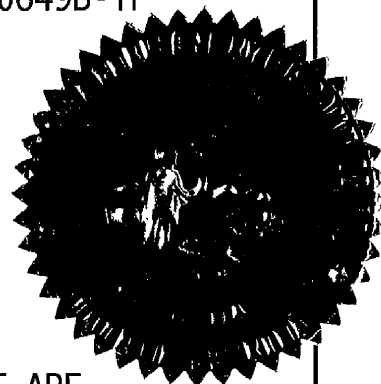


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990649B-TP

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 RUDOLPH "RUDY" BRADLEY

DATE: Wednesday, April 9, 2003

TIME: Commenced at 8:35 a.m.  
Concluded at 9:57 a.m.

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

REPORTED BY: TRICIA DeMARTE, RPR  
Official FPSC Reporter  
(850) 413-6736

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 03423 APR 14 8

FPSC COMMISSION CLERK

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

1  
2 CHAIRMAN JABER: Good morning, we have a special  
3 agenda conference. Let's go ahead and get started.

4 Staff, you have an introduction. Staff.

5 MR. KNIGHT: Yes.

6 CHAIRMAN JABER: This would be an agenda conference.

7 MR. KNIGHT: Good morning, Commissioners.

8 CHAIRMAN JABER: Good morning.

9 MR. KNIGHT: This will be the agenda conference that  
10 was continued from last week and was noticed for this time and  
11 place.

12 CHAIRMAN JABER: And Issue 1 involves a request for  
13 an oral argument. Staff is recommending that the request be  
14 granted.

15 Commissioners, can I have a motion?

16 COMMISSIONER DEASON: Move to approve staff.

17 COMMISSIONER BAEZ: Second.

18 CHAIRMAN JABER: There's been a motion and a second  
19 on Issue 1. All those in favor say "aye."

20 (Simultaneous affirmative responses.)

21 CHAIRMAN JABER: Issue 1 is approved.

22 Staff, you recommended and we just approved oral  
23 argument limited to ten minutes per side.

24 Parties, have you gotten together --

25 MS. CASWELL: Yeah, I think we're --

1 CHAIRMAN JABER: -- to discuss the order?

2 MS. CASWELL: Well, I think since it's my motion, I  
3 would go first.

4 CHAIRMAN JABER: Okay. Ms. Caswell, go ahead.

5 MS. CASWELL: Commissioners, this is strictly a legal  
6 issue. There's no policy involved and no discretion to be  
7 exercised. If the conditions for a stay are met, it must be  
8 issued. There's no question that the conditions for a stay are  
9 met here. The automatic stay rule says, when the order being  
10 appealed involves the refund of moneys to customers or a  
11 decrease in rates charged to customers, the Commission shall,  
12 upon motion filed by the utility or company affected, grant a  
13 stay pending judicial proceedings. So under the rule, Verizon  
14 must receive a stay of the UNE order if it decreases rates  
15 charged to Verizon's customers. There's no dispute that the  
16 order decreases Verizon's UNE rates, and there's no legitimate  
17 dispute that those rates are charged to Verizon's customers, in  
18 this case, the ALECs. The Commission said so right in the UNE  
19 order itself, that an ALEC is a customer when it purchases UNEs  
20 from Verizon.

21 There's nothing unusual about calling  
22 telecommunications carriers customers of one another, including  
23 ALECs. There are probably hundreds of such references in  
24 Commission orders, interconnection agreements, tariffs, and  
25 other filings by both ILECs and ALECs. The very long footnote

1 in our motion cites just a few of those references. ALECs buy  
2 UNEs from Verizon, so they are Verizon's customers. The UNE  
3 order decreases the rates Verizon can charge those customers.  
4 That's the end of the inquiry for the mandatory stay. Because  
5 the order decreases rates charged to Verizon's customers, the  
6 Commission must approve a stay.

7 Not surprisingly, the ALECs don't like this result.  
8 They don't deny they're Verizon's customers and staff doesn't  
9 either. To try to avoid the effect of the mandatory stay rule,  
10 however, they read words into the rule that aren't there. They  
11 say that even though the rule says "customers," it means end  
12 user or retail customers. The problem with this interpretation  
13 is that it violates the cardinal rule of statutory  
14 construction, that the words in a provision must be given their  
15 plain and ordinary meaning. Courts will look to the dictionary  
16 for the plain meaning of "customer" which is one that buys  
17 goods or services. There is no need to use other rules of  
18 statutory construction when the language of a rule is  
19 unambiguous and conveys a clear and ordinary meaning. There's  
20 nothing ambiguous about the term "customers" in the rule.  
21 There's no indication that it might mean only certain kinds of  
22 customers.

23 Florida law says it's impermissible to imply  
24 exceptions to rules or to add words to steer a provision to a  
25 meaning and a limitation which its plain wording does not

1 supply. A rule interpretation that deviates from the plain  
2 meaning of the rule is clearly erroneous and cannot stand. It  
3 would be clearly erroneous for the Commission to read the words  
4 "retail" or "end user" into the stay rule and to imply a  
5 limitation that does not appear on the face of the rule.

6 So how does the staff square its recommendation with  
7 the plain meaning of the rule? It doesn't. Staff doesn't deny  
8 that ALECs are customers of Verizon. It doesn't claim that the  
9 word "customers" in the rule is ambiguous. It doesn't say that  
10 Verizon is wrong about the plain meaning rule. The  
11 recommendation simply ignores the plain meaning of "customers."

12 Instead of basing its recommendation on the language  
13 of the rule itself, the staff relies solely on one Commission  
14 case interpreting the rule. In that case involving BellSouth  
15 and WorldCom, the Commission refused to grant an automatic stay  
16 of an order requiring BellSouth to pay reciprocal compensation  
17 to the WorldCom Companies under interconnection contracts. The  
18 Commission said the stay rule is designed to apply to rate  
19 cases or other proceedings involving rates and charges to end  
20 user ratepayers or consumers, not to contract disputes between  
21 interconnecting telecommunications providers.

22 Staff advises the Commission to deny Verizon's motion  
23 because it claims Verizon has failed to adequately distinguish  
24 the Commission's rationale in the Bell case from the situation  
25 at hand, but the Bell case doesn't control here. First, the

1 Commission found it did not involve a rate decrease, as this  
2 case clearly does, but rather a dispute about payment under  
3 contracts. Second, to the extent the Bell case did rest on the  
4 view that "customers" means only retail customers, that  
5 rationale was mistaken. The Commission's statement in the Bell  
6 case that the stay rule applies only to cases involving rates  
7 to end users was not based on the language of the stay rule  
8 itself or anything else for that matter. It was just a naked  
9 conclusory statement with no supporting analysis or  
10 explanation, and it can't support a decision to deny the stay  
11 here. As the Commission knows, the Florida Supreme Court will  
12 expect the Commission to justify the -- its interpretation on  
13 the language of the rule rather than on its own mistaken  
14 precedent.

15           Staff, nevertheless, finds support for the  
16 Commission's previous interpretation of the stay rule in,  
17 quote, the fact that the rule was developed before the  
18 Commission even had authority to address matters involving  
19 intercarrier compensation, end quote. That's not true. In  
20 fact, at the same time the stay rule was being developed, the  
21 Commission was considering intercarrier compensation in the  
22 context of Microtel's application to provide interexchange  
23 service which was filed in 1980. By January 1983 the  
24 Commission had ordered all LECs to submit intrastate access  
25 tariffs. It is obviously wrong to suggest, as the ALECs do,

1 that the Commission lacked jurisdiction over intercarrier  
2 compensation as late as 1986. In any event, the scope of the  
3 Commission's jurisdiction when the rule was adopted in 1982 is  
4 not relevant to applying the plain language of the rule just as  
5 it's not relevant that CLECs didn't exist when the rule was  
6 adopted.

7           As the Florida Supreme Court tells us, when a statute  
8 is expressed in general terms and in words of the present  
9 tense, it will generally be construed to apply not only to  
10 things and conditions existing at the time of its passage but  
11 will also be given a prospective effect and made to apply to  
12 such as come into existence thereafter. Neither staff nor the  
13 ALECs address this principle which is fatal to their arguments.

14           Aside from being the law, this is the only approach  
15 that makes sense. If the Commission's rules only apply to  
16 things and conditions that existed when they were adopted, the  
17 Commission would be constantly revising its rules, some of  
18 which are decades old, to account for new kinds of services,  
19 technologies, and companies.

20           As I said earlier, there's no need to examine the  
21 legislative history of the stay rule because its plain language  
22 is unambiguous, but because the ALECs purport to rely on the  
23 purpose of the rule, it's worth looking at the legislative  
24 history if only to prove they're wrong.

25           The ALECs argue the rule was adopted because they're



1 under rate regulation. If a company was forced to implement a  
2 rate decrease before disposition of an appeal, it was at severe  
3 risk of being unable to recover any shortfall from its general  
4 body of ratepayers. The purpose of the stay rule, the ALECs  
5 claim, was to protect a rate return carrier's regulated revenue  
6 requirement. That theory is wrong. For all the talk about the  
7 intent and purpose of the rule, Verizon is the only one that  
8 cited the actual legislative history. The rule was not  
9 prompted by any concern about the difficulty a rate-regulated  
10 company might face in collecting from ratepayers if it won an  
11 appeal.

12           The rule was adopted at the Supreme Court's  
13 suggestion to harmonize Commission rules with the automatic  
14 stay rule in the Florida appellate rules at the time. Staff  
15 called the Commission rule a restatement of the appellate rule  
16 providing for an automatic stay, quote, when the appeal  
17 involves a money judgment and bond is posted, end quote. What  
18 the Commission did was, in the words of its counsel at the  
19 time, read the procedural rules and translate them into what we  
20 do at the Commission. The Commission considered a decrease in  
21 rates in the Commission context to be like a money judgment  
22 against a company in the civil context. In both cases, the  
23 relevant fact is that appellant loses money in the absence of a  
24 stay. A stay is particularly important in cases involving  
25 money judgments because money once lost can be very hard to get

1 back.

