal with this issue
13 of 30 basis points?

14 CHAIRMAN JABER: Commissioner Bradley, can I
15 interrupt you for just a second? There has been a motion to
16 accept staff. How about we see what happens with that motion?

17 COMMISSIONER BRADLEY: Okay.

18 CHAIRMAN JABER: All right. There is a motion to
19 accept staff's recommendation. Is there a second?

20 COMMISSIONER DEASON: Well, I guess I earlier made
21 the motion, too, so I mean, but I am interested in what
22 Commissioner Bradley has to say. So, I mean, I can second the
23 motion if it is understood we are going to at least have
24 further discussion before we take a vote.

25 CHAIRMAN JABER: How about we allow both of you to

1 withdraw your motions so we can continue the dialogue.

2 COMMISSIONER DEASON: I am willing to do that.

3 COMMISSIONER PALECKI: I withdraw my motion.

4 CHAIRMAN JABER: Okay. Commissioner Bradley.

5 COMMISSIONER BRADLEY: Right. And I'm not arguing
6 one way or the other, but I would just like to see the hard
7 data to substantiate what has been given to us so that we will
8 not have a faulty decision made here today.

9 MR. LESTER: Well, what I did, 0was I took the
10 Verizon witness' exhibit in his rebuttal testimony, and that
11 would be Exhibit Number 41, Page 1. And I have made copies of
12 that if you would like me to pass that out.

13 CHAIRMAN JABER: Sure, that would be helpful. And
14 what is this, Mr. Lester?

15 COMMISSIONER BRADLEY: My issue isn't with staff, it
16 is with Mr. Draper and his analysis and his conclusion.

17 CHAIRMAN JABER: Hang on, Commissioner Bradley. What
18 is it you are passing out, staff?

19 MR. LESTER: Exhibit 41, Page 1. That is the Exhibit
20 to the Verizon witness' rebuttal testimony.

21 CHAIRMAN JABER: Okay. And, Commissioner Bradley, I
22 understand your point. You are questioning the testimony that
23 was filed by Witness Draper.

24 COMMISSIONER BRADLEY: Right.

25 CHAIRMAN JABER: I understand.

1 MR. LESTER: I believe that Witness Draper was
2 correct for including CenturyTel and AT&T, but we can take the
3 information from that exhibit that I provided, and SBC, as you
4 can see, is on there, that line item. Now, I don't agree with
5 the way this exhibit was done entirely, but the information on
6 the line item I can take and incorporate with Witness Draper's
7 exhibit to then recalculate his result. I also have his
8 exhibit, if you would like that.

9 CHAIRMAN JABER: As I recall, from reading this issue
10 and from looking at the Verizon exhibit, one of the reasons you
11 are recommending we reject that is they actually included
12 analysis of companies that were not even telecommunications
13 companies. Remind me or refresh my memory there.

14 MR. LESTER: Yes, the Verizon witness primarily
15 relies on the Standard & Poor's industrial companies, and those
16 are companies in a variety of industries.

17 CHAIRMAN JABER: So is that an apples-to-oranges
18 comparison in your opinion?

19 MR. LESTER: Not from what I have handed you there,
20 because what he has done in that exhibit that was passed out
21 was his statement that he reproduced Witness Draper's result to
22 exclude ALLTEL and CenturyTel and to include SBC. I can take
23 that line item information on SBC, incorporate it with Witness
24 Draper's exhibit, and then that is how I come up with that
25 statement that the cost of equity would be 30 basis points

1 higher. There is your evidence, Commissioner.

2 COMMISSIONER DEASON: So the 30 basis points, that is
3 just isolating the impact of including SBC?

4 MR. LESTER: Yes, sir. And that has an effect of
5 about 18 basis points on the overall cost of capital.

6 COMMISSIONER BRADLEY: Eighteen additional basis
7 points?

8 MR. LESTER: Yes, sir.

9 COMMISSIONER DEASON: Why did Mr. Draper say in his
10 deposition that he acknowledged that SBC has more than 75
11 percent revenue from telecom, and he earlier when he filed his
12 testimony, he had the other, he had the opposite impression?

13 MR. LESTER: I personally believe he just misspoke,
14 because he says subject to check. And that is what I believe,
15 and therefore I weighted is direct testimony, and that is why I
16 am recommending what I am recommending. It is simply there
17 that he agreed, subject to check, that SBC had more than 75
18 percent --

19 CHAIRMAN JABER: Misspoke in the depo?

20 MR. LESTER: Yes, ma'am. I would like to add, too,
21 that he subsequently states, and he was questioned by the Z-Tel
22 attorney, and I don't have it right in front of me, but he was
23 asked why he excluded Southwestern Bell, that is SBC
24 Corporation, and he said I did it for all the criteria I have
25 enumerated in my testimony.

1 COMMISSIONER BRADLEY: You know, that is a tremendous
2 burden to put on staff in terms of trying to speak for
3 Mr. Draper; that is, to try and interpret or to assume that he
4 misspoke. And I think it is unfair to put you in the position
5 of trying to answer maybe what was going on in Mr. Draper's
6 mind, which creates more of a problem for me with respect to
7 this particular issue.

8 CHAIRMAN JABER: Well, you know, when staff files
9 testimony they are not any different than any other witness in
10 the case, and it may be a burden on staff, but frankly we put
11 them in that situation when they are analyzing any witnesses'
12 testimony. But I don't necessarily disagree with you,
13 Commissioner Bradley, but it is probably just the nature of the
14 beast.

15 COMMISSIONER DEASON: Do you have the specific
16 question and answer in the deposition where he indicated he was
17 giving an answer subject to check?

18 MR. LESTER: Yes, sir. Let me read that for you.
19 Give me just one moment, please. I'm fumbling around here.

20 COMMISSIONER DEASON: And I assume the deposition is
21 in the record?

22 MR. LESTER: Yes, sir, it is Exhibit 37. It's Page
23 56 of his deposition.

24 The question: "Would you agree that SBC received 75
25 percent of its revenue or more from telecommunications

1 operations?

2 "Answer: Subject to check."

3 COMMISSIONER BRADLEY: Subject to?

4 MR. LESTER: Subject to check.

5 COMMISSIONER BRADLEY: C-H-E-C-K?

6 CHAIRMAN JABER: Yes. It means he reserves the right
7 to go back and take a look at it and if there is a problem,
8 point it out.

9 COMMISSIONER BRADLEY: So he really didn't answer the
10 question, then.

11 CHAIRMAN JABER: Is that right, Ms. Keating? Well,
12 but that brings a legal question up, because you hear it all
13 the time. You hear it in hearings, and certainly you hear it
14 in depositions. The witness will say subject to check I can
15 agree with that, and what is the real effect of that? It is
16 time to call the check. What does all of that mean? Should we
17 rely on it in our decision-making when the witness has reserved
18 the right, you know, to come back and say, oh, I was wrong.

19 MS. KEATING: I think you give it the weight that it
20 is due, which may not be very much. Particularly, I think,
21 since Mr. Lester had pointed out that later on in the
22 deposition he said some other things that would seem to
23 indicate that he still believed SBC was properly excluded.

24 MR. LESTER: I can read that quote from the depo
25 also, if you would like.

1 CHAIRMAN JABER: Please, because I suppose that your
2 point would be we should look at the deposition in its
3 entirety.

4 MR. LESTER: This is Page 71 of his deposition, which
5 was when he was being questioned by Mr. McGlothlin, the Z-Tel
6 attorney.

7 Question: "Looking at your index for just a second,
8 was there a particular reason why you did not include
9 Southwestern Bell in your index?"

10 "Answer: I don't recall. It could have been for any
11 one of the reasons I stated in my criteria. I'm not sure
12 Southwestern Bell is followed by Value Line."

13 That is the answer.

14 COMMISSIONER DEASON: And that was subsequent to
15 the -- that was on Page 71 and the previous question was
16 earlier?

17 MR. LESTER: Yes, sir.

18 CHAIRMAN JABER: Commissioners, any other questions?

19 COMMISSIONER BAEZ: I have to speak up, and I'm
20 having trouble figuring out how an answer that says subject to
21 check is inconsistent now with what the direct testimony was.
22 And now that is not making a judgment -- you know, I'm not
23 making a judgment as to whether the inclusion or whether even
24 the criteria is appropriate. I would probably have more
25 trouble if the actual criteria was under attack rather than

1 this inconsistency. I, for one, don't see an inconsistency. I
2 have trouble listening to an answer that is subject to review
3 and in the end analysis it becomes consistent with what was
4 originally done to begin with. Again, factually that is what I
5 see. Whether we want to get into a discussion of the
6 appropriateness of the criteria, I don't know. But if we are
7 going to take the criteria as given, I am just not seeing where
8 any inconsistencies exist to the way the staff witness applied
9 it.

10 COMMISSIONER PALECKI: Mr. Lester, could I ask you
11 another question? On Page 100 of your recommendation, the
12 second full paragraph, you conclude with, staff believes
13 Witness Draper's index of companies is a reasonable proxy group
14 for determining the cost of equity related to UNEs. Do you
15 still believe that today?

16 MR. LESTER: Yes, sir.

17 COMMISSIONER PALECKI: And you stand by that
18 recommendation?

19 MR. LESTER: Yes, sir.

20 COMMISSIONER PALECKI: Thank you.

21 CHAIRMAN JABER: Commissioners, any other questions
22 or a motion?

23 COMMISSIONER PALECKI: I would move the staff's
24 recommendation.

25 CHAIRMAN JABER: There has been a motion to accept

1 staff's recommendation. Is there a second?

2 COMMISSIONER DEASON: Second.

3 CHAIRMAN JABER: A motion and a second to accept
4 staff's recommendation. All those in favor say aye.

5 COMMISSIONER DEASON: Aye.

6 COMMISSIONER PALECKI: Aye.

7 COMMISSIONER BAEZ: Aye.

8 CHAIRMAN JABER: Aye.

9 (Simultaneous affirmative vote.)

