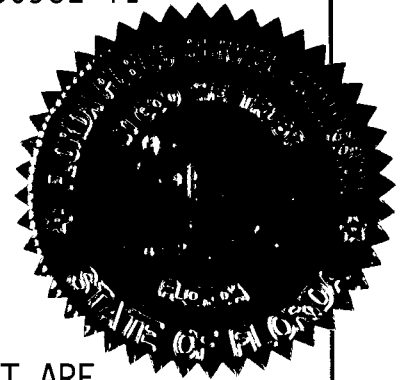


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030961-TI

In the Matter of:

FLOW-THROUGH OF LEC SWITCHED  
ACCESS REDUCTIONS BY IXCs,  
PURSUANT TO SECTION  
364.163(2), FLORIDA STATUTES.



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PROCEEDINGS:           AGENDA CONFERENCE  
ITEM NO. 5

BEFORE:                 CHAIRMAN LILA A. JABER  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

DATE:                   November 3, 2003

TIME:                   Commenced at 11:43 a.m.  
Concluded at 1:25 p.m.

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

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

## 1 PARTICIPATING:

2 CHARLES BECK, ESQUIRE, representing the Office of  
3 Public Counsel.

4 CHARLES REHWINKEL, ESQUIRE, representing  
5 Sprint-Florida, Inc.

6 DONNA McNULTY, ESQUIRE, representing MCI WorldCom  
7 Communications, Inc.

8 TRACY HATCH, ESQUIRE, representing AT&T  
9 Communications of the Southern States, Inc.

10 HARRIS ANTHONY, ESQUIRE, representing BellSouth Long  
11 Distance, Inc.

12 MICHAEL B. TWOMEY, ESQUIRE, representing the  
13 American Association of Retired Persons.

14 BETH KEATING, ESQUIRE, LEE FORDHAM, ESQUIRE, and  
15 FELICIA BANKS, ESQUIRE, representing the Commission Staff.

16

## 17 ALSO PARTICIPATING:

18 RICK WRIGHT and CHERYL BULECZA-BANKS, FPSC Division  
19 of Competitive Markets and Enforcement.

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

1  
2 CHAIRMAN JABER: Commissioners, let's get back on the  
3 record. Item 5. Staff, you have an introduction for Item 5?

4 MR. REHWINKEL: Madam Chairman, Charles Rehwinkel  
5 with Sprint. I was wondering if, before we get into the  
6 staff's presentation, I could ask that -- and I think I can  
7 represent this on at least behalf of AT&T and MCI. We've  
8 struggled with how to respond to this staff recommendation  
9 here. There's some logistical issues that we would certainly  
10 like to sit down with staff and all the other parties in the  
11 next few days and try to work out rather than try to go through  
12 that up here with agenda time with the Commissioners.

13 I've talked to WorldCom -- I mean, MCI and AT&T and I  
14 think they agree. I don't know that staff has a problem with  
15 it. It certainly is not because staff has not reached out and  
16 sought input from us. But you heard some discussion at the  
17 last item about competitive issues, and we're very ginger about  
18 talking to each other about what we can and cannot do and what  
19 we're willing to say here as part of input to the staff. So  
20 we've really been, I think, at least in my view, we've been  
21 remiss in getting with staff to work this out or at least give  
22 them some more refined input. It's just something I put out  
23 there to see if there's any willingness to defer this one  
24 agenda; see if we can work out some items that may obviate the  
25 need to have a protest on some of the procedural matters that

1 are in the recommendation.

2 CHAIRMAN JABER: Staff, introduce the item and give  
3 me some feedback on what Mr. Rehwinkel said.

4 MR. WRIGHT: Commissioners, Item 5 addresses the IXC  
5 filing requirements that may be needed if the petitions in  
6 Dockets 030867, 030868, and 030869 are approved. The  
7 recommendation is designed to kind of give a heads-up to the  
8 IXCs on what the staff believes the filing requirements that  
9 are needed. It includes items such as if the IXCs are paying  
10 access charges of a million dollars or more, that there are  
11 certain documentation that we'd require. If they are less than  
12 a million dollars in 2002 in access charges, then they just  
13 need to file the certification in their tariffs. And if the  
14 reduction is less than a hundred dollars a month, then there's  
15 no requirement for a flow through. And also, we address --  
16 let's see.

17 CHAIRMAN JABER: Rick, is your microphone on?

18 MR. WRIGHT: I've got a green light. I'll just get  
19 closer here.

20 Staff is also concerned about the time requirement  
21 that the reductions are going to be in place, and we've  
22 recommended that they stay in place for at least one year after  
23 parity is met.

24 CHAIRMAN JABER: And is this the first you've heard  
25 of a request for a deferral? Give me some feedback on that.

1 And maybe I read too much into the recommendation. I thought  
2 you had been working with the companies on the timing of this  
3 recommendation and the whole notion that any sort of reduction  
4 should happen simultaneously. Give the Commissioners a  
5 briefing in that regard.

6 MR. WRIGHT: Yes, we did meet with the IXC's to get  
7 some feedback on their concerns. And staff is always willing  
8 to work with the companies. I guess we don't see a problem  
9 with deferring it.

10 CHAIRMAN JABER: Ms. Banks.

11 MS. BANKS: Chairman, I think Ms. Banks would like to  
12 comment on that.

13 MS. BULECZA-BANKS: We met early on. We met back in  
14 mid-August to discuss what we were planning to do and trying to  
15 get some feedback to see what the market conditions were and  
16 what we could obtain as information. After that meeting was  
17 held, we also -- well, during the meeting, we asked them to  
18 submit any kind of comments they had so that we can incorporate  
19 those and consider those. I had never received any comment.

20 CHAIRMAN JABER: Commissioner Davidson, I know you've  
21 wanted to say something.

22 COMMISSIONER DAVIDSON: Just a comment. Of course,  
23 I'll go with the will of the majority on this issue, but I have  
24 quite a few questions. And I note that our next agenda  
25 conference I don't think is until December 2nd and, especially

1 given what we've just heard here, that seems like that would be  
2 tough to get through this issue.

3 CHAIRMAN JABER: Mr. Beck, you've come to the table,  
4 but that reminds me, I do want to hear from each of the parties  
5 on the deferral.

6 Frankly, Mr. Rehwinkel, I'm surprised. I mean, this  
7 rec has been filed for 12 days now.

8 Mr. Beck.

9 MR. BECK: Yes. Thank you, Chairman Jaber. Charlie  
10 Beck, Office of Public Counsel. I'd oppose the deferral,  
11 Commissioners. We think this is an important issue. It  
12 probably ought to be part of the rate rebalancing cases. I  
13 know during the previous item you expressed some concern on the  
14 timing and how to do that, and I have a couple of ideas about  
15 that. But if you defer this for a whole month, it just about  
16 kills any possibility of bringing this up in a timely fashion so  
17 that it's done, you know, in time to take into the account the  
18 rate rebalancing if you should grant them. So I'd opposed the  
19 deferral and ask you to consider it today.

