

ORIGINAL



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April 17, 2003

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COMMISSION
CLERK

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000075-TP (Phase IIA)
Investigation into appropriate methods to compensate carriers for exchange of
traffic subject to Section 251 of the Telecommunications Act of 1996

Dear Ms. Bayo:

Enclosed are an original and 15 copies of the transcripts of the Agenda Conferences
held August 20, 2002 and December 17, 2002 in the above matter. Verizon Florida
Inc. respectfully requests that these transcripts be filed in this docket. If there are any
questions regarding this matter, please contact me at 813-483-2617.

Sincerely,

Kimberly Caswell

for

KC:tas
Enclosures

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via U.S. mail on
April 17, 2003 to the parties on the attached list.



for Kimberly Gaswell

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ORIGINAL

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 000075-TP - Investigation into
appropriate methods to compensate carriers for
exchange of traffic subject to Section 251 of
the Telecommunications Act of 1996.

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

PROCEEDINGS: AGENDA CONFERENCE

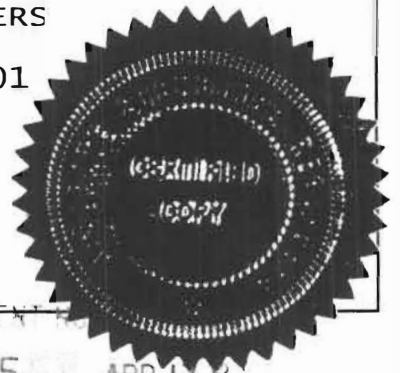
ITEM NUMBER: 21

DATE: Tuesday, August 20, 2002

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850)878-2221



DOCUMENT #

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FPSC-COMMISSION CLERK

PARTICIPANTS:

KEVIN BLOOM, FPSC.

STAFF RECOMMENDATION

ISSUE 13: How should a "local calling area" be defined for purposes of determining the applicability of reciprocal compensation?

a) What is the Commission's jurisdiction in this matter?

b) Should the Commission establish a default definition of local calling area for the purpose of intercarrier compensation, to apply in the event parties cannot reach a negotiated agreement?

c) If so, should the default definition of a local calling area for purposes of intercarrier compensation be: 1) LATA-wide local calling, 2) based upon the originating carrier's retail local calling area, or 3) some other default definition/mechanism?

PRIMARY RECOMMENDATION: The local calling area should be defined through negotiations between the parties. While staff believes the Commission has jurisdiction to define local calling areas, staff does not believe a compelling case can be made to exercise the Commission's jurisdiction to designate a default in the event negotiations are unproductive.

ALTERNATIVE RECOMMENDATION: Alternative staff believes that the Commission has jurisdiction to determine local calling areas, and recommends that the originating carrier's retail local calling area be used as the default local calling area for purposes of reciprocal compensation.

ISSUE 17: Should the Commission establish compensation mechanisms governing the transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties reaching an agreement or negotiating a compensation mechanism? If so, what should be the mechanism?

a) Does the Commission have jurisdiction to establish bill-and-keep?

b) What is the potential financial impact, if any, on ILECs and ALECs of bill-and-keep arrangements?

c) If the Commission imposes bill-and-keep as a default mechanism, will the Commission need to define generically "roughly balanced"? If so, how

should the Commission define "roughly balanced"?

d) what potential advantages or disadvantages would result from the imposition of bill-and-keep arrangements as a default mechanism, particularly in comparison to other mechanisms already presented in Phase II of this docket?

RECOMMENDATION: No. Staff does not recommend the imposition of a single compensation mechanism governing the transport and delivery or termination of traffic subject to Section 251 of the Act to be used in the absence of the parties negotiating a compensation mechanism. While staff believes the Commission has the jurisdiction to establish bill-and-keep subject to either a determination or a presumption that a traffic between carriers is roughly balanced, the record of this proceeding does not support such a determination and argues against a presumption of balance. Should the Commission determine that the imposition of a bill-and-keep default is desirable, staff recommends the Commission define roughly balanced to mean the traffic imbalance is less than 10% between carriers over a three-month period.

ISSUE 19A: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon the expiration of the time to file a motion for reconsideration or an appeal, since no further action is required by the Commission.

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PROCEEDINGS

CHAIRMAN JABER: Item 21 is a panel of Jaber, Deason, Baez, and Palecki.

MR. BLOOM: Commissioners, Item 21, you have before you staff's recommendation on Issues 13 and 17 in Phase II-A of Docket 000075. As you may recall, at the agenda conference on the 5th of December, you voted on Issues 10, 11, 12, 14, 15, 16, 18, and 19, and then directed us, the staff, to conduct a one-day hearing on Issues 13 and 17 to supplement the record. You now have that recommendation before you.

Issue 13 deals with the issue of defining local calling areas. There is a primary and an alternate. I am responsible for the primary, and Ms. Simmons is responsible for the alternate.

Issue 17 deals with the issue of compensation mechanisms, and specifically bill-and-keep, and Issue 19a is the close docket issue.

We are at this time prepared to answer any questions you may have.

CHAIRMAN JABER: Commissioners, we should take them up issue by issue because of the

1 primary and the alternative, so Issue 13. Do
2 you have any questions of staff or a motion?

3 COMMISSIONER DEASON: Madam Chairman, I had
4 the opportunity to meet with staff and discuss
5 this matter, and I'm comfortable making a
6 motion. I certainly recognize there may be
7 questions from other Commissioners, and that
8 would be fine too.

9 CHAIRMAN JABER: Commissioners?

10 COMMISSIONER DEASON: If there are no other
11 questions, we do have a primary and an
12 alternative, and I would say that I support the
13 alternative. And the main reason for that is, I
14 believe that it provides an avenue for
15 competitive companies to perhaps define local
16 calling areas in a different manner such that
17 they can be responsive to the market as they
18 deem appropriate. I think that the primary
19 recommendation keeps the current local calling
20 areas in a status quo situation. Those calling
21 areas were established before there was
22 competition, and I'm not so sure that that's
23 necessarily the correct model in a competitive
24 environment.