10 CHAIRMAN JABER: Opposed, nay. You voted in the
11 affirmative? I can't hear this morning. I'm getting
12 Commissioner Baez's cold this morning.

13 COMMISSIONER BRADLEY: I'm going to vote no. I
14 didn't vote. I will vote no.

15 CHAIRMAN JABER: Actually I think it is going around
16 in the schools, right?

17 COMMISSIONER BAEZ: I'm trying to cough Commissioner
18 Bradley's way.

19 CHAIRMAN JABER: Issue 7C is approved, four-to-one.
20 Issue 7D.

21 COMMISSIONER DEASON: Move staff.

22 COMMISSIONER PALECKI: Second.

23 CHAIRMAN JABER: All those in favor say aye.

24 (Simultaneous affirmative vote.)

25 CHAIRMAN JABER: Issue 7D is approved. 7E.

1 COMMISSIONER DEASON: Move staff.

2 COMMISSIONER PALECKI: Second.

3 CHAIRMAN JABER: There is a motion to accept staff on
4 7E. All those in favor say aye.

5 (Simultaneous affirmative vote.)

6 CHAIRMAN JABER: 7E is approved. 7F.

7 COMMISSIONER DEASON: Move staff.

8 COMMISSIONER PALECKI: Second.

9 CHAIRMAN JABER: All those in favor say aye.

10 (Simultaneous affirmative vote.)

11 CHAIRMAN JABER: 7F is approved. 7G. There is a
12 modification on 7G, correct? Oh, it's just a typo?

13 MS. CATER: Yes, it is just a typo.

14 CHAIRMAN JABER: And any other fill factors addressed
15 in this issue.

16 MS. CATER: Correct.

17 CHAIRMAN JABER: Commissioners, is there a motion on
18 7G?

19 COMMISSIONER BAEZ: So moved.

20 COMMISSIONER PALECKI: Move staff.

21 COMMISSIONER DEASON: I'm sorry, I have a question.

22 CHAIRMAN JABER: Okay.

23 COMMISSIONER DEASON: I think I have a question if
24 you can just give me a moment.

25 CHAIRMAN JABER: No problem. Who made the motion?

1 COMMISSIONER PALECKI: I think Commissioner Baez beat
2 me to it. I will second it.

3 COMMISSIONER DEASON: Madam Chairman, my question is
4 on Page 129 of the recommendation, and I was needing some
5 clarification with what is contained in the Sprint
6 recommendation. And I know we are not going to take the Sprint
7 recommendation up today, but is it still fair to ask the
8 question?

9 CHAIRMAN JABER: I think so.

10 COMMISSIONER DEASON: Okay. I'm just trying to make
11 sure that the recommendations are consistent, and I think it
12 may be just a difference in terminologies and how they apply.
13 But on Page 129, the second paragraph under the conclusion, it
14 says -- the last sentence says, according to the Verizon
15 witness, this provides for a distribution fill rate of 73.54
16 percent. Now, I'm looking at Page 96 of the Sprint
17 recommendation --

18 CHAIRMAN JABER: This is 7G, but Commissioner
19 Deason's question is --

20 COMMISSIONER DEASON: Yes, it is the same issue, but
21 it is for Sprint.

22 COMMISSIONER BRADLEY: Which page is that?

23 COMMISSIONER DEASON: Page 96 of the Sprint
24 recommendation. And here under the second paragraph of the
25 conclusion section it says that staff agrees with the

1 distribution fill being set at 100 percent. Now, I think we
2 may be talking about two different concepts, and if we are,
3 please explain. But just taking it at face value we are
4 talking about distribution fill, one is 100 percent and the
5 other is less than 75 percent. So the question is are we
6 talking about two different things, and if we are, what is the
7 distinction? And if we are talking about the same thing, why
8 are the percentages so different?

9 MS. CATER: Well, Commissioner, part of it is, I
10 believe, the way the models are set up. In Sprint what they
11 did is they set it up -- when they set the distribution, they
12 set it so they are basically setting the distribution at two
13 lines per household. On the Verizon case, what is set is cable
14 sizing factors. If it takes -- let's assume you need 86 pair
15 cable to go through. It will size the next one up to 100 pair,
16 so you have a little bit of what Mr. Dowds describes as
17 chunkiness. Basically, it sizes it to the next level because
18 cable only comes in discreet sizes. So, while in the Sprint it
19 basically takes -- it sets it at 100 percent to set it at two
20 pair per household.

21 COMMISSIONER DEASON: So is Sprint and Verizon
22 defining distribution fill differently?

23 MS. CATER: Somewhat, yes.

24 COMMISSIONER DEASON: So it is a difference in
25 concept as opposed to an absolute difference in the numbers?

1 MS. CATER: Yes.

2 CHAIRMAN JABER: Did you have another question,
3 Commissioner Deason?

4 COMMISSIONER DEASON: Well, this may go along the
5 same line? Back on Page 129 of the Verizon recommendation, it
6 talks there about -- if I'm not mistaken, it indicates that
7 fill is actually an output of the model as opposed to an input
8 to the model.

9 CHAIRMAN JABER: Correct.

10 COMMISSIONER DEASON: And for Sprint, is fill an
11 input to the model or is it an output from the model?

12 MS. CATER: It is an input.

13 COMMISSIONER DEASON: So the models here again are
14 different in that regard?

15 MS. CATER: Yes.

16 COMMISSIONER DEASON: And maybe that is something we
17 need to do on a consistent basis. Would you perhaps agree it
18 is something we need to ask as to how these models should be
19 structured so as to have consistent inputs? It's just a
20 difference in the models, correct?

21 MR. DOWDS: It is a difference in the inputs. They
22 both use cable sizing factors as opposed to using fill as an
23 input. For example, I may have my companies confused, Sprint
24 assumes two drops per household.

25 MS. CATER: Yes.

1 MR. DOWDS: Verizon used a weighted average that
2 ranged from, I think, two.

3 MS. CATER: I think it ranged -- I think the numbers
4 are confidential, but the weighted average came out to 2.16.

5 COMMISSIONER DEASON: Anyway, I have my questions
6 answered, Madam Chairman.

7 CHAIRMAN JABER: Is there a motion on 7G?

8 COMMISSIONER BAEZ: I can move it.

9 COMMISSIONER PALECKI: Second.

10 CHAIRMAN JABER: There is a motion and a second. All
11 those in favor say aye.

12 (Simultaneous affirmative vote.)

13 CHAIRMAN JABER: 7G is approved. 7H.

14 COMMISSIONER PALECKI: Move staff.

15 COMMISSIONER DEASON: Second.

16 CHAIRMAN JABER: There is a motion and a second to
17 approve staff on 7H. All those in favor say aye.

18 (Simultaneous affirmative vote.)

19 CHAIRMAN JABER: 7H is approved. 7I and 7J.

20 COMMISSIONER DEASON: Move staff.

21 COMMISSIONER PALECKI: Second.

22 CHAIRMAN JABER: All those in favor say aye.

23 (Simultaneous affirmative vote.)

24 CHAIRMAN JABER: 7I and 7J are approved. 7K.

25 COMMISSIONER PALECKI: Move staff.

1 COMMISSIONER BAEZ: Second.

2 COMMISSIONER DEASON: Give me just a moment. Okay,
3 I'm fine.

4 CHAIRMAN JABER: Motion and a second to approve staff
5 on 7K. All those in favor say aye.

6 (Simultaneous affirmative vote.)

7 CHAIRMAN JABER: 7K is approved. 7L.

8 COMMISSIONER DEASON: Move staff.

9 COMMISSIONER PALECKI: Second.

10 CHAIRMAN JABER: All those in favor say aye.

11 (Simultaneous affirmative vote.)

12 CHAIRMAN JABER: 7L is approved. 7N.

13 COMMISSIONER DEASON: Madam Chairman, I may have a
14 question on 7M. And I apologize for having to turn pages back
15 and forth so much.

16 CHAIRMAN JABER: It's not a problem.

17 MR. J. BROWN: Commissioner, I would like to make an
18 oral modification to Issue 7M. On Page 162, in the second
19 paragraph under the first sentence, the line starting,
20 digitally derived loop is connected to, it should be an ALEC
21 switch instead of a Verizon switch.

22 COMMISSIONER DEASON: I'm looking at Page 162 of the
23 recommendation, the bottom paragraph there. There is a
24 sentence -- well, it's the first sentence, but the latter part
25 where it indicates that staff agrees with the Verizon witness

1 that it is indeed possible at present to use IDLC facilities to
2 provide a loop/port combination. Now, it is possible to do
3 that, but Verizon for purposes of the cost study did not
4 utilize IDLC in determining the cost of the UNE-P, is that
5 correct?

6 MR. J. BROWN: That is correct.

7 COMMISSIONER DEASON: And why did they not do that,
8 given this testimony here?

9 MR. J. BROWN: It cost less.

10 COMMISSIONER DEASON: It cost less, and so Verizon
11 did not use it because it cost less? I mean, they didn't have
12 a technical reason? It was simply a question of cost
13 consideration?

14 MR. J. BROWN: Basically, as far as staff is
15 concerned, it is technically feasible to provide the IDLC.

16 COMMISSIONER DEASON: And it is more cost efficient
17 to do so.

18 MR. J. BROWN: Correct.

19 MS. KING: Also, Commissioner Deason, if you would
20 look at Page 355 of the recommendation where loop/port
21 combinations are discussed, staff did ask Witness Tucek, the
22 Verizon witness, why didn't Verizon take IDLC into
23 consideration, and he provided an explanation there about the
24 middle of the page on Page 355. And he alludes to that as a
25 pricing and policy determination that Mr. Trimble, who was

1 another Verizon witness, decided to price. The UNE price is
2 the loop plus the port. And then he explains that ICM-Florida
3 is capable of modeling IDLC, but they chose not to do it that
4 way.