2           The relevant fact then is the rate reduction. It  
3 doesn't matter whether the customers whose rates are reduced  
4 are retail or wholesale customers. It's a money judgment  
5 against the company in both cases, and that's what matters for  
6 purposes of the appellate rule and the analogous Commission  
7 rule. Neither was motivated by any special concern about  
8 protecting a rate-regulated company's revenue requirement. In  
9 fact, I can tell you with absolute certainty that it will be  
10 much harder for Verizon to be made whole after a successful  
11 appeal in this case than it was when GTE won a rate case appeal  
12 and collected the shortfall from its retail customers.

13           Verizon is owed millions of dollars by CLECs, many of  
14 which are insolvent or headed that way; that includes one of  
15 the principal opponents of the stay here, MCI. If no stay is  
16 granted and Verizon must implement the new rates during appeal,  
17 Verizon has little hope of ever collecting the undercharges  
18 from ALECs if it wins the appeal. This situation is just what  
19 the stay rule was designed to protect against.

20           Finally, the Commission has not interpreted the  
21 mandatory stay rule to apply only to orders reducing rates for  
22 retail customers. In the GTC case Verizon cited, the  
23 Commission issued an automatic stay on the basis that the order  
24 reduced rates charged to an ILEC's wholesale customers, in that  
25 case, the IXCs. The staff and ALECs attempt to distinguish

1 this case by saying the stay there was not contested. This  
2 distinction has no legal significance. The only question that  
3 will interest a review in court is whether the Commission has  
4 applied the mandatory stay rule only when customers at issue  
5 were retail end users and the answer is no.

6           Because the Commission's UNE order reduces the rates  
7 Verizon may charge to its ALEC customers, the Commission must  
8 grant a stay. Despite what the ALECs may argue, your decision  
9 cannot be based on policy considerations. Verizon will provide  
10 security as a condition of the stay to assure that ALECs will  
11 get rate true-ups if Verizon loses the appeal. Verizon agrees  
12 with staff that the amount to be secured is the incremental UNE  
13 revenue and that the form of the security should take the form  
14 of a corporate undertaking. Thank you.

15           CHAIRMAN JABER: Ms. Caswell, thank you for your  
16 presentation. And frankly, this is a unique issue, and I've  
17 been looking forward to this oral argument. You all have  
18 collectively presented us with an issue that I'm just surprised  
19 we haven't heard more often, so -- but I have questions while  
20 they're fresh on my mind, and I want to go ahead and get them  
21 out so Mr. Melson and Mr. Hatch could address them, too.

22           With respect to your appeal that's in the Florida  
23 Supreme Court, do you intend to file an appeal in the Federal  
24 Court or you can't? Walk me through --

25           MS. CASWELL: Do I think we have a choice of forums,

1 Federal Court or Florida Supreme Court? It may be that we  
2 could file an appeal in Federal Court after the Supreme Court  
3 appeal ends, but at this same time we have no plans to do that.

4 CHAIRMAN JABER: Okay. So as it relates to this  
5 appeal, this stay --

6 MS. CASWELL: It's just the Florida Supreme Court  
7 proceeding, I can assure you of that.

8 CHAIRMAN JABER: Okay. If a stay is granted, assume  
9 that at the end of the day this Commission agrees with you that  
10 there is a mandatory stay that should be in effect, what does  
11 that mean in terms of the rates that apply pending appeal?  
12 What is it you're asking us --

13 MS. CASWELL: The rates that would apply are the  
14 rates that apply today, the rates that were set earlier. And  
15 in the meantime, we would file a corporate undertaking or bond,  
16 whatever form of security you'd require, and that security  
17 would assure that if we lost the appeal, the ALECs would get  
18 true-ups in the end with interest. So that the purpose of the  
19 rule, and if you look at the appellate rules and your  
20 legislative history, the purpose is to maintain the parties' --  
21 maintain status quo so that in the end if we win the appeal, we  
22 get the benefit of that; if we lose the appeal, they do not  
23 lose the rates that they would have been entitled to otherwise,  
24 and they get use of the money because they get interest.

25 CHAIRMAN JABER: You said that the -- the rates that

1 we've already approved, the rates that apply today.

2 MS. CASWELL: Right.

3 CHAIRMAN JABER: Refresh my memory. I thought for  
4 Verizon the Commission had not yet established rates until this  
5 last proceeding and that you all were -- for the rates for the  
6 UNEs we had not established, you all were negotiating company  
7 by company what those rates would be. Is that not a correct  
8 statement?

9 MS. CASWELL: Well, in 1996 we had an arbitration  
10 with AT&T and MCI, and you set rates there. And for all  
11 intents and purposes, those were the rates that governed all  
12 the contracts because everybody adopted the contracts, and you  
13 realized that, and that's why you had the generic ratemaking.

14 In the meantime, there was an interim rate  
15 stipulation whereby we deaveraged the rates based on the rates  
16 you set in 1996, but the underlying rates are still good, and  
17 the rates that we apply today we apply across the board to  
18 everyone. And it's true that you did not set all of the rates,  
19 but the principal ones you did set.

20 CHAIRMAN JABER: Okay. So if we granted the stay,  
21 what you're suggesting is, to the degree rates are covered  
22 through the AT&T/MCI arbitration, and those contracts have been  
23 adopted, those rates apply, but to the degree any of those  
24 rates are superseded by the interim rate stipulation, then  
25 those rates apply. And anything not covered --

1 MS. CASWELL: Yeah, we wouldn't go back to the world  
2 where we were not deaveraged at all. We would take the rates  
3 that we agreed with the CLECs to charge in the interim period,  
4 the deaveraged rates, and apply those. So all of the rates  
5 that are in effect today are the rates that we would seek to  
6 apply during appeal. There would be no change. It would be  
7 status quo because that's the objective of the stay rule.

8 CHAIRMAN JABER: Okay. And for purposes of the  
9 record, it is not your intent during a stay, if this Commission  
10 finds it appropriate, to apply the rates that were in your  
11 proposal during this docket.

12 MS. CASWELL: Absolutely not.

13 CHAIRMAN JABER: All right. With respect to the  
14 applicability of the rule, in your pleading, you don't even --  
15 you don't make the case that if we deny the mandatory stay  
16 request, the discretionary part of the rule applies.

17 MS. CASWELL: Yeah, I did not ask for a discretionary  
18 stay because I did not have to because the mandatory stay  
19 applies. If I did ask for a discretionary stay, certainly we  
20 believe that we would get the stay under that as well. We  
21 believe we have a very good chance of winning on appeal.  
22 There's no harm to the public interest while the appeal is  
23 taking place, and it would be very hard for us to be made whole  
24 again afterwards, and I would say almost impossible given  
25 the -- you know, given the difficulty we've had in collecting

1 even, you know, our monthly bills to the CLECs.

2 CHAIRMAN JABER: Now, assume with me for a moment --  
3 and again this is just to flush out all the debate that really  
4 should occur this morning. Assume with me that we don't  
5 believe the mandatory stay rule applies, but we might want to  
6 exercise our discretion with respect to the second part of the  
7 rule. The second part of the rule discusses that the standard  
8 should be irreparable harm.

9 MS. CASWELL: Right.

10 CHAIRMAN JABER: Whose harm should we be looking at?

11 MS. CASWELL: You should be looking at Verizon's  
12 harm --

13 CHAIRMAN JABER: And why?

14 MS. CASWELL: -- the irreparable harm to the person  
15 who applies for the stay. And as I said, it would be  
16 difficult, if not impossible, for us to collect the  
17 undercharges from CLECs if we win the appeal. Many of those  
18 CLECs are headed out of business, many of them are insolvent.  
19 Like I say, we're owed many, many millions of dollars by CLECs,  
20 and we're having very much difficulty collecting that money,  
21 and I don't think there's any way we'd get all of it back after  
22 an appeal.

23 You know, I would also point out that, you know, the  
24 CLECs talk about the stay rule in the context of, you know,  
25 rate-regulated carriers not being able to collect it from their

1 ratepayers if they won an appeal. We won an appeal of our 1992  
2 rate case, and we had to collect several million dollars in  
3 undercharges from our ratepayers. It was very easy. All we  
4 did was put a surcharge on the bill, and in one month we had  
5 all that money back. I assure you, it's not going to be that  
6 easy in this case.

7           CHAIRMAN JABER: Let me speculate what the ALECs are  
8 going to say with respect to irreparable harm just because I  
9 think it's a common sense argument. It seems to me that they  
10 would say, well, we have a harm to the degree that the rates  
11 prevent us from entering a market. There's irreparable harm,  
12 and we can't recover that because either the decision is you  
13 enter the Florida market or you don't based on whatever the  
14 rate environment is. So let's say this Commission grants your  
15 stay whether it's mandatory or discretionary. They might say  
16 there's irreparable harm with respect to a competitive market.  
17 How do you address that?

18           MS. CASWELL: Well, first of all, the conditions that  
19 you may consider in granting the discretionary stay include  
20 whether the petitioner has demonstrated that he is likely to  
21 suffer irreparable harm if the stay is not granted. So again,  
22 the focus is on the petitioner, which would be Verizon in this  
23 case, and I think we have proved that we will indeed have  
24 substantial harm.