25 I know that there are perhaps some concerns

1 about some administrative costs with the
2 alternative recommendation. I would note,
3 though, that in the record there is evidence
4 that BellSouth has been able to accommodate that
5 particular arrangement, apparently successfully,
6 and so that gives me comfort that it is a
7 workable, doable situation.

8 So for those reasons, I would move that we
9 would adopt staff's alternative recommendation
10 on Issue 13.

11 CHAIRMAN JABER: Is there a second?

12 COMMISSIONER PALECKI: I second the motion.

13 CHAIRMAN JABER: There's been a -- any
14 discussion?

15 COMMISSIONER BAEZ: This is a real -- this
16 one is tough. I met with staff too, and I think
17 what -- guess my understanding of at least the
18 handicapping of the default is that nobody likes
19 it, and I think therein lies a lot of value. So
20 just with the understanding that there's still
21 negotiation available to --

22 COMMISSIONER DEASON: Well, let me say
23 that obviously the number one situation, the
24 most preferred situation is for the parties to
25 negotiate it and determine what best meets their

1 particular needs, and I certainly would endorse
2 that by all means. This isn't in the situation
3 of a default.

4 COMMISSIONER BAEZ: Yes. And I think, like
5 I said, therein lies the value. It may not be
6 the most comfortable arrangement for everyone,
7 and I think as long as the negotiation away from
8 it is available, I can support it.

9 CHAIRMAN JABER: Okay. There has been a
10 motion and a second to approve staff's
11 alternative recommendation. All those in favor
12 say aye.

13 (Simultaneous affirmative responses.)

14 CHAIRMAN JABER: Issue 13 alternative is
15 approved, with those clarifications.

16 COMMISSIONER BAEZ: Thank you.

17 CHAIRMAN JABER: Item -- Issue 17.

18 COMMISSIONER DEASON: Madam Chairman, I can
19 move staff's recommendation.

20 CHAIRMAN JABER: There has been a motion to
21 approve staff on Issue 17. All those in favor
22 say -- second?

23 COMMISSIONER PALECKI: Second.

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

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(Simultaneous affirmative responses.)

CHAIRMAN JABER: Issue 17 is approved.

Any objection to closing the docket?

COMMISSIONER BAEZ: Gosh, no.

COMMISSIONER DEASON: No.

COMMISSIONER PALECKI: No.

CHAIRMAN JABER: Mr. Bloom, do you have a problem with our closing the docket? There's a motion by Commissioner Deason to close the docket.

COMMISSIONER DEASON: Absolutely.

CHAIRMAN JABER: And a second by Commissioner Palecki.

COMMISSIONER BAEZ: Second.

CHAIRMAN JABER: All those in favor say aye.

(Simultaneous affirmative responses.)

CHAIRMAN JABER: Issue 19a is approved.

COMMISSIONER DEASON: Let me take this opportunity to congratulate staff on a very good recommendation and a very long and complicated docket. Good job.

CHAIRMAN JABER: Yes, excellent.


(Conclusion of consideration of Item 21.)

1
2 CERTIFICATE OF REPORTER3
4 STATE OF FLORIDA)5 COUNTY OF LEON)
6

7 I, MARY ALLEN NEEL, do hereby certify that the
8 foregoing proceedings were taken before me at the time
9 and place therein designated; that my shorthand notes
10 were thereafter transcribed under my supervision; and
11 that the foregoing pages numbered 1 through 8 are a
12 true and correct transcription of my stenographic
13 notes.

14 I FURTHER CERTIFY that I am not a relative,
15 employee, attorney or counsel of any of the parties,
16 or relative or employee of such attorney or counsel,
17 or financially interested in the action.

18 DATED THIS 29th day of August, 2002.
19
20

21 
22 _____
23 MARY ALLEN NEEL, RPR
24 100 Salem Court
25 Tallahassee, Florida 32301
(850) 878-2221

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 000075-TP - Investigation into
appropriate methods to compensate carriers for
exchange of traffic subject to Section 251 of
the Telecommunications Act of 1996.

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

PROCEEDINGS: AGENDA CONFERENCE

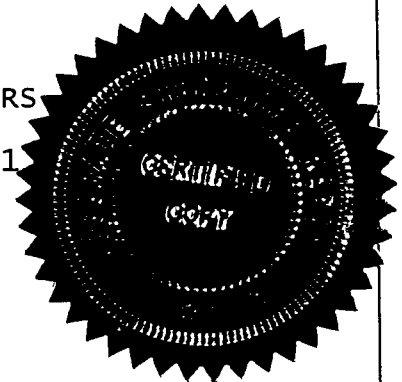
ITEM NUMBER: 25

DATE: Tuesday, December 17, 2002

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850)878-2221



PARTICIPANTS:

DAVID CHRISTIAN, Verizon.
MATTHEW FEIL, Florida Digital Network.
SUSAN MASTERTON, Sprint.
MARTIN MCDONNELL, Rutledge, Ecenia, Purnell &
Hoffman, on behalf of AT&T, AT&T Broadband, FCCA,
FCTA, Time Warner, and US LEC.
FELICIA BANKS, FPSC.

STAFF RECOMMENDATION

ISSUE A: Should the Commission grant AT&T/TCG/AT&T Broadband's request for oral argument on its motion for reconsideration of Order No. PSC-02-1248-FOF-TP?