5 COMMISSIONER DEASON: Okay. Thank you. I have my
6 questions answered.

7 CHAIRMAN JABER: Okay. There was a motion to approve
8 staff on 7M?

9 COMMISSIONER DEASON: Second.

10 CHAIRMAN JABER: There was a motion?

11 COMMISSIONER DEASON: I believe there was.

12 CHAIRMAN JABER: Great. And a second. All those in
13 favor say aye.

14 (Simultaneous affirmative vote.)

15 CHAIRMAN JABER: 7M is approved. Let me see if we
16 can do any of these. 7N.

17 COMMISSIONER PALECKI: Move staff.

18 COMMISSIONER DEASON: Second.

19 CHAIRMAN JABER: All those in favor say aye.

20 (Simultaneous affirmative vote.)

21 CHAIRMAN JABER: 7N is approved. On 70 I have a
22 question. No, actually it was asked earlier by Commissioner
23 Baez with respect to the comparison between states. So, I no
24 longer have a question on 70. Is there a motion?

25 COMMISSIONER PALECKI: Move staff.

1 COMMISSIONER BAEZ: Second.

2 CHAIRMAN JABER: And a second. All those in favor --

3 COMMISSIONER DEASON: I'm sorry, let me ask my
4 question.

5 CHAIRMAN JABER: Uh-huh.

6 COMMISSIONER DEASON: The switch -- there is a
7 certain switch that has been brought into issue, a certain
8 model switch that Verizon uses. It is fairly pervasive through
9 its network, and there was testimony challenging whether it
10 actually is consistent with the forward-looking network. What
11 is that switch?

12 MR. T. BROWN: That is correct. It is a GTD-5
13 switch.

14 COMMISSIONER DEASON: GT-5?

15 MR. T. BROWN: GTD-5 switch.

16 COMMISSIONER DEASON: GTD-5. Now, staff is of the
17 opinion that the utilization of that switch is consistent with
18 the forward-looking network, correct?

19 MR. T. BROWN: For Verizon in the State of Florida,
20 yes, sir.

21 COMMISSIONER DEASON: And it is because it is such a
22 pervasive part of the network?

23 MR. T. BROWN: That is correct, sir.

24 COMMISSIONER DEASON: And Verizon continues to get
25 updates?

1 MR. T. BROWN: It is still being supported.

2 COMMISSIONER DEASON: It is still being supported by
3 the manufacturer?

4 MR. T. BROWN: That is correct.

5 COMMISSIONER DEASON: Did Verizon indicate that they
6 are going to be acquiring any new GTD-5 switches or are they
7 even manufactured anymore?

8 MR. T. BROWN: They made reference to the fact that
9 they would continue to purchase -- I forget where in the record
10 it is and where in my recommendation, but I do believe they did
11 make reference to the fact that they were continuing to
12 purchase GTD-5 switches. It may be as remote technology, I'm
13 not sure.

14 COMMISSIONER DEASON: But they do not anticipate
15 purchasing any more as part of their going forward total
16 network?

17 MR. T. BROWN: Purchasing the GTD-5?

18 COMMISSIONER DEASON: Right.

19 MR. T. BROWN: It appeared to me that they would
20 continue to support that and purchase them in the future and
21 had no plans to discontinue that.

22 COMMISSIONER DEASON: And they could conceivably be
23 purchasing a new GTD-5 switch?

24 MR. T. BROWN: According to that, at least as far as
25 I recall in the record. That is the way I read it.

1 COMMISSIONER DEASON: And that would be cost
2 justified because they have similar or identical switches
3 already deployed in their network?

4 MR. T. BROWN: I believe so. Mr. Dowds?

5 MR. DOWDS: I was just going to point to the bottom
6 of Page 176. It indicates that Verizon has plans to purchase
7 additional GTD-5 switches in 2002. Like Mr. Brown, I'm not
8 sure if that refers to new host switches or remotes, though.

9 COMMISSIONER DEASON: But the bottom line is you all
10 are comfortable that this is a cost-effective, efficient,
11 forward-looking technology as it pertains to Verizon?

12 MR. T. BROWN: In this state, yes, sir.

13 COMMISSIONER DEASON: If we were to not use the costs
14 associated with the GTD-5, what impact would it have on the UNE
15 rates for switching, is it significant?

16 MR. T. BROWN: I actually have no idea. I don't know
17 if Mr. Dowds would have an idea or thought on that.

18 MR. DOWDS: I'm not sure I can answer that on the
19 record.

20 COMMISSIONER DEASON: It is proprietary?

21 MR. DOWDS: That is the problem.

22 CHAIRMAN JABER: The calculation was made, though?

23 MR. DOWDS: We know the direction, but to do so would
24 be to reveal confidential information.

25 CHAIRMAN JABER: But that is not what I asked you.

1 Was the calculation made? Throughout the course of the -- let
2 me try it a different way, because maybe you are being careful
3 because even my question creates a problem, I don't know. In
4 this record, did any witness consider the effect of removing
5 the GTD-5 from the calculations?

6 MR. DOWDS: Not the way you are asking the question,
7 but there is another question that I can't answer that was
8 addressed in the testimony of a Verizon witness.

9 COMMISSIONER PALECKI: Let me ask the question this
10 way. Could you provide the Commissioners with an answer in a
11 red confidential file that would not be made public?

12 MR. DOWDS: Yes, sir.

13 COMMISSIONER DEASON: Could we ask our staff to do
14 that?

15 CHAIRMAN JABER: Well, if that is your pleasure. And
16 we have not taken a break, so do we want to take just a ten
17 minute break and give staff that opportunity? We will come
18 back at five till.

19 (Recess.)

20 CHAIRMAN JABER: We are back on the record. And
21 let's see, Commissioners, remind me, I think the question was
22 is there anything that shows us in the record what the numbers
23 would be without the GTD-5 switch, is that correct? And staff
24 indicated they had a confidential exhibit that could give us
25 some guidance on that. So I would caution you with respect to

1 everything on this document, it is confidential, Commissioners.

2 COMMISSIONER DEASON: Madam Chairman, I appreciate
3 this exhibit, and it is very useful information, and this
4 exhibit is in the record, correct?

5 MR. DOWDS: Yes, sir.

6 COMMISSIONER DEASON: And I don't have any questions
7 from this exhibit. It seems pretty self-explanatory to me.
8 And I think I had -- was there a motion made on this item and I
9 interrupted with a question? Refresh my memory.

10 CHAIRMAN JABER: I think it was withdrawn.

11 COMMISSIONER DEASON: Well, if there has not been a
12 motion made, I can move to approve staff's recommendation.

13 COMMISSIONER PALECKI: Second.

14 CHAIRMAN JABER: There is a motion and a second to
15 approve staff on Issue 70. All those in favor say aye.

16 (Simultaneous affirmative vote.)

17 CHAIRMAN JABER: 70 is approved. Are there questions
18 on the next few issues? I'm wondering if there are
19 opportunities here to take up several issues at once.

20 COMMISSIONER DEASON: I can move 7P and Q.

21 COMMISSIONER PALECKI: Second.

22 CHAIRMAN JABER: There is a motion and a second to
23 approve staff on 7P and 7Q. All those in favor say aye.

24 (Simultaneous affirmative vote.)

25 CHAIRMAN JABER: That takes us to 7R.

1 COMMISSIONER DEASON: Madam Chairman, give me just a
2 moment.

3 CHAIRMAN JABER: Okay.

4 COMMISSIONER DEASON: I guess my question concerns
5 the 85 percent engineering capacity benchmark that staff --
6 this is what you are recommending, is that correct?

7 MS. LEE: As a benchmark, yes, sir. We are just
8 using that as a benchmark, and that is how we deriving our 28
9 percent fill.

10 COMMISSIONER DEASON: Okay. Well, explain to me,
11 then, how that benchmark -- how it actually impacts the
12 calculation of the actual fill factors.

13 MS. LEE: Well, you would take the maximum, the
14 benchmark, which is 85 percent, times the maximum fill, which
15 is 33.3 percent, and that is how you get your 28 percent fill
16 factor.

17 COMMISSIONER DEASON: And why is the maximum capacity
18 of an OC3 system 33 percent?

19 MS. LEE: That is based on -- let me see if I can
20 recall correctly. I think you have 28 DS -- an engineer
21 with --

22 COMMISSIONER DEASON: That is not a contested issue,
23 I mean, that is factual situation?

24 MS. LEE: That is correct.

25 COMMISSIONER DEASON: Okay. So there is not

1 differing positions on that?

2 MS. LEE: Not on the maximum fill, right, on the 33.3
3 percent. It is just a mathematical calculation.

4 MR. DOWDS: Commissioner, an OC3 system fully
5 equipped has a maximum capacity of three DS-3s. Each DS-3 is
6 28 DS-1s. It so happens this particular configuration is only
7 wired and engineered for 28 DS-1s, so by definition it can't be
8 more than one-third. The maximum is 33-1/3rd.

9 COMMISSIONER DEASON: And there is a valid
10 engineering reason for that I take it.

11 MR. DOWDS: It is the particular configuration that
12 they are assuming.

13 COMMISSIONER DEASON: Even though with that low fill,
14 it is still the most efficient way to provide the service?

15 MR. DOWDS: Yes.

16 COMMISSIONER DEASON: I'm looking at Page 212 of the
17 recommendation.

18 MS. LEE: Yes, sir.

19 COMMISSIONER DEASON: And this is the first full
20 paragraph there. The second sentence says, nonetheless, staff
21 believes a review of the rates of other companies can be used
22 as a reasonableness check, and Verizon's resultant rates do not
23 fare well. And I guess this goes back to Issue 1 where we
24 indicated that you could make comparisons for companies within
25 the state.