25           Now, you are also allowed to consider whether the



1 delay will cause substantial harm or be contrary to the public  
2 interest. And I assume that's what they're going to argue.  
3 Now, we have very differing views about whether low UNE rates  
4 will incent competition. And our views, by the way, are shared  
5 by many of the analysts on Wall Street that unduly low UNE  
6 rates do not foster true competition. So, in our view, there  
7 would be absolutely no harm to the public interest in  
8 maintaining those rates. And, in fact, the direction you don't  
9 want to go is lower UNE rates and selling off more and more  
10 parts of the network.

11           CHAIRMAN JABER: And one final question before I move  
12 on to the Commissioners' questions they may have of you. If we  
13 accept your legal argument that the mandatory stay should apply  
14 on the notion that an ALEC is a customer -- a customer is a  
15 customer, therefore, the rule should apply -- do you  
16 acknowledge that all of the rules that the PSC has in place  
17 regarding customers and carriers' treatment of customers would  
18 be applicable to your treatment of ALECs?

19           MS. CASWELL: No. No, I don't.

20           CHAIRMAN JABER: Why?

21           MS. CASWELL: I think you need to look at the rule.  
22 In fact, under the principles of statutory construction, you  
23 look at the rule itself. In this case, there's no definition  
24 of "customer" in the rule, so you look to the plain language of  
25 the rule, and you look to the dictionary for that meaning, and

1 you also look to what the Commission itself has said in the  
2 order. That doesn't necessarily apply to all of the other  
3 statute -- all of the other rule provisions. You would need to  
4 interpret them on their own merits. And I think some of  
5 them -- well, I can't say. I haven't looked at the other  
6 rules. I focussed only on this one. But I can tell you that  
7 we will not be making arguments that all of those rules apply  
8 to ALECs as well as end user customers.

9 CHAIRMAN JABER: So if I was to interpret what you  
10 just said, to the degree a customer is defined to be an end use  
11 retail customer, then --

12 MS. CASWELL: Sure, then it remains.

13 CHAIRMAN JABER: -- the rule is applicable.

14 MS. CASWELL: Absolutely.

15 CHAIRMAN JABER: But to the degree the word  
16 "customer" is not defined, an ALEC is a customer.

17 MS. CASWELL: Well, to the degree it's not defined in  
18 the rule and to the degree the rule is read plainly to mean all  
19 customers, then, yes, it would include ALECs and ILECs.

20 CHAIRMAN JABER: Okay. Thank you, Ms. Caswell.

21 Commissioners, do you have questions of Ms. Caswell  
22 before we move on? It's not to say you won't later, but --

23 COMMISSIONER DEASON: Not now.

24 CHAIRMAN JABER: Okay. Mr. Melson or Mr. Hatch?

25 COMMISSIONER BRADLEY: I have a question --

1 CHAIRMAN JABER: Commissioner Bradley, go ahead.

2 COMMISSIONER BRADLEY: -- just of a statement. And  
3 I'd like for her to clear -- or give me some additional  
4 information. You said that low UNE rates don't foster  
5 competition?

6 MS. CASWELL: No. That has been our position, and as  
7 I said, it's the position of many analysts on Wall Street. And  
8 if you look at -- if you looked at the stock prices of the  
9 industry after the FCC issued its UNE Remand Order, you would  
10 have seen the stock prices go down across the board, not just  
11 for the ILECs but for the CLECs as well and for the companies  
12 that are facility-based in particular because those kind of  
13 CLECs don't win from lower UNE rates. In fact, some of them  
14 have come out publicly and opposed further unbundling and  
15 opposed unnecessarily low UNE rates.

16 COMMISSIONER BRADLEY: So might the implication be  
17 then that being facilities-based allows for competition and  
18 fosters competition? Is that the underlying message in that  
19 statement?

20 MS. CASWELL: Yeah, I mean, absolutely. That's what  
21 Congress intended for facilities-based competition to develop,  
22 and I think everyone agrees that facilities-based competition  
23 is true competition that doesn't depend on my network or just  
24 renaming my services. And I think there's also substantial  
25 agreement that if you continue to require the ILECs to sell

1 their network at fire sale prices, it dampens investment for  
2 everybody, not just for the ILECs who are forced to share these  
3 things at below cost but for the companies that would invest in  
4 their own networks but find it, of course, much cheaper to use  
5 our network.

6           So, you know, this is not just my theory again. You  
7 know, if you go to the financial publications, if you go to the  
8 analyses after the FCC released its UNE order, this is a widely  
9 accepted opinion. Of course, you know, I'm sure the ALECs are  
10 not going to agree with it, but the fact is, when I'm required  
11 to sell my network below cost, I'm not going to make as many  
12 investments as I would have otherwise. And the CLECs are not  
13 going to do that either, and the carriers, like, say, an ICI or  
14 a Time Warner who had been facilities-based won't be doing that  
15 either.

16           CHAIRMAN JABER: Is that it, Commissioner Bradley?  
17 Any other questions?

18           COMMISSIONER BRADLEY: I'd just like for the ALECs  
19 and the CLECs to be prepared to address that question, also.

20           CHAIRMAN JABER: Mr. Melson, it seems to me for every  
21 analyst you find that tarnishes commissions' decisions to lower  
22 UNE rates, you can find another analyst that will applaud it,  
23 but why don't you start with that question and then turn to  
24 your presentation. Just like ALECs and ILECs don't agree, I've  
25 never found two analysts who agree.

1 MR. MELSON: Commissioner Bradley, I will admit that  
2 I don't read very much what the analysts say. I did read the  
3 Telecommunications Act of 1996, and it anticipated UNEs as one  
4 mode of competition and UNEs at cost-based rates.

5 Our position is the order that is on appeal here  
6 establishes rates that are actually too high for UNEs but at  
7 least establishes rates that are above Verizon's costs. That  
8 was what the Commission looked at in the hearings and what it  
9 attempted to do in its order.

10 CHAIRMAN JABER: And we've done it just right.

11 MR. MELSON: No, ma'am. We've got a reconsideration  
12 pointing out how you didn't do it quite right, but you're  
13 making the effort.

14 CHAIRMAN JABER: Go ahead. Start your presentation.  
15 You've got ten minutes.

16 MR. MELSON: All right. My presentation can be  
17 summed up in about three words: We disagree with just about  
18 everything Ms. Caswell said.

19 The mandatory stay rule does apply when there is a  
20 reduction in rate to customers, and the real legal question you  
21 have to decide today is what that word means in the context of  
22 that rule. Ms. Caswell says plain meaning customers means all  
23 customers. It's not that simple.

24 In the one previous decision in which you have  
25 considered how that rule applies to interconnection agreements

1 and rates under interconnection agreements, a case involving,  
2 she cited, BellSouth and WorldCom and reciprocal compensation,  
3 you said that the rule did not apply because the complainants,  
4 WorldCom, competitive telecommunications carriers, are not  
5 customers for purposes of the rule. We think there was -- and  
6 Ms. Caswell is correct, there was not a lot of explanation in  
7 the rule for that conclusion, but we think when you look at the  
8 history of the rule and what the rule was designed to do, that  
9 that was an eminently reasonable interpretation. And like any  
10 Commission interpretation of its rules, if it's within the zone  
11 of reasonableness, the courts are going to uphold it.

12 COMMISSIONER DEASON: Mr. Melson, I hate to  
13 interrupt, but I'm going to ask a question at this point. What  
14 was the nature of the issue in the BellSouth/WorldCom decision  
15 which you just referenced?

16 MR. MELSON: It was whether reciprocal compensation  
17 was payable with respect to ISP-bound traffic. The Commission  
18 held that it was. The result of that order was to require  
19 BellSouth to begin paying compensation on that traffic and to  
20 pay past due compensation for traffic on which the compensation  
21 had not been paid.

22 COMMISSIONER DEASON: So it was not a rate decrease  
23 situation.

24 MR. MELSON: No. But the rule applies to refund of  
25 moneys to customers and rate decreases to customers. And I

1 believe BellSouth pled that as a refund to customers because  
2 they were being required to make back payments to WorldCom in  
3 the nature of a refund.

4 COMMISSIONER DEASON: So in that situation, BellSouth  
5 was required to -- it wasn't a refund, it was to pay reciprocal  
6 compensation which had not been paid.

7 MR. MELSON: Correct. In arguing that the rule  
8 applied, I believe BellSouth argued that it was in the nature  
9 of a refund. And the Commission --

10 COMMISSIONER DEASON: It was a payable, it was not a  
11 rate.

12 MR. MELSON: Right.

13 COMMISSIONER DEASON: It was a payable. It was an  
14 amount due not because of a rate that was applied but because  
15 of -- or help me distinguish that.

16 MR. MELSON: It was a payable that was due because  
17 BellSouth had not been applying a rate to traffic that it  
18 should have been applying to that traffic.

19 COMMISSIONER DEASON: Applying a rate for something  
20 you're purchasing from them, or applying a rate to something  
21 that they're obligated to pay you as interconnecting carriers?

22 MR. MELSON: Correct, the latter.

23 COMMISSIONER DEASON: So there is a distinction  
24 there.

25 MR. MELSON: There is a distinction, but that

1 distinction was not drawn by the Commission in the order  
2 denying the stay. In the order holding that the rule did not  
3 apply, the distinction the Commission made was that competitive  
4 carriers were not customers for purposes of the rule. There  
5 may have been -- that may have been -- what you're suggesting  
6 may have been a valid additional reason for not applying the  
7 rule in that case.

8 COMMISSIONER DEASON: Okay. Thank you.

9 COMMISSIONER BRADLEY: Madam Chair?

10 CHAIRMAN JABER: Commissioner Bradley.

11 COMMISSIONER BRADLEY: And I just want to -- you made  
12 mention of -- alluded to defining "customer." And I've been  
13 struggling with this. Now, I just need for you to elaborate  
14 while you're on that hypothesis. If an ALEC and a CLEC are not  
15 customers of an ILEC, then what are they in this instance?  
16 Give me a word that describes their relationship to the ILEC.