20 CHAIRMAN JABER: Mr. Hatch and Ms. McNulty, did  
21 Mr. Rehwinkel speak on your behalf that you are supportive of a  
22 deferral?

23 MS. McNULTY: Yes.

24 MR. HATCH: Yes.

25 CHAIRMAN JABER: Commissioners, what's your pleasure?

1 I tend to agree with Commissioner Davidson on this. I threw  
2 out one of the questions related to this item already. The  
3 logistics of all of this, I really need to understand sooner  
4 rather than later. Saying all of that, like  
5 Commissioner Davidson, if the will of the majority is to defer  
6 this, I'll live with that.

7 COMMISSIONER BAEZ: Well, I have a question.

8 CHAIRMAN JABER: Commissioner Baez.

9 COMMISSIONER BAEZ: I guess one of the Chairman's  
10 questions was, you know, in the event of a protest because this  
11 issue is PAA, and I guess I want to try and get some  
12 appreciation as to what the possible difference is of a  
13 protest, you know, as a result of a December 2nd discussion as  
14 opposed to a protest as a result of a -- what day is today --  
15 November 3rd. I mean, is there any -- do you have an  
16 appreciation for that, what the logistical effect of it is, if  
17 any?

18 MR. FORDHAM: Commissioner, we certainly can't  
19 determine what's in the mind of the industry. There is a  
20 possibility that if -- that additional meetings would diminish  
21 the probability of a protest by resolving some of the issues,  
22 but we have no way of knowing that. It would be purely  
23 speculation.

24 COMMISSIONER BAEZ: And I guess a follow-up question.

25 CHAIRMAN JABER: But it's not just the industry. I

1 think you bring the industry and the consumer advocates to the  
2 table, and we can't say one way or the other if an order would  
3 be protested or whether concerns would be alleviated in future  
4 meetings.

5           COMMISSIONER BAEZ: And perhaps this is -- I also  
6 want to understand exactly what the import of our decision is.  
7 Is it merely to set out guidelines for when and if the  
8 petitions get approved so that everyone is on notice, certainly  
9 the IXCs in this case are on notice, as to what we're expecting  
10 to file, how the reductions should be structured and  
11 for what -- well, not how the reductions should be  
12 restructured, but certainly for how long they should be in  
13 effect and for what time to give that kind of guidance so that  
14 the filings can look a certain way and feel a certain way and  
15 have enough information for the Commission to render a  
16 decision?

17           If that's the purpose of the decision, then I  
18 guess -- I want to avoid a protest on this because I think -- I  
19 agree with the Chairman. I mean, I don't think there's any  
20 way we can -- we're opening up a very big can of worms  
21 logistically if this gets protested. And I really want to  
22 weigh what the value of getting some of whatever issues, and  
23 I'm going to ask Mr. Rehwinke1 to maybe elaborate on some of  
24 those issues to the extent he can, but try and get some  
25 appreciation as to if we can get some of those issues out of



1 the way, that the purpose of this vote today gets served. And  
2 I want to understand what the purpose is exactly.

3 CHAIRMAN JABER: Mr. Rehwinkel -- that question is  
4 posed to Mr. Rehwinkel; right?

5 COMMISSIONER BAEZ: Well, I guess I threw several  
6 questions out there. One of them would be, what exactly is the  
7 purpose of the vote, or what is the effect? What kind of  
8 things do we set into motion tomorrow as a result of this vote  
9 potentially? And, secondly, I'd be interested in knowing to  
10 the extent that he feels comfortable, I guess, what  
11 Mr. Rehwinkel or the other companies' concerns about a  
12 discussion taking place now without you-all, what kind of  
13 issues that are on your mind.

14 MR. REHWINKEL: Well, let me make it clear. First of  
15 all, I broached the issue about deferral at about 8:30 this  
16 morning. So it was before Item 4A. So it's not -- I actually  
17 pitched this request with great trepidation after the last  
18 discussion because I really don't know where things stand right  
19 now in the other dockets.

20 One of our biggest concerns is logistically how do  
21 you synchronize tariff filings. There's not a discussion in  
22 the staff recommendation with respect to the process that I  
23 understand with respect to the ILEC filings. Let's say you  
24 grant one or more of the three pending petitions out there.  
25 There's no time frame in the statute whereby those have to be

1 filed by a date certain. So if you had multiple petitions  
2 granted, you could have multiple what I'll call compliance  
3 filings. And those are a 45-day notice, which is a minimum  
4 time before they could become effective. There is another  
5 45-day period which could be the exact same, or it could be a  
6 different 45-day period where the Commission has to review the  
7 ILECs' compliance filings, let's call them, comply with the  
8 decision in the petition. The Commission has to review those  
9 and verify that they're revenue neutral and then issue an  
10 order.

11 Now, I would argue that you can do an administrative  
12 order like you do to say that a tariff filing complies with the  
13 Commission decision or a tariff filing complies with a rate  
14 case decision. But you've got that. Then that's the point in  
15 time where parties know that absent appellate action, that they  
16 can rely on the filing the ILECs have made. Only at that point  
17 can IXCs know that they have enough information to know  
18 whether -- to know how to structure their retail end user rate  
19 filings. But as was discussed in the item prior, there are a  
20 very large number of permutations of end user rates that could  
21 be filed depending on -- everybody talks about the \$355 million  
22 number. That's only if all the petitions are granted. You  
23 could have variations of companies' requests granted, and then,  
24 you know, and then different elements. So I'm reiterating what  
25 we heard in the last item about the permutations you could see.

1           Then you've got the billing system issue about making  
2 sure that the billing changes are made. And in some companies,  
3 billing systems are modifiable on a monthly basis. So the  
4 timing issue is one that I just believe requires a little bit  
5 more precision and discussion among all the parties that would  
6 be involved, not only the ILECs, but the IXC's and any other  
7 interested party that wants to be involved in that discussion.  
8 That's just one issue, and it's a nonsubstantive issue. Some  
9 of the other parties that are here today have other substantive  
10 issues that they may want to discuss.

11           My only reason for seeking this was to try to get the  
12 logistics synchronized a little more. Personally, I believe  
13 that after the discussion on Item 4A there may even be a  
14 greater need to have synchronization of the logistics. So I've  
15 kind of made part of my presentation that I was going to make,  
16 and I apologize. But I just don't know that this is the kind  
17 of discussion that befits -- that works well in this  
18 environment.

19           MS. BULECZA-BANKS: In response to your earlier  
20 question, the purpose of the recommendation was like prior  
21 recommendations was merely to provide guidance to the IXC's and  
22 what our expectations were in the filings.