RECOMMENDATION: No. Pursuant to Rule 25-22.060(1)(f), Florida Administrative Code, oral argument on any post-hearing motion for reconsideration may be granted solely at the Commission's discretion. In this instance, staff believes that oral argument will not aid the Commission in evaluating issues before it.

ISSUE 1: Should the Commission grant the various motions for reconsideration filed regarding the tandem interconnection rate and definition of comparable geographic area in Order No. PSC-02-1248-FOF-TP?

RECOMMENDATION: No. The motions have not identified a point of fact or law which was overlooked or which the Commission failed to consider in rendering its decision. Therefore, the motions for reconsideration regarding the tandem interconnection rate and definition of comparable geographic area in Order No. PSC-02-1248-FOF-TP should be denied.

ISSUE 2: Should the Commission grant the various motions for reconsideration filed regarding assignment of telephone numbers and the related intercarrier compensation in Order No. PSC-02-1248-FOF-TP?

RECOMMENDATION: No. The motions have not identified a point of fact or law which was overlooked or which the Commission failed to consider in rendering its decision. Therefore, the motions for reconsideration regarding assignment of telephone numbers and the related intercarrier compensation in Order No. PSC-02-1248-FOF-TP should be denied.

ISSUE 3: Should the Commission grant the various motions for reconsideration regarding the definition

of local calling area defined by Order No. PSC-02-1248-FOF-TP?

RECOMMENDATION: Yes. The motions have identified a point of fact or law which was overlooked or which the Commission failed to consider in rendering its decision. Therefore, the motions for reconsideration regarding the definition of local calling area established by Order No. PSC-02-1248-FOF-TP should be granted. Staff recommends that no default option specifying the applicable local calling scope for purposes of intercarrier compensation should be set at this time.

ISSUE 4: Should the Commission grant the various motions for reconsideration regarding the ruling requiring the originating carrier to bear all of the cost of transport to a distant point of interconnection in Order No. PSC-02-1248-FOF-TP?

RECOMMENDATION: No. The motions have not identified a point of fact or law which was overlooked or which the Commission failed to consider in rendering its decision. Therefore, the motions for reconsideration regarding the ruling requiring the originating carrier to bear all the cost of transport to a distant point of interconnection in Order No. PSC-02-1248-FOF-TP should be denied. However, staff believes the Commission should clarify and emphasize that this Commission's ruling will remain in effect only until such time as the FCC makes a definitive ruling on this issue. In addition, staff believes that the Commission should clarify that the point of interconnection designated by the ALEC, to which the originating carrier has the responsibility for delivering its traffic, must be within the ILEC's network.

ISSUE 5: Should Verizon's motion to strike GNAP's notice of adoption be granted?

RECOMMENDATION: Yes. GNAP's notice of adoption appears to be an untimely motion for reconsideration or response to a motion. It is not otherwise contemplated by the Commission rules.

ISSUE 6: Should the various requests/motions for stay pending appeal be granted?

RECOMMENDATION: If staff's recommendation in Issue 3 is approved and reconsideration is granted, staff believes that the requests for stay are rendered moot. If, however, the Commission denies staff's recommendation in Issue 3, staff recommends that the

requests for stay be denied.

ISSUE 7: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation, no further action would be required.

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PROCEEDINGS

CHAIRMAN JABER: That takes us to Item 25. Commissioners, Item 25 is a panel, Jaber, Deason, Baez, Palecki. It is post-hearing. Let me see if I can do this right here. Issue A addresses a request for oral argument, so we need to take that up first. And I would bring to your attention that the request for oral argument was filed on Issues 1 and 2. Staff believes we have discretion to hear oral argument on all the issues through 4.

Just for your benefit, I have to tell you, I need oral argument on Issue 3. But for me personally, that's the only one I need oral argument on.

COMMISSIONER PALECKI: I also would like to hear oral argument on Issue 3.

CHAIRMAN JABER: Okay. Commissioner Baez just said the same thing.

COMMISSIONER BAEZ: If that's a motion, I can second it.

CHAIRMAN JABER: Okay. There's a motion to hear oral argument only on Issue 3, and that would address your Issue A, and a second. All those in favor say aye.

1 (Simultaneous affirmative responses.)

2 CHAIRMAN JABER: So with respect to Issue
3 A, Ms. Banks, we are limiting oral argument to
4 Issue 3. Okay?

5 MS. BANKS: Okay.

6 CHAIRMAN JABER: Commissioners, is there a
7 motion on Issue 1?

8 COMMISSIONER DEASON: Move staff.

9 CHAIRMAN JABER: There's a motion and a
10 second to approve staff on Issue 1. All those
11 in favor say aye.

12 (Simultaneous affirmative responses.)

13 CHAIRMAN JABER: Issue 1 is approved.
14 Issue 2.

15 COMMISSIONER DEASON: Move staff.

16 COMMISSIONER PALECKI: Second.

17 CHAIRMAN JABER: Motion and a second to
18 approve staff on Issue 2. All those in favor
19 say aye.

20 (Simultaneous affirmative responses.)

21 CHAIRMAN JABER: That brings us to Issue 3.
22 I'm trying to assess whether we want to go ahead
23 and rule on the other issues. Are we ready for
24 a motion on Issue 4?

25 COMMISSIONER DEASON: I can move staff on

1 Issue 4.

2 CHAIRMAN JABER: Issue 4, page 38, there
3 has been a motion to approve staff.

4 COMMISSIONER BAEZ: Second.

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

7 (Simultaneous affirmative responses.)

8 CHAIRMAN JABER: Issue 4 is approved.

9 Issue 5.

10 COMMISSIONER DEASON: Move staff on Issue
11 5.

12 CHAIRMAN JABER: Page 47, Issue 5, there
13 has been a motion.

14 COMMISSIONER PALECKI: Second.

15 CHAIRMAN JABER: And a second. All those
16 in favor say aye.

17 (Simultaneous affirmative responses.)