17 MR. MELSON: I'm going to tell you, Commissioner,  
18 they are wholesale customers. They are not retail customers,  
19 they're not what we would call end use customers, they are  
20 wholesale customers. And the question is whether -- the legal  
21 question is whether the word "customer" in your stay rule was  
22 intended to encompass both wholesale and retail customers, or  
23 was it intended, as you have said in a prior decision, to  
24 encompass end use customers and not to encompass competitive  
25 wholesale customers.



1           COMMISSIONER BRADLEY: Who then is the retail  
2 customer?

3           MR. MELSON: The folks who buy telephone service from  
4 Verizon and get a seven-digit phone number and pay their  
5 monthly bill for local service. And those were the only types  
6 of customers that existed when the rule was adopted in 1982.  
7 Wholesale customers, CLECs didn't come along -- CLECs did not  
8 come along until after the legislation in 1995.

9           COMMISSIONER BRADLEY: Well, then in terms of  
10 maintenance and service, who then provides maintenance and  
11 service to the retail customer, the ALEC or the CLEC -- or the  
12 ILEC? I'm sorry.

13           MR. MELSON: The ILEC provides maintenance to its  
14 retail customers. When it sells UNEs to a CLEC, it provides  
15 maintenance to those UNEs because the CLEC is essentially  
16 leasing that facility.

17           COMMISSIONER BRADLEY: Well, then couldn't we make  
18 the argument then that the ILEC is -- this is a hybrid  
19 situation, and the ILEC is still providing -- so, I mean, the  
20 retail customer is still a part of this equation then even  
21 though we're talking about a wholesale --

22           MR. MELSON: At that point, the retail customer is a  
23 WorldCom retail customer or an AT&T retail customer when they  
24 are being serviced through UNEs.

25           COMMISSIONER BRADLEY: I'd like to ask Harold a

1 question.

2 MR. McLEAN: Yes, sir.

3 COMMISSIONER BRADLEY: And I need to just -- I need  
4 you to help me with some dates and some times. When we -- when  
5 this rule was put into place, was this prior to the 1996 Act?

6 MR. McLEAN: Yes, sir, substantially.

7 COMMISSIONER BRADLEY: So basically since it was  
8 prior to the 1996 Act, then we've never ever had the  
9 opportunity to really give consideration to clarifying  
10 "customer."

11 MR. McLEAN: Not really, Commissioner, but I believe  
12 Ms. Caswell made a -- made you a pretty good argument, that it  
13 was our intent back in the days when we crafted that rule to  
14 make it roughly analogous to what they did at the Supreme  
15 Court.

16 Although it was a long time ago and we did not know  
17 what kind of customers we might have in the future, we were  
18 trying to replicate the rule at the Supreme Court which they  
19 have because we had been -- I don't want to say "scolded"  
20 really because that's kind of a strong word, but the Supreme  
21 Court seemed moderately annoyed, and it said to the Commission,  
22 come up with procedures for these situations where your order  
23 changes the respective positions of the parties and you can  
24 maintain the status quo pending that situation. So although we  
25 have not had an opportunity to interpret it, it was the staff's

1 intention, and presumably the Commission's as well, back in  
2 those days to adopt a rule which roughly, as well as we could  
3 as an administrative agency, mirrors what they do at the courts  
4 and at the Supreme Court.

5 CHAIRMAN JABER: Commissioner Bradley, can I stop you  
6 here? In the interest of fairness, we didn't interrupt  
7 Ms. Caswell's presentation. Can you hold on to your questions?  
8 And let's let Mr. Melson finish his presentation. And I am  
9 sure we're going to have a lot of questions.

10 Go ahead.

11 MR. MELSON: And, Commissioners, the -- a fairly  
12 recent analogy I would give you, and it was a case I was  
13 involved in, was the construction of the term "rate structure"  
14 in your statute regarding wholesale contract between Seminole  
15 and its members, and whether "rate structure" meant all rate  
16 structures or did it mean retail rate structures or wholesale  
17 rate structures. And at least a majority of the court agreed  
18 with a majority of the Commission that the word "rate  
19 structure" was not plain and unambiguous and that you had to  
20 understand the context in which you were answering the  
21 question. And for that reason, I would suggest to you that the  
22 plain meaning rule that Ms. Caswell urges on you does not  
23 necessarily apply in this situation.

24 You need to look at the underlying purpose of the  
25 rule and also at the effect if you apply the rule. One thing

1 that is quite different here from the situation that existed in  
2 1981, '82 when that rule was adopted is your decision has an  
3 effect not only on dollars that flow or do not flow to Verizon,  
4 it has an impact on competition in the state.

5           The rates in Verizon's territory today are higher  
6 than the rates in BellSouth's territory, and I'm not going to  
7 tell you that's the only cause and effect, but if you look at  
8 the degree of mass market residential competition, you see it  
9 in some of Bell's territory, you really don't see it in  
10 Verizon's. And to the extent you construe the mandatory stay  
11 rule in a way that simply protects Verizon's revenues during  
12 the pendency of an appeal, I suggest to you the existing  
13 barrier to entry in Verizon's territory is likewise going to  
14 continue during the pendency of the appeal. And that is a type  
15 of consideration that wasn't present when you were formulating  
16 your rules back in 1981. It's a kind of consideration that  
17 makes this different from a money judgment that one might get  
18 in a court and apply in a court rule by analogy. There is more  
19 impact here than just the impact of the dollars.

20           Ms. Caswell then cites to one other case in which the  
21 Commission has considered a stay in what I would call an  
22 intercarrier situation; that was when you required BellSouth to  
23 terminate intraLATA subsidy payments to St. Joe Telephone  
24 Company and at the same time to flow that -- the revenues that  
25 BellSouth will gain, flow those back to its end use customers.

1 Both parties in that case requested a stay citing the mandatory  
2 stay provisions, and the Commission ultimately granted a stay.  
3 And so Ms. Caswell argues that that case stands for the  
4 proposition that in an intercarrier situation, the mandatory  
5 stay rule does apply.

6 I'd point out two distinguishing factors. First,  
7 both parties had relied on that rule. You were not asked the  
8 question, does the rule apply or not, you were asked which  
9 party's version of the stay should be granted. And your  
10 rationale ultimately for granting the stay rested not on the  
11 difficulty that GTE or St. Joe or BellSouth might have in  
12 collecting the funds from each other, it focussed on the fact  
13 that part of your order required BellSouth to reduce its rates  
14 to end use customers, and that if that portion of the order  
15 were not stayed, BellSouth might very well have trouble making  
16 itself whole from those end use customers. So we don't think  
17 that decision is controlling, and to the extent it expresses a  
18 rationale, it's a rationale that is consistent with your later  
19 decision in the WorldCom/BellSouth case that this rule simply  
20 does not apply to relationships between carriers.

21 That sort of finishes the major part of my  
22 presentation. I would like, Commissioner Jaber, with your  
23 permission to go through and answer each of the questions that  
24 you posed to Ms. Caswell, and then I'd be happy to answer any  
25 others --

1           CHAIRMAN JABER: Yeah, I think Commissioner Bradley  
2 asked you a couple of questions, too. So, yeah, take an  
3 opportunity to respond to all the questions, and there may be  
4 other Commissioner questions.

5           MR. MELSON: Certainly. You asked Verizon whether  
6 they planned to appeal to Federal Court, and I believe they  
7 indicated that there might be a subsequent appeal after the  
8 Supreme Court but they didn't have any current plans. You have  
9 not yet issued your order on reconsideration in this docket.  
10 At that point, the order as to us at least is final and  
11 appealable. And I think WorldCom's expectation, although a  
12 final decision has not been made, is that we would take the  
13 decision to Federal Court and would probably file a protective  
14 appeal before the Florida Supreme Court. And one --

15           CHAIRMAN JABER: So you can have an appeal in front  
16 of the Florida Supreme Court and in front of the Federal Court  
17 at the same time of the same order? Or is that an issue to be  
18 decided?

19           MR. MELSON: I think that is an issue to be decided.  
20 I think we clearly can go to Federal Court because there is a  
21 federal question involved, the Commission's application of the  
22 FCC's TELRIC rules. Once we are in Federal Court, whether that  
23 has the effect of preempting or staying or abating the State  
24 Court proceeding is probably a question that hasn't been  
25 answered.

1           CHAIRMAN JABER: Okay. Well, see, and that's why I  
2 asked the question. And, Ms. Caswell, I'm not going to leave  
3 you out of this conversation. We'll come back with that  
4 question. But that's precisely why I ask. If you assume for a  
5 moment that the Commission finds that our rules on stay are not  
6 applicable, are there appellate rules that govern stays, and if  
7 so, are those at the state level or are they at the federal  
8 level?

9           MR. MELSON: Well, the state -- Verizon is doing  
10 exactly what they should be doing in a State Court appeal,  
11 which is coming first to the Commission for a stay. And if you  
12 deny that stay, that decision is reviewable on motion in the  
13 Florida Supreme Court. In the Federal Court, it was WorldCom's  
14 position in the WorldCom/BellSouth case that you did not have  
15 jurisdiction to enter a stay; that if Bell wanted relief, their  
16 sole remedy was to seek an injunction from the Court against  
17 the enforcement of your order. In that case, you ruled against  
18 us on that point. You said, oh, no, we have jurisdiction, and  
19 then you took the next step and said, but our stay rule, our  
20 mandatory stay rule does not apply in this situation. So you  
21 said you had authority to decide, and then you decided in a way  
22 that made it unnecessary for us to pursue the issue of whether  
23 an injunction was the only real remedy.