23           COMMISSIONER BAEZ: And I guess you heard  
24 Mr. Rehwinkel's comments. I mean, do you have any thoughts on  
25 that? Is it something that we need to discount?

1 MS. BULECZA-BANKS: Certainly staff is never opposed  
2 to listening to some logistical problems that would have  
3 occurred. It would have been nice to have known about them  
4 earlier that we could have incorporated them. I'm not sure  
5 where that leads us because it's all in timing. If we can  
6 address those logistical issues and that alleviates some of the  
7 possibility of protest, that doesn't eliminate all the other  
8 potential protests that are out there later on.

9 COMMISSIONER BAEZ: Well, Mr. Rehwinkel, let me ask  
10 you this. If the purpose of this recommendation is guidance,  
11 then why not just take the guidance and let that filter into  
12 what I'm sure will be further discussions?

13 MR. REHWINKEL: Well, that's all well and good as  
14 long as there's guidance and there's guidance that you have to  
15 adhere to. And if it's going to be mandatory, then it's not  
16 guidance. It's kind of inconsistent to have a PAA and say it's  
17 just guidance. And I want to be frank with you about the  
18 timing here is, quite frankly -- and the reason I say this is,  
19 the last discussion makes it probably even more important that  
20 we have this opportunity to discuss logistics is, is from  
21 Sprint's standpoint, the standard in the case may or may not be  
22 changing based on the discussion that we just had as far as  
23 what we assumed that the -- that it really was more like  
24 guidance because this is about how you do the filing afterwards  
25 and not -- that this would be relating to an issue that now

1 seems to be getting more into the guts of the petitions in the  
2 other dockets.

3 CHAIRMAN JABER: Mr. Rehwinkel, let me ask you  
4 something as a follow-up to what you just said. You've said  
5 twice now that this environment doesn't lend itself to that  
6 kind of conversation you want to go back and have. I'm  
7 assuming further discussion will be with the parties and staff.

8 MR. REHWINKEL: Absolutely, yes.

9 CHAIRMAN JABER: Well, won't that environment have  
10 the same people at the table?

11 MR. REHWINKEL: Yeah. I mean, we can do that right  
12 now. That's not the point I was making, is that --

13 CHAIRMAN JABER: Well, but I'm confused by the point  
14 you're making.

15 MR. REHWINKEL: -- normally we wouldn't do that with  
16 the Commissioners.

17 CHAIRMAN JABER: Mr. Rehwinkel, it happened in the  
18 last item and it's happening again. Due to competitive issues,  
19 we can't share that information with you. As a decision-maker,  
20 at the end of the day, we have to explain our decision to the  
21 consumers. It is not good enough to say, the companies  
22 wouldn't give us that information because of a competitive  
23 environment, and they don't want to share with their  
24 competitors. You've got to give us something better than that.

25 MR. REHWINKEL: Madam Chairman, that's not the point

1 I --

2 CHAIRMAN JABER: Okay. Well, that's how it sounded  
3 to me, so why don't you try again.

4 MR. REHWINKEL: Okay. When I brought that up, I was  
5 saying that it's been very difficult since the August time  
6 frame for us to do this because as competitors, it's very  
7 difficult for us to sit down in a room and say, this is how  
8 we'd like to approach this, because there are legal problems  
9 with doing that. I'm not saying that I don't want to talk  
10 about all the issues that I would want to talk about on this  
11 item in public here today. I've got no problem with that.  
12 That's not the issue.

13 CHAIRMAN JABER: Okay. Well, you kept saying "the  
14 environment here." You said, "here isn't the best  
15 environment."

16 MR. REHWINKEL: What I mean by that is normally if  
17 you've got issues of logistical nature, it's usually better to  
18 try to work those out before you get in front of the five  
19 Commissioners. That's all I meant.

20 CHAIRMAN JABER: Okay. Commissioners, again,  
21 whatever your pleasure is. Personally, I think allowing  
22 Commissioners to ask their questions and delve into some of  
23 these things that are already in staff's recommendation will  
24 only help that dialogue, not hurt it. Now, that may mean that  
25 we don't vote this item out today, or maybe it does. But a

1 request for a deferral at this point I'm uncomfortable with.  
2 Can I get some feedback?

3 COMMISSIONER DEASON: Well, maybe feedback, maybe a  
4 question. The difficulty I'm having is the very short time  
5 frame that we're working under. We have hearings set. I guess  
6 my question would be this, and I'll direct this to staff. If  
7 we issue this recommendation as it is presently formulated, or  
8 substantially that way, and we have a protest of that, what  
9 does that do to our ability to make a timely decision for  
10 hearings which are some five weeks away?

11 And do we have the ability to change those hearings  
12 if there's a protest given that we have a 90-day clock set by  
13 the law, or is our only alternative then to say, we deny the  
14 petitions because we have a PAA we have to attend to, and once  
15 we address that, then we'll -- you are able to renew your  
16 petitions?

17 CHAIRMAN JABER: Ms. Keating, this delves into the  
18 question I asked you previously too. Help us out here.

19 MS. KEATING: I think the question that you're asking  
20 though gets back to the question that the Commission preserved  
21 for hearing; that being, to what extent impacts on the toll  
22 market have to be considered and addressed in addressing the  
23 ILECs' petitions. So to that extent, I think you may not  
24 really know until the hearing potentially whether or not what  
25 happens in this docket impacts your ability to make a full and

1 complete decision in the other docket.

2           COMMISSIONER DEASON: And, Madam Chairman, that's  
3 what I thought the answer would be. And it goes back to, I  
4 guess, what we were -- at least what I was saying previously.  
5 It goes back to burden, burden of proof in the other dockets  
6 and how you are going to meet that burden. And it's -- you  
7 know, if parties are willing to go forward protesting what's  
8 here knowing that there may be some information which the  
9 Commissioners would like to have that is not going to be  
10 provided or at least there's not going to be assurances, that  
11 that's just going to make the burden more difficult to meet.  
12 And if they're willing to go forward, I guess that's their  
13 choice. Would you agree with that or disagree with that?

14           MS. KEATING: I certainly agree with you,  
15 Commissioner, that it's a matter of burden. And it's the  
16 Commissioners' choice as to whether you want to proceed or  
17 whether it should be up to the parties to determine how that  
18 burden is met.

19           COMMISSIONER DEASON: Madam Chairman, I would think  
20 that if we had the luxury of more time, this probably would be  
21 something that I probably would agree with Mr. Rehwinkel, that  
22 this is something that the logistics of the timing of how you  
23 coordinate ILEC filings and the tariffs that would be filed by  
24 the IXCs, I don't see where we have that luxury. It's 90 days  
25 and we've got to proceed.