18 CHAIRMAN JABER: That resolves Issue 5.

19 COMMISSIONER DEASON: I think we have to
20 wait on Issue --

21 CHAIRMAN JABER: We have to wait, right,
22 and obviously 7. So let's go back to 3. Three,
23 6, 7.

24 Staff, how would you recommend we move with
25 the order? Verizon and BellSouth first?

1 MS. BANKS: whatever your pleasure, Madam
2 Chair. Probably the petitioner first, and then
3 the respondent.

4 CHAIRMAN JABER: Is there anyone here from
5 Verizon? I think I said BellSouth. I mean
6 Verizon.

7 It's okay. Come on up Mr. Christian.
8 Really, it's okay. You need to go back and tell
9 them that you've done all their work.

10 MR. CHRISTIAN: Oh, the message has already
11 been sent, Commissioner.

12 COMMISSIONER DEASON: It's not your
13 birthday today, is it?

14 MR. CHRISTIAN: No, it's not.

15 COMMISSIONER BAEZ: Maybe you should have
16 them sing for you. It made me feel better.

17 MR. CHRISTIAN: Unfortunately, I am
18 definitely not prepared to discuss this item,
19 and I apologize for not having someone here who
20 can represent the company.

21 CHAIRMAN JABER: It's really fine,
22 Mr. Christian. You do need --

23 MR. CHRISTIAN: I think I can let you know
24 that we support staff's recommendation on Issue
25 3.

1 CHAIRMAN JABER: Let me leave the choice up
2 to you. And, Commissioners, I need your
3 feedback here. It seems to me that -- because
4 certainly I recognize I need oral argument on
5 this issue, should we allow Verizon an
6 opportunity to come back and give us oral
7 argument on this issue, or should we ask the
8 questions we have?

9 COMMISSIONER DEASON: well, Ms. Masterton
10 is here for Sprint, and their arguments may be
11 very similar. I'm not sure.

12 MS. MASTERTON: I probably am not prepared
13 to address all of the arguments that Verizon
14 made, but I am prepared to address Sprint's
15 arguments.

16 COMMISSIONER DEASON: well, I wasn't
17 seeking for you to make their arguments for
18 them, but it just seems to me that your
19 arguments may give us that side of the picture.
20 I would assume that they're very similar, if not
21 identical.

22 MS. MASTERTON: Yes.

23 COMMISSIONER DEASON: Madam Chairman, you
24 know, with all due respect to Verizon, this item
25 was on and it was noticed. And there may have

1 been some difficulties having someone here, and
2 I understand that, but I think we need to go
3 forward.

4 CHAIRMAN JABER: And I can be fine with
5 that.

6 And Mr. Feil, you're here, and
7 Mr. McDonnell. Who do you represent, and are
8 you ready to go forward?

9 MR. FEIL: I'm here on behalf of Florida
10 Digital Network.

11 MR. MCDONNELL: I'm Marty McDonnell, and
12 I'm here for the parties who filed a response to
13 Verizon's motion for reconsideration, for AT&T
14 Communications of the Southern States and their
15 affiliates, the Florida Cable Telecommunications
16 Association, Time Warner, the Florida
17 Competitive Carriers Association, and US LEC.
18 And I believe another party or two, ALEC party
19 or two may have adopted the motion but didn't
20 join in.

21 CHAIRMAN JABER: I think, you know, in
22 terms of how this was noticed, this was noticed
23 letting folks know that participation on this
24 item would be at the Commissioners' discretion,
25 and we've exercised our discretion to hear from

1 the parties, so let's do the best we can and go
2 forward.

3 With respect to Verizon, you agree with
4 staff's recommendation.

5 MR. CHRISTIAN: Yes, Madam Chair.

6 CHAIRMAN JABER: Okay. Ms. Masterton.

7 MS. MASTERTON: Yes, Madam Chair. Sprint
8 urges you to approve the staff recommendation to
9 grant Sprint's request for reconsideration of
10 the local calling area issue, and that staff's
11 recommendation to grant that motion should be
12 approved by the Commission.

13 As staff recognized, the Commission failed
14 to consider certain critical implementation
15 issues, such as how a carrier demonstrates what
16 its retail local calling area is and whether the
17 retail local calling area should be based on a
18 carrier-specific basis or a customer-specific
19 basis.

20 In the tandem rate interconnection issue,
21 there was a lot of attention paid and a lot of
22 testimony given to how to establish what is a
23 comparable geographic area, and we believe that
24 same kind of consideration needs to be given to
25 how to determine what a carrier's retail local

1 calling scope is in order to implement the
2 Commission's decision, and the evidence wasn't
3 presented on that or considered by the
4 Commission.

5 In addition, the Commission, as staff
6 noted, failed to consider the inconsistencies
7 between its decision on the retail local -- on
8 the local calling area for reciprocal
9 compensation purposes and its decision on the
10 virtual NXX issue. The inconsistencies in those
11 two decisions present administrative
12 difficulties in implementation that we don't
13 believe the companies can address.

14 Sprint also believes that the selection of
15 the originating carrier's local calling scope is
16 not a competitively neutral solution as the
17 Commission had sought to achieve. Sprint agrees
18 with staff's recommendation that the Commission
19 should decline to adopt the default local
20 calling area at this time. Sprint believes that
21 allowing the companies to negotiate business
22 solutions to this issue would appear to be the
23 most competitively neutral available
24 alternative.

25 we ask again that you approve staff's

1 recommendation on the local calling area issue.

2 Thank you.

3 CHAIRMAN JABER: I need to explore with
4 you a little bit more why you believe
5 implementation creates problems. That's really
6 what I wanted to hear from the parties. I need
7 a better understanding of the concerns you have
8 with how our previous recommendation would have
9 to be implemented.