1 MS. LEE: Yes, that you may be able to do that.

2 COMMISSIONER DEASON: Okay. Is this the basis for
3 the ultimate adjustment that you made? Refresh my memory as to
4 the --

5 MS. LEE: The two adjustments that we made, one was
6 to the fill factor.

7 COMMISSIONER DEASON: I'm sorry, say that again.

8 MS. LEE: The fill factor to 28 percent. The other
9 one was on the DS-1 loop cost. When we calculated the DS-1
10 loop cost in accord with the model documentation, we came out
11 with a different cost from what Verizon had proposed. And,
12 coincidentally, the difference was the same for each wire center.
13 We cannot explain that difference. So, that is the other part
14 of our recommendation that the DS-1 loop cost be calculated in
15 accord with the model documentation and that inexplicable
16 difference be reduced. The loop costs be reduced by that.

17 COMMISSIONER DEASON: And is that differential in the
18 record? I mean, is it confidential or is that differential --

19 MS. LEE: It is confidential. And that is why on
20 Page 212 at the bottom, we talk about what the model
21 documentation explains and how to calculate the DS-1 loop
22 costs. That is derived from the ICM less the non-BNF
23 advertising, marketing, billing, and collection and directory
24 costs. And then the next paragraph describes that that is
25 exactly the calculation that staff made. And that when we did

1 that compared to Verizon's costs there was that an inexplicable
2 difference which was the same for each wire center.

3 COMMISSIONER DEASON: Well, is your calculation in
4 the record?

5 MS. LEE: The calculation -- staff's calculation is
6 derived from the information in the record.

7 COMMISSIONER DEASON: And you got a different result.

8 MS. LEE: Yes.

9 COMMISSIONER DEASON: Now, is this from running the
10 model or is this -- how did the result that you obtained, which
11 is different from Verizon's, how did you actually go through --
12 what were the mechanics of coming up with that number?

13 MS. LEE: By following the model documentation, we
14 took the DS-1 loop results from the ICM model, directly what
15 came out of the ICM model. We reduced it by the non-BNF,
16 advertising, marketing, billing, and collection costs which
17 were given by Verizon, and that result, that arithmetic result
18 was different from what Verizon was showing as a DS-1 loop
19 cost.

20 COMMISSIONER DEASON: And that arithmetic result was
21 consistent through all of the --

22 MS. LEE: Wire centers.

23 COMMISSIONER DEASON: -- wire centers?

24 MS. LEE: Yes.

25 COMMISSIONER DEASON: So it seemed to be some

1 systematic error.

2 MS. LEE: Yes. And one of the things that we thought
3 about, if you recall, both Sprint and Verizon filed an initial
4 cost study I think in May and then they subsequently withdrew
5 those and then filed revised cost studies in November. One of
6 the things we thought of was maybe the DS-1 loop cost study may
7 not have been updated, because, remember, this is an outboard
8 study, it is not part of ICM. The loop cost study as well as
9 the high fiber capacity studies are outboard studies, separate
10 and apart from the ICM. And it is possible that this was not
11 updated when they filed in November. But there is no way to
12 tell. It's just that the numbers are different.

13 COMMISSIONER DEASON: Okay.

14 MS. LEE: When we follow the documentation, we get
15 different numbers.

16 COMMISSIONER DEASON: Madam Chairman, with that
17 explanation I can move staff. And I assume that if there is
18 some systematic error and we are interrupting it incorrectly, I
19 guess it can be the subject of a petition for reconsideration.

20 MS. LEE: And that is exactly why in the
21 recommendation we quoted exactly what the documentation says
22 and the exact steps that we went through in coming up with our
23 number. So if there is a misinterpretation, yes, Verizon can
24 bring that up on reconsideration.

25 COMMISSIONER PALECKI: Second.

1 CHAIRMAN JABER: A motion and a second to accept
2 staff's recommendation on Issue 7R. All those in favor say
3 aye.

4 (Simultaneous affirmative vote.)

5 CHAIRMAN JABER: 7R is approved. On 7S I have a
6 quick question, staff. Ms. Lee, on Page 225 there was some
7 discussion of what you acknowledge that some of the loading
8 factors are still linear, but you make the observation that in
9 the end with respect to the final UNE rates, if the Commission
10 accepts the recommended adjustments that, you know, the rates
11 are still reasonable. My question goes to comparing that
12 analysis with what we did with the BellSouth filing. The
13 Commission recognized that linear loadings created an
14 inconsistency between rural and urban areas so that costs can
15 be distorted. And that was such a concern that we required
16 BellSouth within 120 days to submit a filing that removed the
17 linear loading factors. And I'm trying to understand why that
18 was not the recommendation here. And, again, that is not
19 critical of was this right or wrong, but I need to understand
20 the distinction between handling linear loadings in the Verizon
21 filing in this manner versus how it was handled in the
22 BellSouth filing.

23 MS. LEE: I think it goes back to your first comment,
24 and that was on balance, the rates, the ultimate UNE rates
25 seemed to be reasonable and in line. Certainly linear loading

1 factors do as you pointed out distort between rural and urban
2 areas. What we did in this case was we compared Verizon's
3 loading factors to those of BellSouth, and those that were
4 outliers we adjusted. Now, in the end, yes, you still have,
5 quote, linear loading factors. But, again, what are you
6 looking at the end result, and the end results are that we
7 think that the UNE rates that are produced by the multitude of
8 recommended adjustments throughout the recommendation do give
9 you reasonable UNE rates.

10 COMMISSIONER DEASON: But isn't reasonableness -- it
11 can also be based on a range. And I guess the more refined
12 question would if you remove the linear loadings are rates at
13 the end of the day more reasonable? Do we have enough in the
14 record that even gives us the flexibility?

15 MS. LEE: No, you don't.

16 MR. DOWDS: Chairman Jaber, one observation to make
17 things a tad grayer. If you look back on Page 138, I believe
18 it is Issue 7I and J, where it is talking about the placement
19 costs associated with cable. In the original BellSouth filing,
20 they molded placement cost and engineering from a tops down.
21 They used factors. In contrast, for most instances Verizon is
22 modeling placement costs bottoms-up. The engineering, however,
23 is a linear loading, so it is kind of a matter of degree here.
24 That is the key difference that I noted from the original
25 BellSouth filing to what Verizon is doing here.

1 CHAIRMAN JABER: But as a matter of public policy,
2 though, shouldn't the engineering costs be modeled from a
3 bottoms-up approach, too? And in our exercise of discretion,
4 can't we do that independent of what was testified to in the
5 record?

6 MS. LEE: Yes, you could, but there wasn't enough
7 information in the record to do that.

8 CHAIRMAN JABER: So we wouldn't even know where to
9 start is what you are telling me.

10 MS. LEE: Exactly.

11 CHAIRMAN JABER: And if I was interested in doing
12 that so that there is an apples-to-apples methodology used for
13 placement costs and engineering costs, the Commission would
14 have to require Verizon to submit a new filing as it relates to
15 the engineering costs with a bottoms-up approach?

16 MS. LEE: Correct.

17 CHAIRMAN JABER: Okay. Commissioners, do you have
18 any questions on this issue?

19 COMMISSIONER DEASON: Well, I guess the question I
20 have is how did you come up with your percent adjustments? I'm
21 on Page 225. First of all, let me make sure I'm on the right
22 issue. We are on Issue 7S, is that correct?

23 MS. LEE: Yes. Unless would you like to be on
24 another issue.

25 COMMISSIONER DEASON: I would like to be on the last

1 one, frankly.

2 MS. LEE: I know. Me, too.

3 COMMISSIONER DEASON: Staff, I think you stated
4 earlier, I think, on Page 224 or somewhere that you find
5 yourself in a quandary or something to that effect. And you
6 have found it necessary to come up with some adjustments. And
7 I guess the question that I have is this is your third
8 alternative. You say that staff believes the third alternative
9 represents the best solution. And then you say given the
10 general lack of support, staff recommends an adjustment by 50
11 percent. And then you indicate some outliers and then
12 adjustments by 20 percent for fiber cable and 25 percent for
13 metallic cable. And then the next paragraph, as it relates to
14 poles and wire and their association with aerial cables, then
15 there is some following adjustments and some percentage
16 adjustments. How did you come up with all of these?

17 MS. LEE: The provisioning factors, I reduced those
18 by 50 percent. That was based on the fact that Verizon could
19 not provide any supporting documentation for the provisioning
20 factors. If you recall earlier in the recommendation, Verizon
21 makes mention that those provisioning factors were the product
22 of a time study, if I'm not mistaken, back in 1996. However,
23 when staff asked for that study to be produced, they said that
24 it was no longer available. That to us meant we had to
25 question the validity of the provisioning factors. Because

1 there was no competent evidence in the record, we just reduced
2 them by 50 percent. Could you have done 80 percent? Yes.
3 Could you have reduced them by 20 percent? Yes. It was a
4 judgment call. The other adjustments were made specifically
5 just to try to bring Verizon's factors more in line with those
6 of BellSouth. Recognizing that, at least in our opinion,
7 Verizon's loading factors might be higher than BellSouth's,
8 simply because Verizon may not enjoy the same economies of
9 scale as BellSouth, but to try and bring them more in line or
10 in the range of reasonableness, if you will, with BellSouth.
11 And that is basically how we derived the adjustment percentages
12 for the other items.

13 COMMISSIONER DEASON: So you looked to BellSouth
14 as --

15 MS. LEE: As a guideline only.

16 COMMISSIONER DEASON: Is that information in the
17 record?

18 MS. LEE: On Page 223 is a comparison of Verizon's
19 loading factors with those of BellSouth. That information is
20 in the record.