1 COMMISSIONER BAEZ: Yeah.

2 CHAIRMAN JABER: Commissioner Baez.

3 COMMISSIONER BAEZ: I don't think we can pass up an  
4 opportunity to at least discuss the recommendation. I know the  
5 Chairman alluded to the possibility that at end of the day we  
6 don't end up voting this out, maybe we do or maybe don't as we  
7 see fit. But certainly to have -- I mean, I know  
8 Commissioner Davidson already said that he has many questions,  
9 and I'm sure that many more questions are going to pass up. We  
10 are short on time. I think that whether we defer this or not  
11 at the end of the discussion, that's a whole other question,  
12 but certainly as far as the Commissioners are concerned, I  
13 don't think we can afford to pass up an opportunity to at least  
14 give some kind of verbal guidance whether something in writing  
15 is issued or not.

16 CHAIRMAN JABER: Okay. Commissioner Davidson, why  
17 don't you get us started. I think the consensus -- it's  
18 obvious that the consensus is to move the discussion forward.  
19 Hang on. I'm sorry. So staff has introduced the item.

20 Mr. Rehwinkel, it's safe to assume your request for  
21 deferral has been denied. Were there parties here that wanted  
22 to address us on the substance of this recommendation?

23 MR. HATCH: Yes, ma'am, we had a few comments.

24 CHAIRMAN JABER: Commissioner Davidson, how about we  
25 do that first? Okay.

1 Ms. McNulty.

2 MR. HATCH: We've got some very similar logistical  
3 concerns, just mechanical ones at some length that we would  
4 like the opportunity to work out with staff. Initially, let me  
5 just talk a little bit about some of the timing concerns. Part  
6 of this I explained a little bit in the previous item in terms  
7 of what the process that we have to go through in order to get  
8 to the point where we file tariffs that enact our flow-through  
9 is that we have to know what the ILEC tariffs are in terms of  
10 filing so that we can then take and calculate from our access  
11 group what the dollars are that we then have to flow through.  
12 And that then comes back to our -- from the access group, it  
13 comes back to the pricing folks. Then they have to go through  
14 and then figure out exactly which services are going to be  
15 reduced and how much and that sort of thing. That takes  
16 amounts of time.

17 And if I'm remember correctly, and I may not, and I  
18 haven't had a chance to go back and ferret it out, initially  
19 when the original IXC flow-throughs were done circa '95, '96,  
20 '97, in that time frame, the IXCs had 60 days after the ILECs  
21 filed their tariff reductions for us to do our calculations and  
22 put together our tariffs and get them filed. We don't have a  
23 problem with them being simultaneous in terms of the effective  
24 date, but we need advanced notice of the ILEC tariff reductions  
25 so that we can then take that information and generate a

1 project -- a process through our process and generate the right  
2 tariffs at the end so that they can be effective on the same  
3 date.

4 COMMISSIONER BAEZ: And do you feel that at this  
5 point in time, do you think that the process is already there  
6 to accommodate that in terms of hypothetically what the ILECs'  
7 filing --

8 MR. HATCH: The answer is we don't know. And that's  
9 a logical question that arises as a result of the staff and  
10 also the way that the statute is drafted. As Mr. Rehwinkel  
11 referred to, there's two different 45-day periods. Are they  
12 running concurrent, or are they running consecutive? If  
13 they're consecutive, we don't know how all this fits together  
14 logistically. So that what we need is an ILEC tariff, 60 days  
15 later we file our tariff regardless of the other processes that  
16 go on just logistically so that we can do the mechanical tariff  
17 construction and get it filed on time.

18 CHAIRMAN JABER: Is that it, Mr. Hatch?

19 MR. HATCH: That's not all. Do you want me to just  
20 run through the laundry list?

21 CHAIRMAN JABER: Go ahead.

22 MR. HATCH: I've got a much more substantive concern  
23 in terms of just the logistical mechanical issues and that is  
24 what appears to be three options that the staff has constructed  
25 as to some sort of a -- or what appears to us to be a revenue

1 cap thrown in. That doesn't appear anywhere in the statute.  
2 And the staff, in fact, is quite up front with that. And they  
3 say the statute is absolutely silent on this issue. And,  
4 frankly, we don't take that silence as a license for the  
5 Commission to begin legislative activity and creating from a  
6 green field how they may choose to see that. We think Option  
7 3 is the correct interpretation of that statute. We don't  
8 think that there is authority in the statute for the Commission  
9 to do the kinds of revenue caps that is being contemplated by  
10 the staff.

11 More importantly, I guess at the end of the day, I  
12 don't think you really need to do that. I don't think that  
13 anybody up here and everybody from this end of the bench --  
14 well, starting at Ms. McNulty and going that way, we're all  
15 IXCs and we're all CLECs or ILECS. At the end of the day, I  
16 don't think anybody is going to suggest to you --

17 COMMISSIONER DEASON: Mr. Beck takes offense to that.

18 (Laughter.)

19 MR. HATCH: I forgot about Charlie. My apologies.

20 MR. REHWINKEL: Just welcoming him to the  
21 brotherhood.

22 MR. HATCH: Absolutely.

23 CHAIRMAN JABER: Ms. McNulty takes offense to that.

24 MS. McNULTY: Sisterhood.

25 MR. HATCH: And the sisterhood, I suppose.

1           At the end of the day, nobody is going to suggest by  
2 any means that the long distance market in particular, which is  
3 what we're really looking at in this particular instance, is  
4 not fiercely competitive.

5           The question that you have to ask is, will the market  
6 even allow me to raise those rates and essentially recover  
7 those revenues again? And, frankly, I submit to you, the  
8 market won't let us do that. AT&T has got to be the poster  
9 child for that phenomena these days. If you look at our  
10 financials, revenue is declining, market share is declining,  
11 and it's a fiercely competitive marketplace out there. And  
12 it's only just begun, frankly.

13           So, (a), we don't see there's any authority to do it,  
14 but more importantly, we don't see that there's any need for  
15 you to do that. And at the very end of the day when the dust  
16 settles, you have the authority to go in and monitor all the  
17 reductions that we've done to date up through and including the  
18 last access reduction and audit the fact that we have done it.  
19 That is your ultimate governing mechanism. Other than that, I  
20 don't think that there's anything that you need to do in terms  
21 of oversight in the sense of declaring or deciding or  
22 determining exactly what we do and how we do it if it's  
23 otherwise compliant with the statute.

24           CHAIRMAN JABER: There's no disagreement on your part  
25 with regard to Page 5 of staff's recommendation, the 1, 2, and

1 3? What they're suggesting you include in your filing, you  
2 don't take issue with?

3 MR. HATCH: The answer is I don't -- in terms of  
4 generic filing, no, in terms of the documentation that you  
5 filed just to demonstrate that you're making at least a good  
6 faith effort to comply with the statute and here's how you're  
7 determining it. But at the end of the day, that doesn't really  
8 tell you anything other than that you're making an honest  
9 attempt at it because it's your audit authority at the end of  
10 the day that determines whether or not you've actually done it.