10 MS. MASTERTON: well, first off the bat,
11 we're supposed to compensate based on the ALEC's
12 retail local calling scope, and how are we to
13 know what that is? Do they just come in and
14 say, "This is it," or, you know, do they have to
15 file tariffs showing that it is? Do we
16 negotiate an agreement on what that is when
17 we're negotiating the contract? And none of
18 that was addressed as to what the ILECs would
19 accept as the retail local calling scope for the
20 ALECs. And a corollary to that is --

21 COMMISSIONER DEASON: I'm sorry. Could you
22 repeat that last sentence? I didn't --

23 MS. MASTERTON: What are we supposed to use
24 to base our judgment on what the retail local
25 calling scope of the ALEC is? What would we

1 accept as sufficient demonstration of what that
2 is? There's no guidance to the ILEC as to --

3 COMMISSIONER DEASON: Is that something we
4 need to give you guidance on, or is that
5 something for you two to work out?

6 MS. MASTERTON: Well, it's something that
7 we could try to work out. We're thinking that
8 we would end up back before you in an
9 arbitration with an individual ALEC to try to
10 resolve that issue, since there was no guidance
11 given by the Commission on what that
12 determination --

13 COMMISSIONER DEASON: Well, what's wrong
14 with them telling them what -- the competitive
15 company telling you what their local calling
16 area is? That's not good enough? You can't
17 accept that?

18 MS. MASTERTON: Well, I think we would need
19 some proof that in fact they offer retail local
20 service on that basis. Otherwise, they could
21 say the LATA is -- the decision didn't even
22 restrict the retail local calling scope to the
23 LATA, so they could say it's the entire state.
24 But we would want some demonstration that they
25 in fact -- because it says retail local calling,

1 that they in fact offer local -- retail local
2 services in the area that they designate to be
3 their local calling area. And what sort of
4 proof should they be required to give? I'm sure
5 the ALECs would agree with you that they should
6 just tell us.

7 But I think that it's very similar to
8 comparable geographic area in the tandem rate
9 issue, and there the Commission set forth very
10 specific criteria for how an ALEC would
11 demonstrate that they had a comparable -- that
12 they served a comparable geographic area.

13 CHAIRMAN JABER: One of the --

14 COMMISSIONER PALECKI: If you want to --
15 excuse me.

16 CHAIRMAN JABER: One of the points that was
17 made in either the response or through the
18 hearing process, certainly it's discussed on
19 page 32 of staff's recommendation, is an
20 acknowledgment by the ALECs and our staff that
21 BellSouth is doing this. The very issue that
22 you have a concern about with respect to how it
23 gets implemented and how it gets negotiated for
24 implementation BellSouth has figured out. And
25 as I considered the reconsideration motion you

1 all filed, I found it hard to understand why one
2 ILEC, the largest ILEC, is not having a problem
3 with the implementation, but you all are.

4 MS. MASTERTON: I'm not familiar with --
5 you know, BellSouth did that prior to this
6 recommendation, so maybe there was more
7 flexibility on both sides in coming to an
8 agreement there. I don't know what their
9 agreements provide. I don't think it was really
10 offered into the record specifically how their
11 agreements define the originating carrier's --

12 CHAIRMAN JABER: When we rule on
13 arbitrations, it's not uncommon for us to make
14 our rulings in arbitrations and say, "Now go and
15 negotiate terms for your interconnection
16 agreement that are consistent with our
17 rulings." We don't necessarily give you
18 guidance on how you negotiate or what you bring
19 to the table or how you implement our decision.
20 To the degree BellSouth is implementing how they
21 consider the ALEC's retail calling area to be,
22 doesn't that give you the guidance you need? I
23 mean, can't you call your counterpart at
24 BellSouth?

25 MS. MASTERTON: I mean, I suppose we could

1 do that. That doesn't necessarily mean that we
2 would feel that the way that they did it prior
3 to you all issuing this ruling was the way that
4 we would implement it based on -- I mean, that
5 that was fulfilling the Commission's order.
6 But, yes, we could find that as one way. I
7 didn't really understand, though, that you all
8 ordered that we do it in the way that BellSouth
9 is doing it.

10 CHAIRMAN JABER: No, I agree with that. I
11 don't think we did.

12 MS. MASTERTON: I guess we're saying we're
13 going to have to negotiate a lot of these
14 implementation issues, and we agree then that
15 rather than you all even setting a default local
16 calling scope that's going to probably -- the
17 implementation of it is going to be back before
18 you in an arbitration as we try to work out the
19 things that weren't said, so you should, you
20 know, reconsider that and just hold that the
21 parties should negotiate rather than have a
22 default.

23 CHAIRMAN JABER: Okay. And one final
24 question. I know that Commissioner Palecki has
25 some questions of you. Again, I analogize it to

1 how you all implement our arbitration
2 proceedings. It's the same risk. When we
3 arbitrate various issues and we say, "Now go off
4 and do good in implementing that," I suppose all
5 companies take the risk that that issue comes
6 back to us if there's a failure to reach a
7 resolution that's consistent with our decision.
8 Would you agree with that?

9 MS. MASTERTON: I agree with you about
10 that. But I would say that before we get to an
11 arbitration, the parties have usually engaged in
12 extensive negotiations, and so all of the
13 various aspects of the particular issues that
14 are in question are raised in that arbitration.

15 In this case, with this issue, the
16 originating carrier's retail local calling scope
17 was not extensive. There was not testimony on
18 it. The parties didn't really argue it.
19 BellSouth mentioned that they did that. That
20 was essentially the record on that issue. So I
21 think there's a difference in how much is left
22 up to the parties to try to read into an order
23 in an arbitration where there's been extensive
24 negotiations and testimony.