24           And presumably -- and I don't want to put ideas into  
25 Verizon's head, but presumably if you were to deny the stay

1 with respect to a Florida Supreme Court appeal, they would be  
2 free to come back and ask for a discretionary stay or some type  
3 of stay in relation to a Federal Court appeal, and we'd urge  
4 you to reach the same result, but it's probably a separate  
5 question and one that you would at least have to think about  
6 again.

7 I think your next question was, if the stay was  
8 granted, what rates would apply pending appeal? And I agree  
9 with Ms. Caswell there. It would be the rates that are in  
10 effect today, essentially rates that were established in the  
11 1996 vintage arbitration between AT&T and MCI and Verizon.

12 CHAIRMAN JABER: So you're currently in the Verizon  
13 market using those rates?

14 MR. MELSON: We have those rates available to us. I  
15 don't believe we are currently in the Verizon market because  
16 those rates, we believe, are unusable.

17 CHAIRMAN JABER: So you've got the arbitrated order,  
18 but you have not --

19 MR. MELSON: I don't believe we are doing -- we  
20 certainly are not doing a retail UNE-based business in  
21 Verizon's territory. We may have some customers on-net and be  
22 obtaining interconnection facilities and so forth under that  
23 agreement, but we're not doing a mass market UNE type business.

24 Ms. Caswell said that if those rates remained in  
25 effect and Verizon ultimately lost on appeal, that any -- a



1 corporate undertaking that they have suggested would be an  
2 adequate remedy to essentially pay the ALECs the difference  
3 between the rates they had been charged and the lower rates the  
4 Court would have confirmed that they should have been charged.  
5 I would question -- I question that for one reason, which is  
6 your order does not make the new UNE rates for Verizon  
7 effective immediately. It makes them effective only when they  
8 are incorporated into an interconnection agreement that is  
9 filed with and approved by the Commission. If you stay the  
10 order, you have stayed Verizon's obligation to enter into those  
11 interconnection agreements. And we could find ourselves having  
12 won an appeal 18 months from now with Verizon saying, no moneys  
13 are due. We're now required for the first time to negotiate  
14 those agreements only once those agreements that are -- have  
15 been approved by the Commission that there's any rate  
16 differential that would even be triggered. So the idea of a  
17 corporate undertaking in the facts of this case may very well  
18 be a charade.

19 More importantly though is that the harm that occurs  
20 during that period of time is not simply the payment of higher  
21 rates, it is the inability to use those higher rates as a basis  
22 for getting into the market and the delay that we believe the  
23 Commission would see in the development of competition in  
24 Verizon's territory, and there's essentially no way to  
25 compensate for that.

1           Commissioner, you asked, would -- if you were to  
2 decide that the mandatory stay rule does not apply, is a  
3 discretionary stay rule available? Yes, it's available if  
4 Verizon chooses to make that motion.

5           You asked, was irreparable harm under that rule -- to  
6 whom was that irreparable harm? And again Ms. Caswell  
7 correctly cited you the rule which it would be irreparable harm  
8 to Verizon is what you would have to consider. I'd point out  
9 to you that difficulty -- issues that involve simply payment of  
10 money and the difficulty of getting or not getting that money  
11 are typically not viewed as irreparable harm. So I don't think  
12 Verizon could meet either of the three prongs of that rule. I  
13 don't think they can show they're likely to prevail on appeal.  
14 I don't think they can show that they would be irreparably  
15 harmed, as the courts apply that term, and I certainly think  
16 they fail the third part of the test which is the impact of  
17 delay and impact on the public interest. And in this situation  
18 where you would be maintaining higher rates in effect during  
19 the pendency of appeal, the impact on competition and the  
20 public interest, we believe, would be quite significant.

21           Finally, you asked, would Verizon's position lead to  
22 the conclusion that every place the word "customer" appears in  
23 the Commission's rules, it includes ALECs as well as other  
24 customers? I think the logic of her position is, yes, it would  
25 unless there was a specific definition of "customer" that

1 applied to that subsection of the rule or a very clear  
2 indication in the rule in terms of phrasing in terms of end use  
3 customers. But any rule that said "customer" generally would,  
4 under her interpretation, be broad enough to pick up ALECs as  
5 customers. And I'd suggest to you that is not necessarily the  
6 right result.

7 I think you would -- what you ought to do if faced  
8 with that question is examine each of those rules the way we're  
9 asking you to examine the mandatory stay rule and make a  
10 determination: What is the intent? What is the purpose of the  
11 rule? When we crafted that rule, did we intend customers in  
12 this broader sense, or did we intend it in the narrower sense?

13 CHAIRMAN JABER: Thank you, Mr. Melson.

14 Mr. Hatch, did you have a presentation or --

15 MR. HATCH: What I was going to do for my -- I'm  
16 adopting and agree with all the comments made by Mr. Melson.  
17 I'd only add one minor thing. In the question -- Ms. Caswell's  
18 presentation she mentioned the GTE versus Clark case and how  
19 that played out. I would point out to you in that case that  
20 Verizon did not ask for a stay, did not -- and in fact part of  
21 that case was a reduction in rates and would have been entitled  
22 at least for that portion for a mandatory stay. They did not  
23 ask for that stay. But at the end of that case, if you  
24 recall -- I'm sure Commissioner Deason would recall because he  
25 was still on the panel at that point -- that case went up to

1 the Supreme Court, came back --

2 CHAIRMAN JABER: Unfortunately, I recall, too.

3 MR. HATCH: -- the Commission entered its order on  
4 remand, and that order went up, back to the Supreme Court  
5 because Verizon disagreed with the disposition of the remand.  
6 What the Court essentially said at the end when the dust  
7 settled was that the Commission basically has a fair amount of  
8 equitable authority to fashion a correct remedy, and the  
9 correct remedy is to be fair to all folks. In the end, what  
10 the Court said is it didn't matter whether Verizon asked for a  
11 stay, the Commission has the authority to fix it at the end.

12 The point that I would make to you now is, is that  
13 the fix that the Court and the Commission ultimately used was  
14 the surcharge. And the surcharge that Ms. Caswell says is such  
15 an easy mechanism to recover in the event that you need those  
16 revenues is equally applicable here. At the very end of this  
17 case, if they win, then there is the potential for a surcharge,  
18 and then you can figure out what that surcharge should be. But  
19 as Mr. Melson said, if you impose the stay now, that is an  
20 absolute or potentially an absolute barrier to competition.  
21 How do you go back and capture with the refund the carriers  
22 that could not enter the market, never did enter the market?  
23 There's just simply no way to do that -- and that the public  
24 interest would weigh far heavier against imposing the stay.  
25 Thank you.

1           CHAIRMAN JABER: Ms. Caswell, the question I wanted  
2 you to address with respect to the law on stays, if the ALECs  
3 do appeal whatever ultimate order comes out of reconsideration,  
4 do we get to the same point we're at today anyway with some  
5 sort of federal procedure on a stay?

6           MS. CASWELL: Well, we have asked for a stay only to  
7 the conclusion of the judicial proceedings on our appeal. I  
8 don't know what WorldCom might do. They could come to you --  
9 I'm not sure why they'd ask for a stay, but they can ask for  
10 one pending the federal appeal, but as it relates to the issue  
11 today, all that we're asking for is a stay until the conclusion  
12 of the Supreme Court appeal. And I'm not sure if that answers  
13 your question. I don't think it's going to --

14           CHAIRMAN JABER: It does.

15           MS. CASWELL: It's not going to automatically  
16 continue on to the Federal Court appeal. I don't think that's  
17 the way it would work.

18           CHAIRMAN JABER: All right. And with respect to the  
19 argument that the corporate undertaking is not sufficient  
20 because the incremental period doesn't start until you modify  
21 the contracts to allow for the rates to be incorporated, could  
22 you touch on that, please?

23           MS. CASWELL: Yeah. And Mr. Melson is correct that  
24 the rates don't go into effect immediately upon the order  
25 becoming effective. We did argue that in the case, by the way.

1 Verizon said, we wanted the rates to go into effect when the  
2 order took effect, and the CLECs, for some reason, didn't want  
3 that to happen, so we were left with negotiating amendments.

4 If the Commission likes, I will stipulate that the  
5 rates are effective as of the date the stay order is issued so  
6 that we don't have any -- we don't have any concerns about  
7 potential disputes later or what Mr. Melson calls a charade,  
8 Verizon coming back and saying, look, the rates weren't in  
9 effect. We can take care of that problem.

10 COMMISSIONER DEASON: Let me -- can I follow up on --

11 CHAIRMAN JABER: Your stipulation is that the  
12 rates --

13 MS. CASWELL: That the rates -- the UNE rates in the  
14 order take effect as of the date of your stay decision, you  
15 know, even though we haven't negotiated rate amendments. I  
16 mean, we were willing to put those rates in upon the effective  
17 date of the order anyway, so --

18 CHAIRMAN JABER: Okay. Commissioner Deason, you had  
19 a question.

20 COMMISSIONER DEASON: Yeah, I just wanted to follow  
21 up on that. I just want to be absolutely clear. It's your  
22 position that you're willing to stipulate that the rates are  
23 effective, the lower UNE rates would be effective. Assuming  
24 you are not successful in your appeal --

25 MS. CASWELL: Right.

1           COMMISSIONER DEASON: -- they would be effective with  
2 the date of the order granting the stay; is that correct?