11 CHAIRMAN JABER: But you believe 1, 2, and 3 gives us  
12 the information that would be necessary for us to audit the  
13 filing?

14 MR. HATCH: Actually, no. That information doesn't  
15 give you the information needed to adequately -- to audit the  
16 filing. This is -- essentially you're saying up front, here's  
17 what I anticipate happening, here's the dollars, here's my  
18 calculation of how I have flowed those dollars through to these  
19 services. At the end of the day, you look at the services that  
20 we reduced and the revenues that we're making, and at the end  
21 of the day, you say, look, they don't have those revenues  
22 anymore, and that's your question. And your audit will  
23 determine that independent of the information that we file up  
24 front. Even if you didn't get this prefiling -- or this  
25 up-front information, you'd still have your audit authority to

1 go back and look and say, what did you reduce and how much did  
2 you reduce it.

3 CHAIRMAN JABER: Ms. Simmons, when we're all done I  
4 want to ask you that question too. So if you could think about  
5 it.

6 Ms. McNulty.

7 MS. McNULTY: Good afternoon, Commissioners.  
8 Donna McNulty with MCI. I'd just like to point out a few  
9 concerns MCI has regarding staff's recommendation, and they are  
10 similar to those expressed by AT&T, as well as Sprint.

11 First, MCI is concerned about Options 1 and 2 posed  
12 in staff's recommendation because MCI does not believe this  
13 Commission has the authority to do that and it's not based on  
14 the law. Second, regarding Options 1 and 2, MCI does not  
15 believe it's sound public policy for this Commission to  
16 recommend such options because the IXC market as it exists  
17 today is extremely competitive, as we all know. Also, given  
18 the highly competitive nature of the long distance market, it  
19 is essential for IXCs to maintain flexibility. As a  
20 competitive business, MCI wants and needs maximum flexibility  
21 to determine how best to accomplish and effectuate the  
22 flow-through to our presubscribed residential and business  
23 customers and also to bring about more competition to more  
24 people. And the law has given MCI and other IXCs that  
25 flexibility. There is no need for this Commission to

1 micromanage IXCs in a competitive market; therefore, MCI  
2 supports Option 3 if the Commission feels it's even necessary  
3 to vote on that at this time.

4 MCI does acknowledge the Commission does have the  
5 authority and continuing regulatory oversight for purposes of  
6 determining the correctness of any rate reduction. So it does  
7 have the authority on the back end to look at if the decisions  
8 the IXCs made were correct, but this does not give the  
9 Commission the authority to do it up front.

10 COMMISSIONER DEASON: What authority do we have if we  
11 decide that what you implemented was not correct?

12 MS. McNULTY: What authority?

13 COMMISSIONER DEASON: Yes. If we go through and we  
14 determine that you have not lived up to your obligation under  
15 the statute, what authority do we have in regards to what you  
16 have done and what we can order you to do to remedy the  
17 situation?

18 MS. McNULTY: 364.163(3) gives you the authority to  
19 determine whether or not the amount we've flowed through -- or  
20 required to flow through was actually flowed through. Is that  
21 what you mean?

22 COMMISSIONER DEASON: Yes. And if we determine that  
23 it's not, what authority do we have then?

24 MS. McNULTY: Then that same authority gives you  
25 that.



1           COMMISSIONER DEASON: The ability to do what? Order  
2 you to change different rates? Or is the law silent on that as  
3 well?

4           MS. McNULTY: One second, please. It says, "and  
5 making any necessary adjustments to those rates. So the whole  
6 section in its entirety says, "The Commission shall have  
7 continuing regulatory oversight of intrastate switched network  
8 access and customer long distance rates for purposes of  
9 determining the correctness of any rate decrease by a telecom  
10 company resulting from the application of Section 364.164 and  
11 making any necessary adjustments to those rates."

12           COMMISSIONER DEASON: So we can adjust your rates but  
13 only after we find that you have not done it yourself  
14 correctly?

15           MS. McNULTY: Only if you have found that.

16           COMMISSIONER DEASON: But you do concede that we have  
17 the ability to adjust your rates if we make that finding?

18           MS. McNULTY: Whatever is consistent with Subsection  
19 3.

20           Also, regarding the implementation of the IXC  
21 tariffs, in theory, MCI does not have any problem with  
22 implementation concurrent with the ILEC implementation of their  
23 tariffs; however, we do need a 60-day window to be able to make  
24 sure we can assess the market at the time that we need to do  
25 that, make sure we assess the market correctly, make sure we

1 implement all the necessary billing changes in our billing  
2 systems in addition to, you know, whatever is reflected in the  
3 tariff.

4 CHAIRMAN JABER: Let me ask you this, Ms. McNulty,  
5 you and Mr. Hatch and Mr. Rehwinkel, if you want to jump in and  
6 comment, that's fine. Has the industry explored the notion of  
7 reaching a settlement contingent on the PSC if the PSC were to  
8 grant the initial application's implementation of any rate  
9 increase or access charge reduction would be held until you all  
10 have your IXC flow-through tariffs ready to go?

11 MR. HATCH: Madam Chairman, Mr. Rehwinkel alluded to  
12 this earlier, but that would be an extraordinarily dangerous  
13 thing for us to undertake because of antitrust concerns.

14 CHAIRMAN JABER: What if you invited all the parties  
15 to the docket? It's probably antitrust if all the companies  
16 were to get together behind closed doors and talk about what  
17 you intend to do competitively, but how is it antitrust for you  
18 all to bring all the parties to the table in a docket and say,  
19 here's some stipulated language, we will hold off access charge  
20 reductions, increases in local rates so that those kinds of  
21 things would be implemented concurrently with long distance  
22 flow-throughs?

23 MR. HATCH: Then perhaps I misunderstood your  
24 question. I'm still not sure what you want us to do.

25 CHAIRMAN JABER: I probably wasn't articulate.

1 That's the question. Have you ever talked about that kind of  
2 settlement? And I recognize it all is contingent on what this  
3 Commission does, but if you don't have any problem in theory  
4 with concurrent implementation of all of this stuff, can't you  
5 reach an agreement amongst yourselves about that?

6 COMMISSIONER DAVIDSON: I do think on that I will  
7 jump in. I think the purposes go, but I think on that you  
8 would probably because of the Sherman 1 implications have to  
9 get DOJ approval and perhaps the input of other IXC competitors  
10 across the country who may view this as some type of  
11 combination or conspiracy under Section 1 in the Florida  
12 market. I just -- I mean, I think it's a valid concern, but if  
13 your lawyers can sign off, I think it's a great idea.

14 CHAIRMAN JABER: Yeah, I mean, I'm not an expert in  
15 antitrust, and that's not what this agency does, so maybe you  
16 all can show me where -- and how is that different when you get  
17 together and offer settlements in arbitrations?