21 CHAIRMAN JABER: Staff, one of the other things you
22 point out on Page 222 is -- well, I wasn't real clear what the
23 point was you were trying to make. You said if Verizon had
24 been more responsive to discovery, staff and ALEC concerns with
25 Verizon's loading factors may have been resolved. They did not

1 respond to your discovery? They could have done a better job
2 responding to your discovery? I really want to understand
3 that. Let me tell you why that is important to me. There is a
4 real part of me that doesn't want to send the wrong signals to
5 companies that if you do a not so good job answering questions
6 in discovery or through the hearing process that we will at the
7 end of the day defer to what you have testified to. There is a
8 responsibility to respond to inquiries by staff and by the
9 Commission. And the risk companies take in not doing that is
10 they may not get what they are asking for. So I always want to
11 err on the side of you are not going to get what you asked for
12 because you didn't meet the burden of proof as opposed to, I
13 think, sending the wrong signal. Well, you have tied our
14 hands, so therefore, we are going to give you what you have
15 asked for. And that statement is real important to me. Which
16 is it? Did they flat-out refuse to respond to your questions?
17 Did they not give you responses in a timely fashion? And then,
18 Legal, should we do something about it? Ms. Lee.

19 MS. LEE: I think it was more a matter of the
20 response was inadequate in my opinion. The way that Verizon
21 responded was they would always refer back to the ICM model,
22 saying you have the documentation, you have the model logic,
23 that is our support, everything is in there. ICM is very
24 cumbersome. It would have been nice for Verizon to have been a
25 little bit more forthcoming and saying, this is exactly what we

1 did, rather than referring us back to the model logic and model
2 documentation of which support for loading factors was not
3 found in there.

4 CHAIRMAN JABER: Okay. So they refer you back to the
5 model. It is not clear from the model results what the loading
6 factors were or the methodology used is what you are saying?

7 MS. LEE: Correct.

8 CHAIRMAN JABER: Said differently, Legal, they didn't
9 meet their burden and what should be the recourse? It is
10 really bigger than this case. If they don't provide the
11 information they need to provide, our hands should not be tied.

12 MS. KEATING: In hindsight, Madam Chairman, it
13 probably would have been better if we had filed a motion to
14 compel at that point in time. But I think we deferred a little
15 bit to their responses and spent a lot of time trying to go
16 back and see what it was we were missing, rather than going
17 ahead with a motion to compel and requiring them to provide a
18 more specific answer. That probably would have been the best
19 course of action.

20 CHAIRMAN JABER: And I think it is admirable that you
21 see what staff could have done as more, I think that is very
22 responsible on your part, but I also don't want to send the
23 companies the signal do a not so good job and let's wait and
24 see if staff is going to file a motion to compel.

25 MS. LEE: Also, Commissioner, many of Verizon's

1 responses, they were continuing to supplement those responses
2 and many of those supplemental responses did not come in until
3 perhaps a day or two before the hearing began.

4 CHAIRMAN JABER: Commissioners, I will defer here to
5 your pleasure. I have to tell you, this one for the sake of
6 consistency, the fact that linear loadings are in here gives me
7 a lot of concern. And, again, I reconcile it with getting done
8 at the end of the day and establishing UNE rates with the time
9 and expense of asking for a new filing, but staff acknowledges
10 there are linear loadings included in this filing, and we know
11 that skews the costs between rural and urban so that there is
12 some real distortion there. And I find myself, yet again,
13 wondering what to do about it.

14 COMMISSIONER PALECKI: Well, I have a question for
15 Ms. Lee. Do you have a good comfort level with your final
16 recommendation?

17 MS. LEE: Do I have a -- I'm sorry.

18 COMMISSIONER PALECKI: A good comfort level, that
19 when all is said and done, that based upon your recommendation
20 and the effect this will have on the UNE rates, that we are
21 doing the right thing, that we are using the most accurate data
22 that we have available.

23 MS. LEE: I have a good comfort level with the
24 resulting rates, which takes into consideration all of the
25 recommendations that you have sitting before you. Because I

1 think you don't want to look at any one in particular, you need
2 to look at the entire picture. And I think where you
3 ultimately end up with the UNE rates, that is a reasonable
4 place to be. I understand the concern, and, truthfully, it
5 gave me some heartburn, too, that we were sitting here with
6 linear loading factors. And, yes, I do believe that that does
7 cause a distortion. But, again, on balance when I look at the
8 ultimate result, the end, where we are going, the final UNE
9 rates looked reasonable. I think, yes, you might want to send
10 a signal to them that linear loading factors are not
11 appropriate. However, you would have thought that Verizon
12 would have picked that up from your previous decisions in other
13 cases. But you might want to send that signal to them.

14 CHAIRMAN JABER: From a procedural standpoint, we
15 could accept staff's recommendation and require a filing that
16 removes the linear loadings from the model runs, is that
17 correct?

18 MS. KEATING: I believe you could do that, Madam
19 Chairman.

20 CHAIRMAN JABER: And if I recall from BellSouth's
21 filing, the effect of that is the BellSouth rates were
22 temporary until the 120-day filing was resolved.

23 MS. KEATING: They were final, but not final, pending
24 whether the Commission decided that the refiling warranted
25 changing the rates.

1 CHAIRMAN JABER: Commissioners, do you have any
2 questions or a motion?

3 COMMISSIONER DEASON: Well, let me explore the linear
4 loading for a moment. What is the distortion? There is more
5 cost to load it onto rural areas as opposed to nonrural areas?

6 MS. LEE: Yes, that is correct.

7 COMMISSIONER DEASON: And the thinking is that if you
8 do it on a linear basis --

9 MS. LEE: I'm sorry, I have it wrong. The distortion
10 would be on urban rather than rural areas.

11 COMMISSIONER DEASON: On urban rather than rural.
12 Okay. Explain that to me.

13 MS. LEE: It has to do with the density of the zones,
14 if I'm not mistaken. Mr. Dowds, isn't that correct? The
15 density of the zones you would tend to have higher costs in the
16 urban areas. The linear loading factors, because it is a
17 multiplicative times your investment, and then going through
18 the deaveraging process, that it would tend to shift more costs
19 to your urban areas than to your rural areas or your Zone 3s.

20 COMMISSIONER BRADLEY: Did I hear you say that is
21 because there is more cost in the urban areas than in the rural
22 areas?

23 MS. LEE: Oh, no, sir, that's not what I said. What
24 I said was your linear loading factors would tend to shift more
25 cost to the urban rather than to the rural areas when you are

1 deaveraging.

2 MR. DOWDS: Perhaps an example might help. As I
3 recall correctly, the engineering factors shown on Page 226 of
4 Ms. Lee's recommendation are applied per dollar of investment.

5 MS. LEE: Correct.

6 MR. DOWDS: Okay. So, for example, the very first
7 one has a 40 percent factor for aerial copper. So in essence
8 regardless -- what that means is if I have a 25-pair cable,
9 aerial copper cable, I am going to multiply it times 40 percent
10 to estimate/impute the associated engineering with a 25-pair
11 cable. However, if I put in a 100-pair cable, then it thereby
12 follows implicitly that my engineering is four times more for
13 100-pair cable than it is for 25 pair, which is kind of
14 counterintuitive. In other words, it basically assumes that
15 the relationship between engineering is a function of the size
16 of the cable, and intuitively it should not be a linear
17 relationship. Does that help?

18 COMMISSIONER PALECKI: Let me ask you a question. In
19 the BellSouth case we asked BellSouth to refile and gave them a
20 120-day time limitation. If in this docket we went ahead and
21 for our purposes today of setting UNE rates, adopted the
22 staff's recommendation and simply asked Verizon to refile and
23 to discontinue the use of the linear factors, could we do it in
24 a much shorter period of time? I mean, is there something
25 that -- could this be done relatively quickly in order to

1 correct the situation?

2 MS. LEE: I'm not sure it could, Commissioner. My
3 only basis for saying that is I go back to what transpired in
4 the BellSouth 120-day filing. They filed their bottoms-up cost
5 study in 120 days, but because it had to be done or completed
6 so fast, there were a lot of problems associated with that cost
7 study, and there were a lot of reiterations that they had to
8 continue updating and errors that they were finding, staff was
9 finding, the intervenors were finding, and it was just update
10 after update. Now, granted, you wouldn't be looking at --
11 Verizon would be less probably expensive than BellSouth because
12 BellSouth was modeling engineering and placement factors from
13 the bottoms-up. In the Verizon case it would just be the
14 engineering factors. But 120 days may or may not be -- I mean,
15 I don't think we could do it shorter than 120 days.

16 MR. DOWDS: Commissioner, I think the key problem is
17 I don't think we have any record testimony or evidence as to an
18 alternative methodology for computing engineering factors, so
19 we really don't know what to tell them in terms of how they
20 should -- what alternative approach they should follow.

21 CHAIRMAN JABER: You know, as a result of all of this
22 conversation is really why yet again it is not a perfect way of
23 looking at it, but I am willing to compromise and accept what
24 we did with the BellSouth filing. And I am comforted that the
25 order is in the record and that there was some cross

1 examination on it. And I don't know if that is just my desire
2 also not to reward poor behavior. I really don't want to
3 reward poor behavior. It is like you have got to respond to
4 these questions. You have got to do a real good job in the
5 hearing. You have got to do a good job in the depositions to
6 get what it is you ask for. But don't manipulate the docket
7 inadvertently or advertently so that the Commissioners have
8 nothing to look at but the simple testimony you filed. Maybe
9 it is my desire not to reward poor behavior, but I am willing
10 to, for the sake of consistency, for the sake of compromise
11 accept staff's recommendation.

12 COMMISSIONER PALECKI: I will move staff's
13 recommendation.

14 COMMISSIONER DEASON: Second.

15 CHAIRMAN JABER: There is a motion and a second to
16 approve staff on Issue 7S. All those in favor say aye.

17 (Simultaneous affirmative vote.)

18 CHAIRMAN JABER: Issue 7S is approved. 7T.

19 COMMISSIONER DEASON: Give me a moment, Madam
20 Chairman.

21 CHAIRMAN JABER: Take your time, Commissioner.

22 COMMISSIONER DEASON: The calibration function,
23 staff's recommendation is that should be disabled. That has
24 been done?