3           CHAIRMAN JABER: And I guess that's all rates; right?  
4 Because some of those rates went up.

5           COMMISSIONER DEASON: Well, yes, the rates as a whole  
6 would be effective.

7           MS. CASWELL: Yes. I think that's what I'm agreeing  
8 to. I'd like to go back to my company and ask if it's okay.  
9 But I understand the problem. And, you know, whatever we want  
10 to do here there's a way to resolve it because we're not going  
11 to come back and go, oh, no, those rates were never in effect,  
12 so we're not giving any money back to anybody. I mean, that's  
13 not the way the stay rule is intended to operate, that's not  
14 what its terms say. I mean, we're supposed to give back the  
15 money if we lose, and we will do that one way or another. You  
16 know, we can work out that problem, and I think the way to work  
17 it out is just to stipulate an effective date of the rates.

18           COMMISSIONER DEASON: Well, what would be the CLECs'  
19 obligation to take advantage of your stipulation in the event  
20 that you're not successful and they were seeking some type of a  
21 refund?

22           MS. CASWELL: Yeah, I guess we could just require  
23 them to file a piece of paper with the Commission and say,  
24 look, you know, we want -- you know, we would have negotiated  
25 an amendment, we would have taken the rates, and we are going

1 to stipulate that they would have been effective as of the day  
2 the stay was entered. That's what I would contemplate. I'm  
3 doing this on the spur of the moment, but I think that's a fair  
4 and equitable way to do it, because there are some CLECs that  
5 may not want those rates for some reason because the zones did  
6 move around and maybe some of them wouldn't want to take the  
7 rates.

8 CHAIRMAN JABER: And, Ms. Caswell, just to refresh my  
9 memory, I thought that's why we struggled with the language  
10 about the effective date in the ultimate decision. It was --  
11 as it related to me in making that decision, I wanted to  
12 provide enough flexibility to the negotiating parties to  
13 understand what --

14 MS. CASWELL: Right. And there are terms and  
15 conditions that, you know, maybe, you know, one company  
16 wouldn't want, another company would. So I can understand why  
17 the Commission ordered the rate amendments and why the CLECs  
18 might have wanted them. But we don't have to let that prevent  
19 us from -- you know, I don't think that should overshadow the  
20 stay consideration.

21 CHAIRMAN JABER: Commissioners, do you have other  
22 questions?

23 COMMISSIONER BRADLEY: Yes.

24 CHAIRMAN JABER: Commissioner Bradley.

25 COMMISSIONER BRADLEY: To both parties, did you



1 all -- what was your response to the request that you all sit  
2 down and try and negotiate a stipulation as it relates to the  
3 entire proceeding that we are considering here today? Is there  
4 any particular reason why you all could not come to some  
5 agreement rather than have this come before the Commission  
6 itself?

7 MR. MELSON: Commissioner Bradley, I think the  
8 likelihood that the parties could come to an agreement is very  
9 small simply because of our fundamental view that we can't  
10 really get into business in Verizon's territory under the rates  
11 that exist today, that it would be a struggle to do so under  
12 the lower rates in your order, but that at least would give us  
13 a potential shot and -- so it's not a place where there's any  
14 room in the middle.

15 Our position is the new rates need to be effective  
16 during the appeal. Verizon's position is those rates should  
17 not be effective during the appeal. And I don't think there's  
18 a middle ground, and I'm pretty confident that we would not be  
19 comfortable moving to Verizon's position. Obviously I can't  
20 speak for whether Verizon would be likely to move to ours.

21 COMMISSIONER BRADLEY: Okay. And let me ask this  
22 question. With the stipulation that Verizon just put on the  
23 table, does that in any way change your opinion?

24 MR. MELSON: That eliminates a potential issue, but  
25 from WorldCom's position, it's really only a potential issue

1 because we're not there today, we're not buying UNEs today. We  
2 may never buy them at the current rates. And so when we get  
3 out 18 months, the court says we've won, the rates go down, we  
4 may begin buying them then, but there's nothing to true-up for.  
5 So the fact that Verizon has agreed to true-up as a practical  
6 matter may not do us any good at all.

7 COMMISSIONER BRADLEY: It would appear to me --

8 CHAIRMAN JABER: I'm sorry, Commissioner Bradley.

9 COMMISSIONER BRADLEY: Yeah, go ahead.

10 CHAIRMAN JABER: May I follow up?

11 COMMISSIONER BRADLEY: Yeah.

12 CHAIRMAN JABER: It seems to me though the  
13 stipulation gives you a unique opportunity to adjust your  
14 business plan. You may now sit back and say, you know, I'm  
15 going to take a risk and buy UNEs knowing that when the  
16 Commission wins on appeal, the effective date of the UNE rate  
17 will be the day of the stay order which we can get out in 20  
18 days.

19 MR. MELSON: And, Commissioner, the question is, is  
20 getting those dollars in 18 months or 12 months or 2 years  
21 sufficient to drive a business decision today when we're going  
22 to be arguing probably to Federal Court that the rates are  
23 too -- even those rates are too high? I just --

24 CHAIRMAN JABER: But, Mr. Melson, isn't that a  
25 short-term vision? Because if you were thinking long term, and

1 I don't mean that personally, you know I think the world of  
2 your legal skills and your abilities, but if the company was  
3 thinking long term, it seems to me you have a unique  
4 opportunity to get as many customers as you want so that you  
5 broaden your market base and therefore the risk of costs  
6 associated with that 18-month period gets mitigated.

7 MR. MELSON: And, Commissioner, the answer is, if  
8 we're losing money on every customer, is it a good business  
9 decision to go out and get more of them and lose more with the  
10 expectation at the end of the day we will be made whole?

11 CHAIRMAN JABER: But you're going to put them on your  
12 neighborhood plan which is a great bundled service and capture  
13 the market, or as much of the market as you can. I don't mean  
14 to mix policy with legal, because I do agree with Ms. Caswell  
15 that this is completely a legal determination.

16 And Commissioner Bradley has a question. But my  
17 point to you is, it gets real frustrating as a decision maker,  
18 and I'm speaking for myself, to listen time and time again not  
19 to just your side but both sides, with all due respect, to  
20 short-term visions and not long-term visions.

21 Commissioner Bradley, you have a question.

22 COMMISSIONER BRADLEY: I will --

23 CHAIRMAN JABER: Commissioner Deason.

24 COMMISSIONER DEASON: I'm just dying to ask a  
25 question.

1 CHAIRMAN JABER: Go ahead.

2 COMMISSIONER DEASON: Commissioner Bradley has been  
3 gracious enough to let me ask my question. Thank you.

4 COMMISSIONER BRADLEY: Yes, Commissioner Deason.

5 COMMISSIONER DEASON: Mr. Melson, I'm having  
6 difficulty reconciling your positions. In one argument you're  
7 saying that if we grant the stay, that's going to have an  
8 adverse effect on competition, but then on the other hand with  
9 the stipulation that Verizon had just put on the table, you're  
10 saying, well, it doesn't matter, we're probably not going to  
11 enter the market anyway. So which it is? Does granting the  
12 stay have an adverse impact on competition or does it not?

13 MR. MELSON: Yes, sir.

14 COMMISSIONER DEASON: Okay. Can you explain?

15 MR. MELSON: Yes. Because Ms. Caswell's stipulation  
16 still applies to the situation in which a stay is granted. You  
17 grant the stay, she stipulates that, at the end of the day if  
18 the Commission's order is upheld, she will then give money  
19 back. But during that time period, the company is out of  
20 pocket cash flow today's existing rates.

21 COMMISSIONER DEASON: Okay. Let me ask the question  
22 this way then. If we denied the stay, does that mean you're  
23 entering the market?

24 MR. MELSON: I think it substantially increases --

25 COMMISSIONER DEASON: No, I'm not -- are you entering

1 the market if we grant the stay?

2 MR. MELSON: I don't know.

3 COMMISSIONER DEASON: Because you're saying you're  
4 going to be arguing at Federal Court that it's too high that  
5 you can't enter the market anyway. So how does that impact  
6 competition?

7 MR. MELSON: We're going to be arguing at Federal  
8 Court that it's too high because it violates TELRIC, but the  
9 rates are lower. Whether that's enough to tip the decision to  
10 enter the market is a decision that I don't make and that at  
11 this point I'm not privy to. I can tell you, the existing  
12 rates pretty clearly are a barrier. The new rates are a lower  
13 barrier, and whether that's a barrier we can jump, I would hope  
14 so, but I can't sit here today and tell you for sure yes or no.

15 COMMISSIONER DEASON: Do you agree that the whole  
16 question is the risk of pay me now or pay me later kind of a  
17 situation? If you decide to go ahead and enter the market, you  
18 may have to pay -- if we grant the stay, pay the higher rates  
19 anticipating a refund that you would be made whole?

20 MR. MELSON: We would be made whole to that level,  
21 yes, sir. And the question is, given each individual carrier's  
22 business situation, is that a business decision it is going to  
23 make to go out and try to increase -- start building an  
24 increasing market share at a time when that business is not  
25 profitable --

1           COMMISSIONER DEASON: But don't you still have the  
2 risk that if we deny the stay and you entered the market,  
3 assuming you do, and you begin paying the lower rates, you may  
4 be faced with a surcharge if Verizon is successful in their  
5 appeal?

6           MR. MELSON: And, Commissioner, that is also a risk.  
7 That is -- whether we would be faced with a surcharge involves  
8 a whole host of additional questions and considerations that I  
9 don't think there are answers to.

10           COMMISSIONER DEASON: Well, how is this  
11 distinguishable from the situation Verizon versus Clark which  
12 one of the attorneys just referenced?