25 CHAIRMAN JABER: Okay. Commissioner

1 Palecki, and then Commissioner Deason.

2 COMMISSIONER PALECKI: Yes. You had
3 stated earlier that you might need proof from a
4 particular ALEC as to what their local calling
5 area is. Now, if you come to loggerheads with a
6 particular ALEC on that issue, can you not come
7 before this Commission and seek the proof that
8 you're referring to?

9 MS. MASTERTON: No, we can. I agree that
10 we can. In fact, I think one of the things that
11 we're saying is that we probably will need to,
12 because there was so much left unsaid that we
13 will probably likely relatively quickly be back
14 before the Commission in an arbitration to flesh
15 out the Commission's order. And we're saying
16 since the alternative that staff is
17 recommending, and which many parties supported
18 in their testimony and their briefs, is to allow
19 the parties to negotiate the local calling
20 scope, since so much is left to be negotiated,
21 that the Commission should reconsider the issue,
22 don't establish a default local calling scope,
23 let the parties negotiate, and to the extent
24 that they aren't able to establish a business
25 solution, they'll be before the Commission in an

1 arbitration.

2 COMMISSIONER PALECKI: well, it seems to me
3 that you're speculating that you're going to
4 have a problem before it even happens. And
5 wouldn't it be better to negotiate these items
6 first with the default there, and if you do have
7 a dispute after negotiations as to what that
8 local calling area is, then come before the
9 Commission? It's almost speculating that you're
10 going to have the problem, and the negotiations
11 haven't even occurred yet.

12 MS. MASTERTON: well, I can say that it's
13 not totally pure speculation, because we've had
14 to consider how to implement this, you know,
15 since it was adopted in specific situations.
16 But --

17 COMMISSIONER PALECKI: And isn't it just as
18 likely that you'll come to loggerheads with one
19 of the ALECs if you don't have a default? Isn't
20 it even more likely that you'll come to
21 loggerheads if there's no default?

22 MS. MASTERTON: I don't agree, because the
23 particular default that you all enacted we have
24 felt is biased towards, you know, the ALECs and
25 is not competitively neutral. It gives the

1 ALECs a bargaining advantage that prevents us
2 from coming to an agreed-upon solution and will
3 more lead to us coming before the Commission to
4 get the issues that we have with the result.

5 COMMISSIONER PALECKI: You know, I know
6 BellSouth isn't a party to this proceeding, but
7 why is it that you feel that way, and apparently
8 BellSouth does not?

9 MS. MASTERTON: I just hate to -- I cannot
10 speak for BellSouth. And I really feel that
11 there was not a lot of testimony even from
12 BellSouth about this alternative, how they
13 implemented it or why it worked. So I don't
14 think they've put into the record how they're
15 doing it in a way that I could refer to that,
16 and I have no idea what brought them to their
17 decision or even how they've actually
18 implemented it.

19 COMMISSIONER PALECKI: Thank you.

20 COMMISSIONER DEASON: Have you ever
21 negotiated an agreement that defined local
22 calling area other than the way Sprint defines
23 local calling?

24 MS. MASTERTON: Although the majority of
25 our agreements, especially our more recent ones,

1 have the ILEC local calling scope, I believe in
2 some agreements we have altered that in some
3 respects.

4 COMMISSIONER DEASON: How were you able to
5 accomplish that? If this decision brings so
6 many problems to you, how were you able to
7 accomplish that?

8 MS. MASTERTON: well, that was, you know,
9 an arm's length, equal bargaining position, no
10 presumed local calling area between the parties,
11 and we were able to work it out as a business
12 solution. It has to be the originating local
13 carrier's local calling scope, but it doesn't
14 say anything more about how that's to be
15 determined, whether it's the carrier's -- one
16 local calling scope per carrier or each customer
17 is compensated in a different way. So you're a
18 step ahead of where we would be if we were just
19 starting from scratch in the negotiation, and
20 that might ultimately lead to more conflict
21 between us and the ALEC in trying to resolve it.

22 CHAIRMAN JABER: Were you done with your
23 presentation?

24 MS. MASTERTON: That was conclusion of my
25 remarks.

1 CHAIRMAN JABER: Mr. Feil.

2 MR. FEIL: Actually, since FDN adopted the
3 comments of Mr. McDonnell's clients, I was going
4 to defer to him for primary argument.

5 CHAIRMAN JABER: Mr. McDonnell.

6 MR. McDONNELL: Thank you, Madam Chair.

7 I think first and foremost, I would ask the
8 Commission not to lose sight of the vehicle that
9 Sprint and Verizon have used to get before you
10 today, that is, a motion for reconsideration of
11 a previous ruling. As you well know, a motion
12 for reconsideration is inappropriate unless the
13 motion identifies a point of fact or law which
14 was overlooked or which the Commission failed to
15 consider.

16 Sprint's arguments today mirror the
17 arguments that they've made regarding this
18 issue. This docket was opened in, I think,
19 January of 2000. These issues came before the
20 Commission's consideration, I think, in December
21 2001, wherein you voted on them. At the time,
22 the Commission did not overlook anything and did
23 not fail to consider anything, as reflected in
24 your order. The position brought forth in the
25 motion for reconsideration by Sprint and Verizon

1 are the positions they championed in their
2 briefs and are the positions that their
3 witnesses championed before you in their live
4 testimony.

5 BellSouth -- obviously, the Commission
6 rejected those positions, and not surprisingly,
7 because of the fact that BellSouth has
8 implemented this very, quote, local calling
9 area, close quote, with a number of ALECs. And
10 I can point to testimony that the Commission
11 considered. It's in your previous order at page
12 46 and 47. "For purposes of determining the
13 applicability of reciprocal compensation, a
14 local calling area can be defined as mutually
15 agreed to by the parties, and pursuant to the
16 terms and conditions contained in the parties'
17 negotiated interconnection agreement, with the
18 originating party's local calling area
19 determining the intercarrier compensation
20 between the parties." BellSouth currently has
21 the arrangement described in many of its
22 interconnection agreements and is able to
23 implement such agreements to be used as billing
24 factors.