25 MS. MARSH: Yes, sir.

1 COMMISSIONER DEASON: And your numbers reflect that?

2 MS. MARSH: Yes, sir, they do.

3 COMMISSIONER DEASON: I have another question, just a
4 moment. Okay. And then on Page 232 where you indicate the
5 effect of that, that is the disabling of that calibration and
6 that is the result, is that correct?

7 MS. MARSH: Where are we talking about?

8 COMMISSIONER DEASON: Page 232, just above the
9 analysis section there. You talk about a cost allocator being
10 changed from 1409 to 2017.

11 MS. MARSH: No, sir, that is not the result in the
12 way that staff calculated it. This was simply a statement that
13 the witness made that that would be what would happen if you
14 applied both the changes that were being talked about, and that
15 would be the elimination of the C.A. Turner indices and also
16 turning off the calibration.

17 COMMISSIONER DEASON: But you have no problem with
18 the indices?

19 MS. MARSH: No, no. When we turned off the
20 calibration, the result we got was different from this.

21 COMMISSIONER DEASON: Okay. And so these numbers are
22 for both.

23 MS. MARSH: Yes, this was his statement as to what
24 the numbers should be for both. Our numbers came out
25 differently.

1 COMMISSIONER DEASON: Okay. Fine.

2 MS. MARSH: And the rates do reflect the numbers that
3 we came up with.

4 COMMISSIONER DEASON: Okay. I can move staff.

5 COMMISSIONER PALECKI: Second.

6 CHAIRMAN JABER: A motion and a second to approve
7 staff on 7T. All those in favor say aye.

8 (Simultaneous affirmative vote.)

9 CHAIRMAN JABER: 7T is approved. 7U, 7V, can those
10 be taken together or do we have questions?

11 COMMISSIONER BRADLEY: I have a question on 7U.

12 CHAIRMAN JABER: Okay.

13 COMMISSIONER BRADLEY: A question of staff which is
14 similar to, but not directly -- but not exactly the question
15 that you asked earlier. As it relates to U, and of course the
16 staff took -- will this result in ALECs in less competitive
17 zones paying more in common costs than competitors in more
18 competitive zones, and is this consistent with the FCC's
19 expectations relative to common cost allocations?

20 MS. MARSH: There is a specific part of our
21 recommendation that deals with the deaveraged zones. Verizon
22 had chosen a methodology of simply taking the average common
23 cost and then applying that to each of the deaveraged zones so
24 that each zone has a level amount of common cost. In the
25 method that I have recommended, it does shift a little bit more

1 cost into Zone 3 and correspondingly less in Zone 1. Zone 2 is
2 within pennies. It is so close as to be inconsequential.
3 There is a shift into Zone 3. I believe that is consistent
4 with FCC orders which do recommend or, at least, outline
5 certain methodologies that one might choose. There is an order
6 that I refer to in my recommendation that outlines a couple of
7 methodologies one might use. There are others one might use,
8 but I believe that my recommendation is consistent. When you
9 use an allocator, the purpose of using the allocator is you
10 don't know how to directly apply the cost to a specific
11 element. And I believe that once you choose an allocator,
12 recognizing it is not perfect, you stick with it and apply it
13 all the way through. And that is what I have done. But in
14 answer to your question there is some shift of the costs in the
15 way that staff has applied it.

16 COMMISSIONER BRADLEY: But to what extent might this
17 put some ALECs at a disadvantage, though? I am just kind of
18 repeating my question. Have you all done a comparative
19 analysis?

20 MS. MARSH: What, sir, would I compare it to? I'm
21 not --

22 COMMISSIONER BRADLEY: Well, ALEC to ALEC. ALECs in
23 less competitive zones versus competitive zones, that is my
24 question.

25 MS. MARSH: The rates are, you know, what they are as

1 far as, you know, they are going to pay the rate if they choose
2 these rates. And these are subject to negotiation, but if they
3 choose these rates, certainly the competitors in Zone 3 are
4 going to pay more just based on all the costs, the costs in the
5 Zone 3 are higher than Zone 1. There is a slight shift in the
6 common costs based on the methodology, but I have no way of
7 comparing from ALEC-to-ALEC other than just what the rates are.
8 I mean, those are the rates. I'm sorry if I'm not answering
9 your question. I will keep trying.

10 COMMISSIONER BRADLEY: Well, I'm just reverting back
11 to a question that Commissioner Deason asked at the very
12 beginning, and that is the competitiveness of what we are doing
13 and not creating competitive disadvantages for certain
14 respective users. Apparently, it is a question you can't
15 answer. I guess, maybe only time will reveal the answer.

16 MS. MARSH: I'm sorry. I don't think it creates a
17 competitive disadvantage. I think that the costs are higher.
18 And that is not necessarily a competitive disadvantage. They
19 are higher for everyone. Any ALEC choosing to be in Zone 3,
20 the rates are higher as a result of all the inputs, not just
21 the common costs. So, I don't see a competitive disadvantage
22 there, other than what is driven by the nature of the costs.

23 CHAIRMAN JABER: Commissioner Bradley, though, I
24 think you have identified the key element in going forward and
25 understanding what tweaks are appropriate and that is time. So

1 you bring us back to a very important point about allowing the
2 markets to develop in the next year, and getting the market
3 monitoring folks to take a look at that. Okay, good. Any
4 other questions on 7U or a motion?

5 COMMISSIONER DEASON: Move staff.

6 COMMISSIONER PALECKI: Second.

7 CHAIRMAN JABER: There is a motion and a second to
8 approve staff on 7U. All those in favor say aye.

9 (Simultaneous affirmative vote.)

10 CHAIRMAN JABER: 7U is approved. 7V.

11 COMMISSIONER DEASON: Move staff.

12 COMMISSIONER PALECKI: Second.

13 CHAIRMAN JABER: All those in favor say aye.

14 (Simultaneous affirmative vote.)

15 CHAIRMAN JABER: 7V is approved. 8A, B, and E.

16 COMMISSIONER DEASON: Move staff.

17 COMMISSIONER PALECKI: Second.

18 CHAIRMAN JABER: All those in favor say aye.

19 (Simultaneous affirmative vote.)

20 CHAIRMAN JABER: 8A, B, and E are approved. C.

21 COMMISSIONER DEASON: Move staff.

22 COMMISSIONER PALECKI: Second.

23 CHAIRMAN JABER: All those in favor say aye.

24 (Simultaneous affirmative vote.)

25 CHAIRMAN JABER: 8C is approved. 8F.

1 COMMISSIONER DEASON: What about 8D?

2 CHAIRMAN JABER: That would be 8D.

3 COMMISSIONER DEASON: Move staff.

4 COMMISSIONER PALECKI: Second.

5 CHAIRMAN JABER: All those in favor say aye.

6 (Simultaneous affirmative vote.)

7 CHAIRMAN JABER: 8D is approved. 8F.

8 COMMISSIONER PALECKI: Move staff.

9 COMMISSIONER DEASON: Second.

10 CHAIRMAN JABER: All those in favor say aye.

11 (Simultaneous affirmative vote.)

12 CHAIRMAN JABER: 8F is approved. 9A. Can 9A and 9B
13 be taken up together?

14 COMMISSIONER DEASON: I may have a question on 9A,
15 give me just a moment, please. I have already had my question
16 answered. I can move staff.

17 COMMISSIONER PALECKI: Second.

18 CHAIRMAN JABER: Was that for 9A and 9B?

19 COMMISSIONER DEASON: 9A and 9B, yes.

20 CHAIRMAN JABER: Okay. All those in favor say aye.

21 (Simultaneous affirmative vote.)

22 CHAIRMAN JABER: 9A and B are approved. Issue 10.

23 COMMISSIONER DEASON: Move staff.

24 COMMISSIONER PALECKI: Second.

25 CHAIRMAN JABER: All those in favor say aye.

1 (Simultaneous affirmative vote.)

2 CHAIRMAN JABER: 10 is approved. 11A.

3 COMMISSIONER DEASON: I may have a question on 11A.
4 This is the issue where, staff, you are recommending that an
5 amount that was included in the Covad arbitration be utilized,
6 is that correct?

7 MS. KING: Yes, sir.

8 COMMISSIONER DEASON: And that information is in the
9 record?

10 MS. KING: Yes, sir, it was an exhibit. At the
11 hearing, I believe it was Exhibit 59.

12 COMMISSIONER BRADLEY: We are on 9B?

13 CHAIRMAN JABER: No, I'm sorry, this is 11A.

14 COMMISSIONER DEASON: I have a question on Page 340
15 of the recommendation, and it is the statement just above the
16 conclusion section. And we are talking about the -- something
17 about twice the amount of time needed to do the work assignment
18 for -- I'm sorry, is it buried plant as opposed to aerial or
19 underground? What is the terminology?

20 MS. KING: Verizon has assumed it takes twice as long
21 to do the work in the underground environment, and they base
22 that on the fact that there are two splicing technicians that
23 have to be dispatched to the site. Staff believes that just
24 because you have two technicians dispatched doesn't necessarily
25 mean that all of your time should just automatically be

1 doubled. For example, on Page 323 of staff's recommendation we
2 list the various steps for conditioning plant in the aerial and
3 buried environment versus underground, and things like upon
4 arrival at job site, set up work area protection. I don't
5 necessarily think just because you are dispatching two
6 technicians that your time should automatically be doubled. If
7 anything I would think your time would either be the same or
8 reduced because two technicians could probably set up that area
9 quicker than one technician. So staff had some problems with
10 Verizon's model, or their study where they were just
11 automatically doubling certain things. I realize in the
12 underground plant you do have to dispatch two technicians, but
13 there are some steps I believe two technicians should be able
14 to do in the same time as one technician when there are similar
15 things, so I thought that was a little bit flawed.