13           MR. MELSON: That case was in a rate base rate of  
14 return environment where once Verizon or GTE filed the rate  
15 case, they were entitled to a Commission decision within 12  
16 months. They were entitled to earn a regulated rate of return  
17 and under rate of return rate base regulation concepts, you've  
18 always got to get the pot right. In this situation involving  
19 rates that are being set against the standard, we don't even  
20 know exactly what Verizon is going to -- what issues it's going  
21 to raise on appeal because the time for them to do that is in  
22 their brief and their brief isn't due yet.

23           Depending on whether the Court affirmed, reversed,  
24 remanded for further proceedings, remanded with directions to  
25 do something specific, remanded with directions to apply a

1 different standard, I think there's a great unanswered question  
2 as to what happens at the end of the day. It would almost be  
3 like sitting in the Southern States case six or seven years ago  
4 and saying, can we see the end game? And we probably all could  
5 have sat around and guessed, and probably none of us would have  
6 guessed right.

7 COMMISSIONER DEASON: Thank you, Commissioner. I  
8 apologize for that and taking so long.

9 CHAIRMAN JABER: The morning could not have gone by  
10 without those two words coming up.

11 Commissioner Bradley.

12 COMMISSIONER BRADLEY: I will yield to Commissioner  
13 Baez and then ask my question.

14 CHAIRMAN JABER: Commissioner Baez.

15 COMMISSIONER BAEZ: Just a couple of questions.  
16 First of all, that was a low blow with the Southern States.

17 MR. MELSON: I'm sorry?

18 COMMISSIONER BAEZ: That's a low below with the  
19 Southern States.

20 MR. MELSON: I didn't participate. I just reread all  
21 the decisions again last night.

22 COMMISSIONER BAEZ: Question one. I heard the  
23 Chairman agree with Ms. Caswell that this is a legal issue. Do  
24 you agree that is a legal issue?

25 MR. MELSON: Yes.

1 COMMISSIONER BAEZ: Strictly a legal issue?

2 MR. MELSON: I think it's strictly a legal issue as  
3 to what that rule means. I think if you say -- if you get  
4 beyond her position of plain meaning rule, and I think you need  
5 to, then I think the legal issue is colored by the history of  
6 the rule and some of the policy considerations. So it's  
7 ultimately a legal issue, but whether there are policy  
8 considerations that bear on the resolution of it is debateable.

9 COMMISSIONER BAEZ: Okay. And in these kinds of  
10 situations, I'd like to ask you, let's put the shoe on the  
11 other foot, all right, and let's say that the UNE rates had  
12 gone up. Would you be claiming that you were a customer?

13 MR. MELSON: Would I be claiming that I was a  
14 customer? I would probably be asking for a discretionary stay  
15 and arguing not necessarily irreparable harm, I'd be arguing  
16 that I was likely to prevail on appeal, and I'd be arguing that  
17 under Sub C there's a harm to the public interest unless the  
18 order is stayed.

19 COMMISSIONER BAEZ: And I mean no disrespect to  
20 Ms. Caswell. I think that the whole issue of not having pled  
21 for a discretionary stay was probably, you know, going for half  
22 a loaf from the outset. That probably should have been before  
23 us at this point as well. It's just my opinion. You have your  
24 reasons for doing it and that's fine. So I guess the question  
25 to you is, why couldn't you argue that this was -- I mean,



1 we're having an argument, we're having a decision here.  
2 Reasonable minds are disagreeing. Why wouldn't you argue that  
3 you're entitled to a mandatory stay?

4           And here's the issue that I have, whenever there's  
5 complaints from the CLEC community, whenever we're dealing with  
6 OSS standards, setting benchmarks and all of this stuff, you  
7 know, we're operating under the philosophy that competitive  
8 providers are customers and that they're entitled to a certain  
9 type of service. And I dare say that when competitive  
10 providers come here and say, we're not getting the treatment  
11 that we need, it's from the basis that they are a customer.  
12 And I'm not sure -- you know, regardless of what the intent may  
13 have been or what the history -- the context may have been at  
14 the time that these rules are drafted originally, you know, I  
15 think they have to move with the times. So how can we have it  
16 one way and not the other under these types of circumstances?  
17 How can we claim that we're a customer one day and then we're  
18 not a customer for purposes of other things?

19           MR. MELSON: Commissioner Baez, I don't think we've  
20 ever said we're not customers.

21           COMMISSIONER BAEZ: No, I know.

22           MR. MELSON: We don't think customer is a complete  
23 description. We think there are wholesale customers and there  
24 are retail customers, and we believe that this rule was  
25 intended to apply to retail customers, not to wholesale

1 customers. But to give you a better answer to your shoe on the  
2 other foot question, I would not be entitled to a mandatory  
3 stay in any event because it involves refund of moneys or  
4 decrease in rates and I would be looking at an increase in  
5 rates.

6 COMMISSIONER BAEZ: Fair enough.

7 MR. MELSON: So I've got an easier answer to that  
8 than I thought I did.

9 COMMISSIONER BAEZ: Can you explain -- and I guess --  
10 I read the rule -- or I'm reading the rule and, you know, we're  
11 trying to attribute meanings to the words in the rule. And  
12 when it says "upon motion filed by the utility or company  
13 affected," what does that suggest to you, the words "or  
14 company"? What's the intent of that word?

15 MR. MELSON: I don't know because anything that  
16 involves refund of money to customers or decrease in rates  
17 charged to customers would be what I would consider a utility.  
18 So I don't what "or company" adds to it.

19 MR. HATCH: Commissioner Baez, I may add something to  
20 that.

21 COMMISSIONER BAEZ: Sure.

22 MR. HATCH: There used to be a dichotomy in the way  
23 the statutes were constructed between the electrics and the  
24 water and sewers and the telephones. "Utility" by definition  
25 didn't include telecommunications, and so the rule was drafted

1 to cover telecommunications companies which were not defined in  
2 Florida law as utilities. Utilities in Florida law were  
3 defined previously as electric and water and sewer. Just a  
4 historic anomaly.

5 CHAIRMAN JABER: Commissioners, if there are no other  
6 questions -- Commissioner Bradley.

7 COMMISSIONER BRADLEY: Yeah. And I know that I've  
8 heard several times, and it's true that this is strictly a  
9 legal matter, but it's almost impossible to sort through the  
10 legal issues especially when, you know, I keep hearing the  
11 statement "in the public interest" which gets into policy, in  
12 my opinion. So I guess it's kind of difficult to make a legal  
13 ruling without giving some consideration to policy, but I've  
14 heard the ALECs say that they intend to take this matter to a  
15 higher court no matter what or how this Commission rules. I've  
16 heard the ILECs -- well, the ILEC, Verizon in this case, state  
17 that that's not their intent even though your interpretation of  
18 what she said is different.

19 Is that correct, Ms. Caswell, that you, during the  
20 time that you were speaking, said that it was not Verizon's  
21 intent to take it past the Supreme Court?

22 MS. CASWELL: Correct. We haven't had any  
23 discussions like that.

24 COMMISSIONER BRADLEY: Okay. But, however, I know  
25 that based upon what you have heard here today that that may

1 change your strategy.

2 MS. CASWELL: No, I don't think so, but --

3 COMMISSIONER BRADLEY: Okay. My point is this. What  
4 if Verizon prevails? I'm talking to the ALECs and the CLECs.  
5 It would seem to me that it's -- you all are assuming that they  
6 are going to prevail if your intent is to take it to the next  
7 level.

8 MR. MELSON: No, Commissioner, and it is not a next  
9 level, it is a different court.

10 COMMISSIONER BRADLEY: Well, another court then which  
11 is --

12 MR. MELSON: A different court. And what Verizon has  
13 taken your order to the Florida Supreme Court presumably going  
14 to argue that the rates you set are too low. We have a pending  
15 motion for reconsideration. We believe the rates you set are  
16 too high. Assuming you grant our motion for reconsideration,  
17 we will be vigorously defending your order in whatever court  
18 it's in.

19 Assuming that you deny the motion for  
20 reconsideration, we believe the rates are too low, we've got  
21 two options. We can appeal to the Florida Supreme Court and  
22 perhaps consolidate with Verizon's appeal, or we can go to  
23 Federal Court. That decision has not been made, but our track  
24 record has been to think that because these involve federal  
25 questions, that Federal Court is the more appropriate forum.

1 So that is likely where we would end up. And with sort of the  
2 Commission order in the middle, Verizon arguing the rates are  
3 too low and us arguing they are too high.

4 CHAIRMAN JABER: Thank you, Commissioner Bradley.  
5 What is it you've beat into me now ever since you've been on  
6 the Commission? Good policy means both sides walk away  
7 unhappy, and I think we've made good policy.

8 Commissioners, let me tell you, I have to be  
9 consistent with how I've approached being a Commissioner as it  
10 relates to telecommunications. I've tried to reinforce with  
11 the ILECs that ALECs are customers. And from the day I joined  
12 the Commission it's, why can't you treat them like customers?  
13 They are customers. A customer is a customer. So I find  
14 myself agreeing with Ms. Caswell that this is purely a legal  
15 issue and the plain meaning of the rule says "customer." So I  
16 would support any motion that would be to deny staff on the  
17 legal basis that the rule is applicable here.

18 And I would note, Commissioners, just for my own  
19 purpose and to the degree it is of benefit to you, I don't  
20 believe in reading the BellSouth stay order. I don't believe a  
21 decision to deny staff's recommendation on the petition for a  
22 stay is inconsistent with the Bell stay order. As I look at  
23 the ruling, the BellSouth stay order at Page it looks like  
24 4 and 5, the Commission, the previous Commission specifically  
25 stated that the rule is designed to apply to rate cases or

1 other proceedings involving rates and charges to end use  
2 ratepayers or consumers. And I think that's consistent with  
3 what I just said. I mean, for whatever reason, the Commission  
4 made a distinction between end use ratepayers or consumers.  
5 And that's good enough for me. If we grant the stay, I think  
6 it's consistent with previous decisions. I think it's  
7 consistent with how the rule should be applied.