25 So it's apparent that this Commission has

1 not overlooked or failed to consider any of the
2 arguments brought forth today. It's merely a
3 rehash of old arguments.

4 In the order issued September 10, 2002,
5 regarding the very issue you're here to
6 reconsider, the local calling area -- and I'm
7 looking at page 51 of the order, "Consequently,
8 we believe that using the originating carrier's
9 retail local calling area for wholesale purposes
10 need not be as complicated to implement as the
11 Verizon and Sprint witnesses would lead us to
12 believe."

13 Additionally, the Commission held, "This
14 issue appears with enough frequency that a
15 default definition is needed for the sake of
16 efficiency. A default should be as
17 competitively neutral as possible, thereby
18 encouraging negotiation and development of
19 business solutions. On this basis, we find that
20 the originating caller's retail local calling
21 area shall be used as the default local calling
22 area for purposes of reciprocal compensation."

23 And I submit to you that's a policy
24 decision made by this Commission that is
25 consistent with federal law, it is consistent

1 with state law, and it is in fact consistent
2 with the marketplace today, because it's being
3 implemented by at least one ILEC. There is no
4 basis for this Commission to reconsider its
5 previously entered valid ruling.

6 CHAIRMAN JABER: Thank you. Mr. Feil.

7 MR. FEIL: If I may just interject one
8 comment, and that is something that
9 Mr. McDonnell alluded to. You made a policy
10 decision when you initially entered the order.
11 You made it for very specific reasons, because
12 you thought that it was going to help open up
13 different markets and offer end users in Florida
14 different local calling options, unlike the
15 current environment.

16 To the extent that Sprint or Verizon had
17 some concerns about the actual implementation of
18 that, that is for the parties to negotiate
19 during the interconnection agreement negotiation
20 process. And to the extent that in the future
21 parties may -- or an ALEC may be requesting
22 something that's completely out of line with the
23 manner in which BellSouth has done something in
24 the past, then if that means there may be a
25 future arbitration, then there's a future

1 arbitration. But the point is, the Commission
2 made a policy decision, and neither Sprint nor
3 Verizon have offered you any reasons for you to
4 change that policy decision.

5 That's all I have to say.

6 CHAIRMAN JABER: Thank you, Mr. Feil.

7 Commissioners, do you have additional --
8 well, are there other parties that are here to
9 address us on this item? Thank you.

10 Commissioners, if you have additional
11 questions, let me know.

12 COMMISSIONER DEASON: Well, I have a
13 question for staff. Why does this rise to the
14 level that we should reconsider our prior
15 decision? That's a pretty difficult standard to
16 achieve. It's very rare that we reconsider a
17 decision.

18 MS. BANKS: That is true, Commissioner
19 Deason.

20 One of the things that Verizon asserted in
21 its motion for reconsideration is the assertion
22 there are appears to be conflict between how the
23 Commission has defined local calling area and
24 how it has established the jurisdiction or what
25 determines the jurisdiction of a call.

1 And one of the things that staff viewed --
2 and I have to admit, I think I speak for the
3 staff on whole that we did grapple with this
4 decision. As you mentioned, a motion for
5 reconsideration is a tough standard.

6 However, in view of what Verizon has
7 asserted, the impact of what a particular
8 decision of having a default local calling area
9 be the originating local calling area, the
10 default, that that potentially is something that
11 the Commission did not -- was not able to give
12 full consideration of how it would impact the
13 parties. And in view of that, a potential that
14 exists, as has been mentioned today, what would
15 afford parties an opportunity to go to the table
16 and negotiate and how they might be influenced
17 to do that, we do believe that with the default
18 local calling area as the originating local
19 calling area, that in some way is more biased on
20 the ILECs. And I'm not sure that gets to your
21 question.

22 COMMISSIONER DEASON: Biased against the
23 ILEC?

24 MS. BANKS: That is correct.

25 CHAIRMAN JABER: I guess I just have a real

1 fundamental problem with that statement, knowing
2 from witness Shiroishi's testimony and what's in
3 staff's rec, that BellSouth has done a good job
4 implementing the local calling area that has
5 been designated by wireless carriers, I think is
6 what the testimony indicates, and ALECs, so I
7 don't buy the conflict argument.

8 But the other problem I'm having,
9 Commissioners, is the notion that we didn't
10 think about the implementation process, because
11 just speaking from my perspective, I did think
12 about it. And I looked at the order to refresh
13 my memory. There was an amendatory order and
14 the original order, and we talk about our
15 preference to create an environment that's going
16 to lend itself to parties coming up with
17 business solutions. I'm looking at from page 50
18 on. Page 52 talks about our preference to have
19 a business solution as opposed to a regulatory
20 solution to industry disputes. And then we did
21 consider Ms. Shiroishi's testimony with respect
22 to implementation.

23 And I don't know what we'll do at the end
24 of our vote, but from my perspective, I'm
25 willing to take the risk that these companies

1 are going to talk further about how it gets
2 implemented, and if they need to come back with
3 some hard iron facts to modify our decision, so
4 be it. But where I am right now, Commissioners,
5 I think it's premature to modify our vote. And
6 I certainly don't think there has been a mistake
7 of fact or law, not from my perspective.

8 COMMISSIONER PALECKI: Madam Chairman, I
9 agree with you completely. I think we did
10 consider implementation. I think the record
11 very adequately supports our decision. I
12 completely disagree with the sentence on page 37
13 of the staff recommendation that there is
14 insufficient record to establish implementation.