16 COMMISSIONER DEASON: Well, I think you have
17 answered -- my question was whether you considered the fact
18 that two technicians had to be dispatched, and you have
19 considered that, but you have made adjustments because you
20 don't think it is always consistent with the proposition that
21 you would just simply double all the work time as when you
22 dispatch two technicians.

23 MS. KING: Yes, sir, that is correct.

24 COMMISSIONER DEASON: Okay. I can move staff on 11A.

25 COMMISSIONER PALECKI: Second.

1 CHAIRMAN JABER: There has been a motion and a second
2 to approve staff on 11A. All those in favor say aye.

3 (Simultaneous affirmative vote.)

4 CHAIRMAN JABER: 11A is approved. 11B.

5 COMMISSIONER DEASON: I may have a question on 11B.
6 The method of recovery of the -- is it on a per query basis?
7 How does it work?

8 MS. KING: It is my understanding that this is an
9 additive charge to each ALEC line sharing order, so it is an
10 additive. When an ALEC submits a line sharing order, this
11 additive would apply.

12 COMMISSIONER DEASON: So it is to each. I'm sorry, I
13 said query, I meant to each order. To each order there is the
14 additive?

15 MS. KING: Yes, sir. And Verizon's proposed method
16 was to apply that additive to each ALEC line sharing order for
17 the ALECs that request the service.

18 COMMISSIONER DEASON: Why wouldn't it be under a per
19 query basis?

20 MS. KING: That would have been staff's preferred
21 method, but we didn't have a record to develop a rate on a per
22 query basis. This is essentially a per query basis. It is
23 every time an ALEC submits an order for line sharing and they
24 ask for loop qualification information, but --

25 COMMISSIONER DEASON: An ALEC can ask, you can just

1 ask for the information without making an order and the costs
2 are imposed by just seeking the information, correct?

3 MS. KING: Well, we asked that in deposition, and the
4 answer we got from the Verizon witness was someone could ask
5 for the information, but if they never place an order they
6 would never be charged.

7 COMMISSIONER DEASON: So aren't you just in that
8 policy of just asking folks to ask maybe when they are not
9 really interested and putting costs on the system?

10 MS. KING: Someone could game the system that way,
11 yes, Commissioner. But as I said, we did not have the record
12 to develop this rate any other way than a per query dip, you
13 know, just somebody getting the information and it had to be
14 tied to the order.

15 COMMISSIONER DEASON: Well, maybe in future
16 proceedings we will get the information. Okay. I can move
17 staff. I am comforted by the fact that the rate is 51 cents,
18 is that correct?

19 MS. KING: Yes, sir.

20 COMMISSIONER PALECKI: Second.

21 CHAIRMAN JABER: A motion and a second to approve
22 staff on 11B. All those in favor say aye.

23 (Simultaneous affirmative vote.)

24 CHAIRMAN JABER: 11B is approved. 12A.

25 COMMISSIONER DEASON: Give me just a moment, again,

1 Madam Chairman. The \$1.39 in savings, this was an amount which
2 was in the record, it was presented by an ALEC witness, is that
3 correct?

4 MS. KING: No, sir, this was presented by Verizon
5 Witness Tucek.

6 COMMISSIONER DEASON: It was Verizon's witness that
7 had this amount. Okay.

8 MS. KING: Yes, sir.

9 COMMISSIONER DEASON: Now, would this amount change
10 any based upon other staff adjustments in this recommendation?

11 MS. KING: Yes, sir. In theory, the amount would
12 change. And we asked Verizon to explain -- and the Verizon
13 witness said that you can go into the model and make -- choose
14 to use IDLC technologies for these loop/port combinations.
15 Staff followed the directions that were provided by Verizon
16 both in Witness Tucek's testimony and in, I believe, it was
17 Interrogatory Number 239 that Verizon provided that response,
18 and they provided us a zip disk. When we ran through all the
19 steps they told us to run through, we got a blank result. So
20 the best information we had on the record was the \$1.39.

21 COMMISSIONER DEASON: Okay. I move staff.

22 COMMISSIONER PALECKI: Second.

23 CHAIRMAN JABER: Motion and a second to approve staff
24 on Issue 12A. All those in favor say aye.

25 (Simultaneous affirmative vote.)

1 CHAIRMAN JABER: 12A is approved. 12B.

2 COMMISSIONER DEASON: The amounts, are these just
3 kind of fallouts from what we decided in Issue 8D?

4 MS. KING: On the recurring side it is a fallout of
5 all of your prior adjustments that you have made, and that is
6 adding up the individual piece-parts that make up the EEL
7 combination. On the recurring side that is consistent with
8 what the Commission has done in the past. The nonrecurring
9 side, we believe that the recommendations that were made in 8D
10 are also appropriate here for nonrecurring.

11 COMMISSIONER DEASON: I move staff.

12 COMMISSIONER PALECKI: Second.

13 CHAIRMAN JABER: Motion and second on 12B. All those
14 in favor say aye.

15 (Simultaneous affirmative vote.)

16 CHAIRMAN JABER: Issue 12B is approved. 13. The
17 effective date of our decision, Issue 13.

18 COMMISSIONER PALECKI: Move staff.

19 COMMISSIONER DEASON: I have a question on this.

20 CHAIRMAN JABER: And there is a modification, too,
21 Commissioner, I think.

22 COMMISSIONER DEASON: There is a modification?

23 MR. T. BROWN: It was contained on the errata sheet,
24 sir.

25 CHAIRMAN JABER: And it is to clarify that -- the

1 correction that you are referring to is 252?

2 MR. T. BROWN: That is correct. I believe that
3 occurs on three pages, 374, 378 and 379.

4 CHAIRMAN JABER: Commissioner Deason, you had a
5 question.

6 COMMISSIONER DEASON: Well, in reading the positions
7 of the parties, it just seemed like that there seemed to be
8 some consensus that there is an easier less burdensome way to
9 do this, to implement the changes. And I am always for easy
10 less burdensome, particularly after reading this recommendation
11 which was burdensome enough. Is there a better way to do this
12 that is easier and less burdensome?

13 MR. T. BROWN: Well, I think there were some generic
14 proposals made here, but I looked at it from a policy
15 standpoint that it didn't make a whole lot of sense to staff
16 that you would have quite possibly three different filing dates
17 or filing deadlines or procedures. I mean, you could
18 technically have one for BellSouth, one for Sprint, and one for
19 Verizon. It made more sense to follow what we had done in
20 BellSouth and apply it to all three equally so that there would
21 be some consistent standard there. And staff specifically
22 asked during discovery whether, you know, staff should deviate
23 from what was done in the BellSouth phase, and there was some
24 discussion that, no, staff should not deviate.

25 CHAIRMAN JABER: It seems to be, though, a procedural

1 issue where we have a lot of discretion, and I don't know that
2 we needed testimony with regard to when the rates should become
3 effective. But even if it is consistent, as staff has written
4 in the recommendation, does that have the effect of actually
5 prolonging new rates from going into effect? If you look at
6 Verizon's position, they say the quickest way is to post it on
7 the website. And isn't that really what we want is for the
8 competitors to have access to new UNE rates as soon as
9 possible?

10 MS. KEATING: I think one of the things that also was
11 taken into account is that if you do that that seems to
12 automatically impose these rates, and we don't want to preclude
13 the parties from using what the Commission has approved as a
14 negotiating tool. Maybe they will agree to something different
15 for purposes of their interconnection agreement in order to get
16 some other concession in another area.

17 COMMISSIONER DEASON: Well, what has to be done under
18 your recommendation to get these rates in effect? They
19 actually have to go in and modify their agreements and file
20 that with the Commission?

21 MR. T. BROWN: It is basically an amend and approve
22 process.

23 COMMISSIONER DEASON: And how time consuming is that?

24 MR. T. BROWN: I don't know how many days it would
25 specifically take. It is similar to other processes. You

1 know, any other amend and approve process that would take place
2 with any agreement, whether they were changing a business
3 address, point of contact, or anything like that.

4 MR. DOWDS: It is conceptually analogous to what they
5 would do under 252I, pick and choose. If something is out
6 there that they want, all they have to do is file an amendment
7 and they are entitled to it. And the same would be true of
8 this order, they are entitled to the rates but we are not
9 imposing the rates on them.

10 COMMISSIONER DEASON: Is it necessary for them to
11 have to go through the process of going through all of that
12 paper work and filing it with us. If they are in agreement
13 that these rates should apply, they just acknowledge that.

14 CHAIRMAN JABER: I guess the other question to ask is
15 does it create confusion for anyone to just post the rates on
16 the ILEC website, or do we need the interconnection agreement
17 modified and filed here for some particular reason?

18 MS. KEATING: Well, I think ultimately it is probably
19 best to have them incorporated in the interconnection
20 agreement, because we do frequently have requests from outside
21 parties to look at the various interconnection agreements on
22 file for purposes of negotiations between parties.

23 CHAIRMAN JABER: Do we even have to -- there is
24 nothing to prevent Verizon from putting the rates on the
25 website and the notice even if we accept staff's

1 recommendation.

2 MS. KEATING: Correct.

3 CHAIRMAN JABER: I think we get to the same place,
4 Commissioner Deason.

5 COMMISSIONER DEASON: Well, it seems to me this is
6 one of the few issues that the parties seemed to agree on and
7 staff has got a different recommendation. Well, I'm for
8 efficiency and quickness and ease of operation, so I am not so
9 sure that I agree with staff's recommendation. But I'm willing
10 to vote it out, and maybe we will get some reconsideration
11 filed on this, maybe some explanation or clarification on it.