8           And then finally, Commissioners, I would be  
9 supportive of a motion that would include recognition and  
10 adoption of the stipulation that was offered because I do think  
11 Mr. Melson raises an excellent point that has the potential to  
12 be just completely chaotic as we start thinking about the  
13 corporate undertaking with respect to the effective date. So I  
14 would encourage supporting the stipulation.

15           And, finally, I would give staff leave or an  
16 opportunity to address the corporate undertaking at an agenda  
17 that's coming up real soon. Selfishly my hope is you never  
18 have to get to an agenda, that the parties will sit down and  
19 figure out what the appropriate corporate undertaking is, and I  
20 don't know that that has to come back to agenda, but you all --  
21 Harold, your team, and, David, you can decide what the  
22 appropriate mechanism is.

23           MR. McLEAN: Yes, ma'am.

24           CHAIRMAN JABER: This is obviously on the assumption  
25 that the Commission will be supportive. Finally, I have a

1 request. It is time for us to move forward. I think the last  
2 few months have shown you that this Commission is going to use  
3 whatever resources it has to provide a fair opportunity for all  
4 the telecommunications industry to participate in a marketplace  
5 that's going to bring benefits to consumers. If we haven't  
6 shown you that in the last few months, I really don't know what  
7 will.

8           Saying that, Ms. Caswell, I would hope you take back  
9 my request to your CEO that this appeal get withdrawn. And,  
10 Mr. Melson, and, Mr. Hatch, I would hope you take back to your  
11 clients my request that the motions for reconsideration and  
12 whatever federal action you are thinking about gets withdrawn.  
13 And that is for the selfish purpose of all of us moving on. If  
14 you're complaining about expenses, don't create them.

15           Commissioners, I'm ready for a motion.

16           COMMISSIONER BRADLEY: I will -- I'll make the  
17 motion.

18           COMMISSIONER DEASON: Let me say one thing real quick  
19 because I can support -- if you're going to make a motion  
20 consistent with what the Chairman just described, I can  
21 certainly support it. My only request is that I think  
22 within -- or I'm anticipating that within your motion there  
23 probably would be recognition of the offer made by Verizon to  
24 have the UNE rates -- the new UNE rates become effective the  
25 date of the order granting the stay. I would be more

1 comfortable seeing that.

2 I know that Ms. Caswell, and this is not in any way  
3 critical of her, she recognizes this is not something she has  
4 discussed with her client.

5 CHAIRMAN JABER: Right.

6 MS. CASWELL: Yeah. What I would contemplate, I  
7 guess, is that you would condition the stay upon the  
8 understanding that the rates -- you know, that it's agreed that  
9 the rates take effect as of the stay order, but I agree,  
10 certainly, you know, we could work on the language, look it  
11 over, make sure that everybody's okay with it, or not,  
12 depending on what you want to do.

13 COMMISSIONER DEASON: Well, I can live either way. I  
14 would either -- if we're going to grant the stay, I would want  
15 to see that in writing, or if we want to condition it with you  
16 filing that subsequent --

17 MS. CASWELL: Okay.

18 MR. McLEAN: Madam Chairman, may I add something to  
19 that? You have the authority to place conditions on the stay  
20 with or without Verizon's --

21 CHAIRMAN JABER: Stipulation.

22 MR. McLEAN: -- stipulation. I'm happy that they  
23 are, and we really appreciate it. That will save us a lot of  
24 work, but I did want to point out, the Commission has the  
25 authority to impose whatever stays it seems just.



1 CHAIRMAN JABER: That's a good point, Mr. McLean.

2 MR. McLEAN: Sure.

3 CHAIRMAN JABER: We have the option of putting in  
4 whatever language we want as a condition of the stay, and  
5 honestly, I'm amenable to both. I don't -- it doesn't --

6 COMMISSIONER DEASON: Well, you know, if it's a  
7 condition of the stay and that's going to be included in the  
8 motion, I can support that.

9 COMMISSIONER BAEZ: And that's as of the effective  
10 date of the order?

11 CHAIRMAN JABER: Yeah. It would be conditioning the  
12 approval for a mandatory stay with the proviso that the rates  
13 up or down can become effective upon issuance of the order on  
14 stay.

15 MS. CASWELL: Yeah. And you might want to put  
16 something in there about a CLEC making some affirmative, you  
17 know, filing that they want to take the rates in case some of  
18 them don't. You know, maybe we could work it out later, but I  
19 guess that's up to them.

20 CHAIRMAN JABER: And the mechanism could vary. I  
21 mean, I suppose they could call you and say, let's negotiate,  
22 or they could file --

23 MS. CASWELL: Yeah. And we've already had some calls  
24 to negotiate the rates, so certainly, you know, those CLECs  
25 would be included. We haven't had just an avalanche of

1 requests, but, you know, this could be a means to at least, you  
2 know, have them go on record saying, we want the --

3 MR. McLEAN: Madam Chairman, as we craft that  
4 language, I'm sure we will consult with both parties and ensure  
5 that they give us help and input and so forth on whether that  
6 condition is appropriate to them and appropriate to the  
7 Commission decision as well. We will work with them, and we  
8 can get the three of us together in some form and decide --

9 CHAIRMAN JABER: Yeah, and just to help you out  
10 because I don't want any problems later on, just to help you  
11 out, it would be that the language is consistent with the  
12 spirit of what the Commission is trying to accomplish here  
13 today.

14 MR. McLEAN: Yes, ma'am. Obviously, yes, ma'am.

15 CHAIRMAN JABER: Commissioners, I'm comfortable with  
16 that.

17 COMMISSIONER BRADLEY: Okay. And also, I'd like to  
18 have some verbiage that indicates that there is going to be a  
19 bond put forth by Verizon as you agreed to do.

20 MS. CASWELL: Either a -- a corporate undertaking is  
21 what I think the staff recommended, and we're fine with that.

22 COMMISSIONER BRADLEY: Okay.

23 MR. McLEAN: Yes, sir. In this context, I think a  
24 corporate undertaking will be the equivalent of a bond given  
25 Verizon's financial credibility.

1           COMMISSIONER BRADLEY: Okay. Staff will need to  
2 craft the motion, but I need to start out by saying that my  
3 first motion would be to deny staff as it relates to Issue  
4 2 and to allow Verizon to have the mandatory stay.

5           CHAIRMAN JABER: Okay. So the motion, taking it a  
6 step at a time, is to deny staff on Issue 2 and therefore grant  
7 Verizon's motion for a mandatory stay. All those in favor say  
8 "aye."

9           (Simultaneous affirmative responses.)

10          COMMISSIONER BRADLEY: And also, to -- my second  
11 motion would be to have staff incorporate the stipulated  
12 language and the concept of -- not the bond but what was  
13 that --

14          CHAIRMAN JABER: Corporate undertaking.

15          COMMISSIONER BRADLEY: -- corporate undertaking as a  
16 part of our rendering, also.

17          CHAIRMAN JABER: Okay. So the motion would be to  
18 allow Verizon to file a corporate undertaking and to -- and for  
19 us to recognize that the stay decision was -- had the caveat  
20 that the rates will become effective the date the stay order is  
21 issued.

22          COMMISSIONER BRADLEY: Yes.

23          COMMISSIONER DEASON: Second.

24          CHAIRMAN JABER: All those in favor say "aye."

25          (Simultaneous affirmative responses.)

1 CHAIRMAN JABER: That motion is approved unanimously.  
2 Commissioner Bradley, let me see if -- did we forget anything?

3 COMMISSIONER BRADLEY: Is there another issue?

4 COMMISSIONER DEASON: We have Issue 3.

5 CHAIRMAN JABER: Okay. Issue 3, is it close the  
6 docket? Yeah.

7 COMMISSIONER DEASON: Of course, at the Chairman's  
8 urging, Issue 3 may go away, but I guess for today we have to  
9 leave the docket open.

10 CHAIRMAN JABER: I really do hope you take that  
11 request seriously. We do not ask for much, and it's in the  
12 spirit of moving on, recognizing the financial conditions of  
13 the entire industry. I hope you evaluate that request  
14 seriously.

15 MS. CASWELL: I will take it back. I'm not the  
16 decision maker, but I will take it back.

17 COMMISSIONER BRADLEY: Madam Chair?

18 CHAIRMAN JABER: If the decision maker needs to have  
19 additional conversations, I'm sure that decision -- the  
20 decision maker knows where to find this decision maker.

21 MS. CASWELL: Understood.

22 COMMISSIONER BRADLEY: Okay. And just to make sure  
23 we have concluded our business, I think we probably need to  
24 make a motion as it relates to Issue 3.

25 CHAIRMAN JABER: Yes.

1 COMMISSIONER BRADLEY: And I think Commissioner  
2 Deason made a motion and I would second it.

3 COMMISSIONER DEASON: Yeah, I would move staff on  
4 Issue 3.

5 CHAIRMAN JABER: And a second. All those in favor  
6 say "aye."

7 (Simultaneous affirmative responses.)

8 CHAIRMAN JABER: Issue 3 is approved.

9 Thank you for your very professional presentations.  
10 Commissioners, thank you for getting up so early this morning.  
11 This concludes the agenda.

12 (Special Agenda Conference concluded at 9:57 a.m.)

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

4  
5         I, TRICIA DeMARTE, RPR, Official Commission Reporter, do  
6 hereby certify that the foregoing proceeding was heard at the  
7 time and place herein stated.

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

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

18             DATED THIS 14th DAY OF APRIL, 2003.

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