15 However, at this time, if any Commissioners
16 feel that we should reconsider on our own
17 motion, if they feel like we didn't make the
18 right decision prior, I wouldn't have any
19 problem going down that road. But I certainly
20 don't believe that the standards for
21 reconsideration have been met here, and I also
22 personally believe that we made the correct
23 decision.

24 CHAIRMAN JABER: Commissioners, any other
25 questions, comments, or a motion?

1 COMMISSIONER DEASON: Let me provide this
2 comment. I believe that part of the motivation,
3 or at least one Commissioner's motivation, and
4 maybe shared by others, was to foster a
5 situation where there is going to be meaningful
6 negotiation between the parties when it comes to
7 local calling areas, and that this is a default
8 position that maybe will never even have to be
9 implemented, in the sense that the parties can
10 come to the bargaining table and negotiate what
11 is in their own best interests. And I think by
12 having that, customers are going to be better
13 served.

14 I'm concerned that without this provision,
15 that we're going to be -- we're going to be
16 captured by the existing local calling areas,
17 and we're not going to see innovative plans for
18 competitors to come in and recognize that there
19 are certain demands within the market and meet
20 those demands when it comes to local calling
21 areas. And that may be increasing those local
22 areas; it may be decreasing those. Whatever the
23 demand is out there, what customers demand,
24 there should be an opportunity for competitors
25 to come in and to meet that demand. I think the

1 same should be for the incumbents as well.

2 I think that we are too structured right
3 now in our thinking that local calling is as
4 local calling was defined before the
5 Telecommunications Act was changed in 1995, and
6 it can never change again. I think that is a
7 bad situation to be in. One of the reasons that
8 I voted for this provision was that I think that
9 gives an opportunity for us to change the status
10 quo and allow participants in the market to
11 evaluate what the market is demanding in terms
12 of local calling. And that was part of my
13 motivation, and I still think that that is the
14 correct -- a correct motivation.

15 COMMISSIONER BAEZ: And I would share those
16 views. And I spent the last few minutes trying
17 to recall what the discussion was leading up to
18 that vote, and as I recall, there was some
19 discussion of creating a basis for negotiation.
20 And I think it's reflected in the order with
21 some degree of confidence that what we're
22 creating is an opportunity to find business
23 solutions, and that should encompass the whole
24 of the interconnect agreement.

25 So I think I haven't seen any reason to

1 change certainly my decision.

2 COMMISSIONER DEASON: And like I say, this
3 -- it is a default position, that's correct, but
4 I think if anything -- I don't think it
5 disadvantages the incumbent LEC. I think it
6 puts the ALEC in a better negotiating position
7 and a more meaningful negotiating position. If
8 there is a situation where there is a true
9 market demand for a different local calling area
10 and the competitive LEC feels that they can come
11 in and meet that demand, they should have the
12 ability to put together a local calling area
13 which accomplishes that.

14 I think under the present regime that it
15 would be impossible for a competitive LEC to
16 have a more extensive local calling area than
17 the incumbent LEC, because that would mean that
18 for every call, they would have to pay
19 terminating access, and they would not be
20 charging their local customer anything
21 additional for making that call. I just don't
22 -- with that regime, I just don't think that
23 we're going to have any change in local calling
24 areas.

25 CHAIRMAN JABER: Okay. Sounds like we're

1 ready for a motion on Issue 3.

2 COMMISSIONER DEASON: I would move that we
3 deny staff and that we not reconsider our
4 decision on Issue 3.

5 COMMISSIONER BAEZ: Second.

6 COMMISSIONER PALECKI: Second.

7 CHAIRMAN JABER: Okay. There has been a
8 motion and a second to deny staff's
9 recommendation on Issue 3 and not grant
10 reconsideration. All those in favor say aye.

11 (Simultaneous affirmative responses.)

12 CHAIRMAN JABER: That resolves Issue 3.

13 Now, staff, on Issue 6, there was a request
14 for a stay. And your recommendation is that if
15 we had approved your recommendation on Issue 3,
16 this would have been rendered moot, but if we
17 deny staff's rec on Issue 3, which we just did,
18 you want us to deny the motion for a stay.

19 Before we bring that up for a vote, you
20 have been -- well, it has been represented in
21 the pleadings that the parties will -- I guess
22 Verizon and Sprint will appeal our decision, and
23 I want to talk to the parties in that regard.

24 Absolutely, I recognize that it's your
25 prerogative to appeal our decision. I would

1 hope we start moving forward on these issues and
2 that the resources that would be devoted to an
3 appellate process get devoted instead to a
4 thorough, meaningful negotiation process.
5 That's not to say I don't recognize that you're
6 free to do whatever you want. I would just -- I
7 have high expectations for this decision being
8 implemented professionally by all the
9 stakeholders.

10 with that, is there a motion for Issue 6?

11 COMMISSIONER DEASON: I would move staff.
12 That's to deny the stay; correct?

13 CHAIRMAN JABER: Is there a second?

14 COMMISSIONER PALECKI: Second the motion.

15 CHAIRMAN JABER: There has been a motion
16 and a second to deny the motion for a stay,
17 which is consistent with staff's recommendation
18 in Issue 6. All those in favor say aye.

19 (Simultaneous affirmative responses.)

20 CHAIRMAN JABER: Issue 6 is approved.

21 Issue 7.

22 COMMISSIONER DEASON: Move staff.

23 COMMISSIONER PALECKI: Second.

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

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(Simultaneous affirmative responses.)

CHAIRMAN JABER: Issue 7 is approved.

Thank you all.

MR. MCDONNELL: Thank you.

(Conclusion of consideration of Item 25.)

CERTIFICATE OF REPORTER


STATE OF FLORIDA)

COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 36 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 31st day of December, 2002.


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