12 CHAIRMAN JABER: There is a motion to approve staff.

13 COMMISSIONER DEASON: Maybe somebody else should make
14 the motion.

15 CHAIRMAN JABER: Ms. Keating, help us out here.
16 There is clearly something we are missing.

17 COMMISSIONER DEASON: Verizon says, and I'm just
18 reading the capsulization of their position, the quickest and
19 easiest way to implement these new rates would be to inform the
20 ALECs of the rate change by distributing notices of the revised
21 rates or by posting them on Verizon's website. COVAD's
22 position, ALECs should not be required to amend their
23 interconnection agreements in order to avail themselves of
24 these rates and charges. ALEC says any other approved rates
25 should become effective as ordered, as ordered in the BellSouth

1 phase of the case. But they identified certain issues that
2 should be effective on the date of the Commission's order,
3 Issues 8 and 9A. Why did they make that distinction between
4 those? Maybe there is not total consensus.

5 MS. KEATING: Another option may be to have the rates
6 become effective immediately, and for the companies to be able
7 to incorporate them and use them immediately on a going-forward
8 basis, but then still require the parties by some date certain
9 to amend their interconnection agreements.

10 COMMISSIONER BAEZ: Because that is just really
11 housekeeping for us, right?

12 MS. KEATING: Correct.

13 CHAIRMAN JABER: It's a contract for them, though.
14 So do we actually need to tell them to amend their
15 interconnection agreement? I mean, that is their contract. It
16 seems like on their own -- what they want is to be able to use
17 the rates right away. And on their own they are going to
18 circle back around and amend their interconnection agreement,
19 aren't they? Isn't that their contract?

20 MS. KEATING: I know there was some dispute in the
21 record as to whether that should be done.

22 MR. DOWDS: I think the record is a little ambiguous
23 as to what do they mean by effective date. I mean, one
24 question is what date -- as of what date is your decision
25 effective, which is normally when your order is issued.

1 CHAIRMAN JABER: No, when the order becomes final.

2 MR. DOWDS: Becomes final. Thank you, sorry.

3 CHAIRMAN JABER: And that means that we get through
4 the reconsideration period, correct? So is it enough for us to
5 make a decision that the rates shall be effective when the
6 Commission's order becomes final? Do you issue a consummating
7 order after reconsideration, or you just do that with PAA?

8 MS. KEATING: No, just with PAA.

9 CHAIRMAN JABER: Okay. So automatically when
10 reconsideration is over, the order becomes final.

11 MS. KEATING: Actually, technically I think the order
12 is final upon issuance, but there is still an opportunity for a
13 motion for reconsideration. So for final post-hearing orders,
14 I believe -- and I hope somebody will jump up if I am
15 incorrect, but I believe it is actually final on the date that
16 it is issued for a post-hearing order. But there is an
17 opportunity for a motion for reconsideration, that is why there
18 is provisions for stays for final orders.

19 COMMISSIONER PALECKI: Let me ask staff. Why did you
20 feel more comfortable with the rates becoming effective when
21 existing interconnection agreements are amended, especially
22 considering that that might take some time?

23 MR. T. BROWN: It might take some time, but it is no
24 different than the way we really handle anything else. And it
25 is no different than the way it was decided in the BellSouth

1 phase. And there was, you know, specific discovery asked, you
2 know, whether we should deviate from this, and I know of at
3 least of one response that said, no, we shouldn't deviate from
4 what we did in BellSouth.

5 COMMISSIONER PALECKI: Do you have any really strong
6 feeling either way, though, that if we made the rates effective
7 upon the issuance of our order and the expiration of the time
8 for reconsideration that they would automatically become
9 effective? I mean, do you have any really heartburn on that?

10 MR. T. BROWN: No, I wouldn't have any heartburn with
11 that. I was just trying to look at it from a different
12 perspective of just what have we done in the past and should it
13 apply equally among all three of the phases. But I wouldn't
14 have any heartburn if that is the route the Commission went.

15 COMMISSIONER DEASON: Well, I don't think we want the
16 rates to become effective before reconsideration has run. I
17 just think that is inefficient. So maybe what we should do is
18 vote out staff's recommendation, let parties file
19 reconsideration, and if there is -- they can explain to us why
20 this is not the right way to do it, there is a better way to do
21 it. I will have an open mind, and we will look at it and if we
22 want to change it, we will change it. Is that fair?

23 COMMISSIONER PALECKI: Well, Commissioner Deason, you
24 had me convinced to do it the other way.

25 COMMISSIONER DEASON: Well --

1 CHAIRMAN JABER: Life is a compromise, though.

2 COMMISSIONER DEASON: Snatched victory from the jaws
3 of defeat or whatever the terminology is. But, I guess I am
4 still comfortable voting out staff's recommendation. I know
5 the reconsideration standard is a hard one. I'm not so sure
6 that that same standard -- I am going to have an open mind when
7 we get these petitions for reconsideration, if there is a
8 better way to do this. I think it is more procedural than it
9 is evidentiary anyway, and we can deal with it at that time.

10 COMMISSIONER PALECKI: I will second the motion.

11 CHAIRMAN JABER: There is a motion and a second to
12 approve staff on Issue 13. All those in favor say aye.

13 (Simultaneous affirmative vote.)

14 CHAIRMAN JABER: Issue 13 is approved. Issue 14.
15 That would be the last issue, Commissioner Deason.

16 COMMISSIONER DEASON: That is the issue I wanted to
17 get to. Particularly when I was reading this recommendation, I
18 kept thumbing through the pages and saying how many more pages
19 is there in this recommendation.

20 COMMISSIONER DEASON: You are counting this as a
21 page. You are counting the index.

22 COMMISSIONER DEASON: Well, this is Page 380, I know
23 that. And I move staff's recommendation.

24 MS. KEATING: Commissioners, actually staff just
25 brought up a real good point.

1 COMMISSIONER DEASON: We can't do it.

2 MS. KEATING: Sprint is actually a part of this same
3 docket.

4 CHAIRMAN JABER: Well, we need to clarify that as it
5 relates to the Verizon piece of this docket, it is closed.
6 Would that be your motion?

7 COMMISSIONER DEASON: That would be my motion.

8 COMMISSIONER BAEZ: Second.

9 COMMISSIONER PALECKI: Second.

10 CHAIRMAN JABER: All those in favor say aye.

11 (Simultaneous affirmative vote.)

12 CHAIRMAN JABER: Issue 14 as modified is approved.

13 On Sprint, Commissioners, and on the workshop idea,
14 is there any objection to having the market monitoring group
15 and the telecommunications group incorporate a workshop into
16 their schedule of review?

17 COMMISSIONER DEASON: No objection by me.

18 CHAIRMAN JABER: Okay. Then we will pursue that.

19 With respect to Sprint, again, let me for purpose of the record
20 and to make sure that everyone understands, including staff, I
21 just need time to have my questions answered by staff. The
22 last couple of days have not given staff sufficient time to go
23 back to the record, me to go back to the record and look at the
24 exhibits and such that I am satisfied with where the record is
25 and my being able to vote. However, there are always

1 opportunities with these kinds of time frames, so I would
2 encourage Sprint to consider what we have done with BellSouth,
3 to consider what we did today with Verizon, and maximize the
4 opportunity to negotiate further. Never, never close the door
5 when opportunity comes knocking. Thank you, staff.

6 COMMISSIONER DEASON: One last thing.

7 CHAIRMAN JABER: Commissioner Deason.

8 COMMISSIONER DEASON: Since we do have the luxury of
9 this added time, it seems to me that there are some issues
10 addressed for Sprint which are -- well, they are all the same
11 issues, but the basis for your recommendation is basically
12 identical. And to the extent that there are certain things
13 that to be consistent between Verizon and Sprint, if you can be
14 prepared to analyze those, or at least tell us that certain
15 issues are directly related to what we already -- I don't want
16 to be inconsistent with what we just voted out for Verizon.
17 And to the extent that we can expedite the next agenda, it
18 would be helpful for staff to look at that and advise us as for
19 those particular issues. When I was just reviewing the
20 recommendation, it seemed like there were several issues, Issue
21 1, 3A and B, and some others which were very similar, if not,
22 identical to Verizon. Perhaps 6 and 7A just to name a few.

23 COMMISSIONER PALECKI: Could we have a chart? Could
24 staff make a chart to show us where there are issues, where we
25 should be consistent? I think that would be expeditious.

1 COMMISSIONER DEASON: It would certainly help a lot.

2 CHAIRMAN JABER: Staff, with respect to a special
3 agenda versus a regular agenda, I really am optimistic we can
4 just get this on a regular agenda. So, I will leave that to
5 you and obviously since you are waiting on me to meet with you,
6 we will be as expeditious as possible so as to not hold this
7 decision up. But I anticipate November.

8 MR. DOWDS: May I ask a quick clarifying question?
9 Commissioner Palecki, you asked for -- I wasn't clear what you
10 were requesting.

11 COMMISSIONER PALECKI: Well, Commissioner Deason had
12 asked if we could have an indication of where we have issues
13 that are consistent between the Verizon portion of the docket
14 that we decided today and the Sprint portion of the docket that
15 we will decide in the future, and I was just asking if we could
16 have that in chart form.

17 MR. DOWDS: You would want a chart that shows what
18 your decision was on Verizon and also shows what staff's
19 recommendation is on the same issue for Sprint?

20 COMMISSIONER PALECKI: Yes.

21 COMMISSIONER DEASON: And my concern is just I think
22 there are some issues which were basically -- your
23 recommendation was basically the same, and I just want to know
24 which once those are so I can save some time when I go back and
25 review them again.

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MR. DOWDS: Certainly.

CHAIRMAN JABER: Thank you. That concludes this
agenda.

(The special agenda concluded at 1:05 p.m.)

1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4
5 I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter
6 Services, FPSC Division of Commission Clerk and Administrative
7 Services, do hereby certify that the foregoing proceeding was
8 heard at the time and place herein stated.

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

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

19 DATED THIS 17TH DAY OF OCTOBER, 2002.

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JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
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