18 MR. HATCH: Typically in arbitrations it is a  
19 negotiated agreement between the two parties and everybody  
20 that's affected is generally there. But what I heard you  
21 suggesting earlier is that everybody out here get together and  
22 start discussing access reductions and price reductions.

23 CHAIRMAN JABER: That is not what I said, Mr. Hatch.

24 MR. HATCH: That's why I'm being very careful here.

25 CHAIRMAN JABER: That is not what I said. Let me try

1 it again because perhaps I'm having difficulty this morning  
2 articulating the questions. Similar to interconnection  
3 agreement discussions or arbitration discussions, why can't you  
4 offer stipulated language regarding the timing of  
5 implementation of flow-throughs and rate increases? That is  
6 not any different from what we do in fuel adjustment cases,  
7 arbitrations, interconnections. And you know what, Mr. Hatch?  
8 With all due respect, you used to work here, you know exactly  
9 what I'm talking about. I'm not suggesting you get behind a  
10 closed door and agree what your access charge reduction will be  
11 and what the price increase will be and what the flow-through  
12 reduction will be. I'm suggesting you work out the timing.

13 MR. HATCH: That's fine, Madam Chairman. I think we  
14 might be able to agree on that. In fact, that is what we had  
15 hoped to do if the deferral was granted and we had the  
16 opportunity to discuss this item with staff so that everybody  
17 would be on board and it would be acceptable to everybody.

18 CHAIRMAN JABER: Was that so hard?

19 MR. HATCH: No, but that's not what I heard.

20 CHAIRMAN JABER: Okay. Were you done with your  
21 presentation, Ms. McNulty?

22 MS. McNULTY: Yes. Thank you.

23 CHAIRMAN JABER: Were you done, Mr. Hatch?

24 MR. HATCH: I believe so.

25 CHAIRMAN JABER: Okay. Mr. Rehwinkel, did you have

1 anything related to the recommendation itself you wanted to  
2 present?

3 MR. REHWINKEL: No, Madam Chairman, other than to say  
4 I concur in those remarks. I just would like to add one thing  
5 on the logistical issue, is that is indeed what I was talking  
6 about. With the concern being that if you have multiple grants  
7 which would be, say, more than one ILEC's petition being  
8 granted, and also I think an important policy goal of having  
9 one set of IXC reductions rather than them being seriatim which  
10 becomes very difficult to slice them up, that it would be worth  
11 having that kind of coordination. And that's all we were  
12 looking for, was the ability to work out the logistical time  
13 points on the calendar to do that with nothing else.

14 But I do think it would be worth doing only under the  
15 aegis of the Commission and the staff and not us going into a  
16 room because when you go into that room and you talk, there  
17 could be some presumptions held against you about what you're  
18 talking about even if you're being really good about what  
19 you're talking about, so. Thank you.

20 CHAIRMAN JABER: Mr. Rehwinkel, the gentleman on your  
21 left, who is that?

22 MR. ANTHONY: Yes, ma'am. My name is Hank Anthony.  
23 I represent BellSouth Long Distance, and I just wanted to state  
24 BellSouth Long Distance's position in this matter. It shares  
25 the concerns about the logistical matters about having one

1 ILEC's tariffs becoming effective on one day, a week later  
2 another ILEC's, and having to pass through those access  
3 reductions in a way that it will be both difficult from a  
4 billing perspective for the company and also, I think,  
5 confusing potentially to the company's customers. So if  
6 there's a way for all the parties, including the staff, to  
7 reach an agreement on that, I think it would be very helpful.

8           We also share the concerns about the authority of the  
9 Commission to impose certain restrictions on the ability of the  
10 IXCs to change prices. I think a good example here would be if  
11 BellSouth Long Distance comes in and passes through the access  
12 reductions in one particular way, it reduces rates for services  
13 A, B, and C, and at the same time the other companies come in  
14 and reduce rates X, Y, and Z, it may pose a competitive  
15 disadvantage to BellSouth Long Distance we guessed and we  
16 guessed incorrectly. We would like to have the flexibility to  
17 react to that, to reduce other rates still in the context of  
18 passing through all those access reductions but having the  
19 ability to rebalance what we had originally anticipated or if  
20 market conditions change in the future because I think, as  
21 Mr. Hatch said, it's probably as competitive a market as there  
22 is, not only among IXCs, but with the new technologies,  
23 wireless, for example, that have been making huge end roads.  
24 It really is a situation where the market can dictate that  
25 rates should not be increasing. Thank you.

1 COMMISSIONER DEASON: I have a question for  
2 Mr. Anthony.

3 CHAIRMAN JABER: Commissioner Davidson and then  
4 Commissioner Deason.

5 COMMISSIONER DAVIDSON: A couple of questions here,  
6 the first one to staff. On Issue 1, staff recommends that IXCs  
7 that paid \$1 million or more in intrastate switched access  
8 charges in 2002 should make an extensive filing. And I'm  
9 wondering if that language could perhaps be changed so that  
10 instead of limiting the 12 months to just 2002, we could say  
11 IXCs that paid \$1 million or more in any 12-month period  
12 between January 2002 and December 2003 so that we capture the  
13 spirit of what staff is saying but we don't inadvertently not  
14 capture an IXC that somewhere in that time frame paid that  
15 amount, if that makes sense to staff and to the Commissioners.

16 MR. WRIGHT: Staff would agree with that change. In  
17 fact, we were going to modify our recommendation to include  
18 2003.

19 CHAIRMAN JABER: Commissioner Davidson.

20 COMMISSIONER DAVIDSON: Well, I think it would be if  
21 the Commissioners agreed, but --

22 CHAIRMAN JABER: Commissioner Davidson, I'll give you  
23 some feedback in the minute, but if you have questions on the  
24 rec, do you want to do that now, or do you want to continue on  
25 with Mr. Beck's presentation and come to these?

1           COMMISSIONER DAVIDSON: Oh, that's fine. I've got a  
2 series of questions. I thought we were actually at that stage.  
3 So whenever you're ready, I'm ready.

4           CHAIRMAN JABER: Okay. I think Mr. Beck wanted to  
5 address the Commission. And, Commissioner Deason, I ask you  
6 the same question. Do you want to go ahead and ask you  
7 question of Mr. Anthony or do you want to --

8           COMMISSIONER DEASON: Yeah, I have a question for  
9 him.

10          CHAIRMAN JABER: Go ahead.

11          COMMISSIONER DEASON: And I think it goes along with  
12 what Commissioner Davidson is trying to accomplish.

13                 Did BellSouth pay \$1 million in access charges in  
14 2002, and if not, do you anticipate paying that much in 2003?

15          MR. ANTHONY: We'll certainly be paying more than a  
16 million dollars in 2003, and I believe that we also had more  
17 than that in 2002.

18          COMMISSIONER DEASON: So you would have been captured  
19 even under the existing staff language?

20          MR. ANTHONY: That's correct.

21          COMMISSIONER DEASON: Okay.

22          CHAIRMAN JABER: Mr. Beck.

23          MR. BECK: Thank you, Chairman Jaber. This past  
24 Friday we filed testimony urging the Commission to deny the  
25 petitions on a variety of reasons -- for a variety of reasons.



1 But if you should grant the petitions of the companies, we  
2 think it's very important to address the matter staff has  
3 raised, and we're very supportive of the staff recommendation.  
4 The legislation itself requires -- or does not leave just to  
5 competitive markets to flow through the access charges. It  
6 specifically requires the companies to decrease their long  
7 distance revenues by the amount necessary to return the  
8 benefits of the access reductions to both residential and  
9 business customers. Issues about that have been raised  
10 repeatedly in the past. I know I've heard presentations by  
11 people from -- representing local exchange companies that  
12 allege that AT&T had failed to do that at a time in the past.  
13 I know with the interstate jurisdiction that gets talked about  
14 a bit too. At the same time access charge reductions have gone  
15 down, there have been times where it appears that long distance  
16 rates have gone up. And I think the Legislature has addressed  
17 that because it wants to require the long distance companies  
18 that pass through any access charge reductions.

19           The staff has several options they've presented to  
20 you. And ones that I'd like to particularly address is  
21 concerning the length of time that you might require the  
22 benefits to be flowed through. One option the staff gives you  
23 is a 12-month period following the time of parity and another  
24 is a three-year period following time of parity. I'd urge you  
25 to go further and say that for each access reduction, and we

1 know there's three proposed in the companies' filings, that you  
2 require the flow-through to remain in place for the entire time  
3 of each flow-through, and then three years at the end.

4           Commissioners, I think the issues raised in the staff  
5 again were supportive. I'd go even further than they have.  
6 They need to be addressed in the dockets that we have pending.  
7 It would be my recommendation to include the issues that are in  
8 the staff's recommendation to simply include them in the --  
9 each of the rate rebalancing petitions. Have the companies  
10 file testimony a week from this Friday and give another week  
11 for rebuttal, if you want. But if you order it, you can put it  
12 on an expedited schedule where these matters would be addressed  
13 in the hearings, and you wouldn't have to worry about a protest  
14 or not to any PAA.

15           If you went the way with a PAA in this separate  
16 docket, then I would put it on a fast track and have the  
17 testimony coincide with the rate rebalancing petitions. I  
18 think these issues are too important to not take them up in the  
19 rate rebalancing petitions, and I think one way or another you  
20 can get there by doing it on an expedited basis.

21           CHAIRMAN JABER: Mr. Beck, let me ask you a question  
22 as follow up to what I asked the industry. Recognizing your  
23 fundamental difference in position on the applications, I would  
24 assume OPC would support some sort of stipulation that the  
25 industry put forward to you that agreed to the timing of

1 flow-through -- the timing of any increases or access charge  
2 reductions being concurrent with flow-through reductions. Give  
3 me some feedback on that.

4 MR. BECK: I'd be happy to talk with them. I wasn't  
5 aware of the meeting staff mentioned, at least I didn't have  
6 any acknowledge of it. I don't know whether they contacted our  
7 office or not, but I'd be happy to talk with the companies and  
8 see if we could reach an agreement on that. But if not, there  
9 needs to be a process where the Commission addresses it, you  
10 know, if the parties can't agree to it.

11 CHAIRMAN JABER: Commissioners -- Mr. Twomey, go  
12 ahead.

13 MR. TWOMEY: Madam Chair, Commissioners, the AARP  
14 will adopt the comments of the Office of Public Counsel.

15 CHAIRMAN JABER: Okay. Commissioner Davidson, you  
16 want to go ahead now?

17 COMMISSIONER DAVIDSON: Thank you, Chairman. The  
18 first question is for staff. On Page 5 of the recommendation,  
19 the last paragraph on the bottom, in staff's view, would those  
20 three components of any tariff filing encompass or is it  
21 contemplated that those requirements encompass some type of  
22 percentage breakdown of reductions flowing to residential  
23 versus reductions flowing to business?

24 MR. WRIGHT: I think we should be able to get the  
25 percentages if we have the correct information.

1           COMMISSIONER DAVIDSON: All right. And these next  
2 few questions are to the parties. First, in your view, does  
3 the flow-through requirement act as an offset against actual  
4 local rate increases or potential local rate increases?  
5 Meaning the tariff filing state that rates are going to be  
6 increased -- local rates are going to be increased year one,  
7 year two, year three in certain amounts. If those rate  
8 increases for whatever reasons, market-based reasons, business  
9 reasons, competitive reasons, don't occur, do you agree that  
10 the access reduction that you would otherwise be entitled to  
11 under the petition you won't be entitled to? If that makes  
12 sense. It may have been a very poorly worded question. But if  
13 you get the gist of it, if you could respond.

14           MR. REHWINKEL: If I understand your question, you're  
15 asking if the end user monthly recurring basic local rate  
16 increases don't materialize to the level that is being  
17 requested today, pre-PSC action, that the access reductions  
18 will not be received to that same degree; is that the question?

19           COMMISSIONER DAVIDSON: That is the question because  
20 I'm assuming the parties are going to -- if this Commission  
21 granted the petitions, the parties would then implement their  
22 access rate reductions based on the petitions as granted, or is  
23 there going to be some type of, do you envision, ongoing  
24 relationship so that you know the amount of actual increases?

25           MR. REHWINKEL: Let me answer it the way I understand

1 it. The only certainty with respect to access reductions will  
2 be in the first step of any multistep rate adjustments because  
3 the ILEC has to come back each year and basically reset. So if  
4 minutes of use and/or number of access lines that are in the  
5 basic category change, it could change the amount of the local  
6 rate adjustment and the access adjustment. I think it could  
7 happen in the second installment if it was a three-step set of  
8 changes. It would most likely happen in the third set --  
9 installment because I think the only thing that we know for  
10 certain is that the world will not look the same three years  
11 from now or two years from now as it does today.

12 Did I answer the question you were asking,  
13 Commissioner?

14 COMMISSIONER DAVIDSON: Well, it does, and I have a  
15 follow-up that I'm going to ask now before the other parties  
16 get to that first question. And let me know if you agree with  
17 or disagree with this statement.

18 Does the intent of the legislation reflect that for  
19 so long and to the extent there is a local rate increase  
20 pursuant to the Act, that increase must be offset by a  
21 reduction in long distance charged to residential and business  
22 customers? And the key element there, I'll repeat it, for so  
23 long and to the extent there's a rate increase, that must be  
24 offset.

25 MR. REHWINKEL: I'm not sure the answer to that

1 question because I don't -- it seems to me that --

2 COMMISSIONER DAVIDSON: Don't you hate it when that  
3 happens?

4 MR. REHWINKEL: Well, I'm sitting here trying to  
5 decide whether I want to let Mr. Fons answer that question.

6 The access charge reductions that occur as a response  
7 to the -- or in conjunction with the local rate increases will  
8 be capped. I don't think they can be adjusted upward. Is that  
9 the question you're asking? I think whatever the assumption is  
10 as far as local rate increases that go into the billing  
11 equalization calculation the Commission will do. Where they  
12 say local rate revenues is "X" amount, access reduction is the  
13 same amount, that whatever access reductions you make will be  
14 capped.

15 COMMISSIONER DAVIDSON: Let me ask one more way, and  
16 I suppose this is a second follow-up. Assume the following  
17 hypothetical, and it's very simplistic. Year one, LEC has a  
18 local rate increase in aggregate of a million dollars. Year  
19 two, LEC has another local rate increase of a million dollars.  
20 The same for year three, a million dollars. Presumably, and  
21 sort of discounting right now for market forces, consumers  
22 could be paying that year one million dollar rate increase for,  
23 hypothetically, a period of four years. The same for the year  
24 two increase, four years. You would add that to the year one,  
25 and they would be paying that for four years, and that would

1 extend the whole period to five years. Same for year three,  
2 extending part of the increase out for six years.

3 Do you agree or disagree with the proposition that  
4 IXCs for whatever period that local rate increase would be  
5 being paid by customers would have to maintain the reductions  
6 in access fees? Meaning if those year one customers paid that  
7 million dollars for four years, the access reductions would  
8 have to remain in place as a matter of law for four years. And  
9 I understand competitive market forces will possibly act as a  
10 ceiling on IXCs raising those rates. But do you get the gist  
11 of the hypothetical?

12 MR. REHWINKEL: I understand your question, yeah. I  
13 think that that is probably the assumption that most people are  
14 operating with in the statute. Whether you can sit here and  
15 say that there is language in the statute that says that that  
16 first million dollar reduction means that for the next so many  
17 years that that IXC's revenues will be that million and the  
18 next million and the next million dollars lower, I don't know  
19 that you can really trace the dollars.

20 COMMISSIONER DAVIDSON: I don't think it's -- it's  
21 not tracing it to so much the revenues. It's tracing it,  
22 tracking it to the access charges that would be passed on to  
23 business and residential customers. I don't think anyone would  
24 have a problem with long distance -- any company making more  
25 money. It's a matter of -- I'm trying to sort of determine to

1 what extent there's philosophic agreement or disagreement with  
2 the duration component. If with the local rate rebalancing  
3 residential, small business customers under these petitions  
4 pay, just say for simplicity sake, \$10 million a year for five  
5 years, would the long distance companies under the law be  
6 required for five years to pass on that \$10 million more being  
7 paid by residential customers? Is the duration of what you  
8 must do as an IXC tied to the duration of what will occur in  
9 the local exchange market pursuant to these petitions if  
10 granted?

11 MR. REHWINKEL: I do not think there's any such  
12 linkage in the statute. And what makes it complicated is the  
13 word "rates" which was in the prior flow-through statutory  
14 language has been changed to "revenues." And that's from an  
15 end user standpoint. I don't know that you can sit there and  
16 say that this linkage travels through time. It's one of those  
17 unfathomable things that, you know, you don't know what the  
18 competitive marketplace looks like. And I know you tried to  
19 take that out and say that -- not to consider that in the  
20 answer, but I don't know -- and maybe there are better people  
21 than myself here among the parties that could answer that  
22 question, but I don't know how you would make such linkage and  
23 extend it through time.

24 All I know is that what the Commission has to do is  
25 to verify that the revenue reductions have been made such that



1 they pass the benefits on to the customers. Beyond that, it  
2 gets very murky, if you will, about how long in time over many  
3 years --

4 COMMISSIONER DAVIDSON: Well, I agree with that. I  
5 think a fundamental tenet of the legislation, at least from my  
6 own perspective sitting here as an individual, is that any  
7 increase in local rates would be offset by a decrease in long  
8 distance rates, and not taking into account the customer  
9 makeup, who residential, who business bears the benefit and the  
10 burden. But if in the local exchange market there will be an  
11 additional \$10 million paid over some period of time, I believe  
12 it's contemplated that in that long distance market there will  
13 be a \$10 million benefit. If you have an additional burden for  
14 perhaps five years but only a benefit for one year, does that  
15 satisfy the legislative requirement that we have benefits and  
16 burdens being equal in these two different markets?

17 MR. REHWINKEL: Well, that's the \$64 million,  
18 thousand dollar, whatever question that you're asking. And  
19 quite frankly, that's an issue that I think we have a  
20 fundamental disagreement on as far as what the language in the  
21 statute stays as far as what benefits are to be considered by  
22 the Commission. And I'm not trying to reopen the discussion  
23 from the last item, but it --

24 COMMISSIONER DAVIDSON: Let me just read from the  
25 statute. I understand -- I mean, I think there are two

1 different notions of benefit. I mean, there is a provision  
2 that any intrastate interexchange telecommunications company  
3 whose intrastate switched network access rate is reduced,  
4 et cetera, shall decrease its intrastate long distance revenues  
5 by the amount necessary to return the benefits of such  
6 reduction to both its residential and business customers. I  
7 mean, I'm reading into that, I suppose, this notion of burden.  
8 So, anyway, I understand your point, and I've probably taken up  
9 enough time with these questions.

10 CHAIRMAN JABER: Do you have other ones though? You  
11 want to go ahead and get them?

12 COMMISSIONER BAEZ: Can I just ask a follow-up real  
13 quick on this particular issue?

14 CHAIRMAN JABER: Commissioner Baez, go ahead.

15 COMMISSIONER BAEZ: Mr. Rehwinkel, it sounds like  
16 there is obviously a disagreement with what might be suggested  
17 in this recommendation, but more to the point, there's a  
18 disagreement with certainly I'm sure Office of Public Counsel  
19 and perhaps even Mr. Twomey might chime in on this issue as to  
20 what -- you know, because there is a question of what  
21 constitutes a benefit, that immediately ropes in the question  
22 of, to the extent that it's a financial -- that is of a  
23 quantifiable financial nature, or at least part of it anyway,  
24 that necessarily ropes in the question of for how long and  
25 whether they should correspond, something that

1 Commissioner Davidson was discussing with you. It starts  
2 sounding a lot like what the Chairman suggested -- or rather --

3 CHAIRMAN JABER: Every once in a while she gets it  
4 right.

5 COMMISSIONER BAEZ: Right.

6 CHAIRMAN JABER: Every once in a while I get it  
7 right.

8 COMMISSIONER BAEZ: And I think Mr. Beck alluded too  
9 that maybe those questions should be included in the general --  
10 I mean, if it is all stuck together, then why don't we just  
11 stick them all together?

12 MR. REHWINKEL: Well, first of all, I don't know that  
13 the state of this particular item that we're on here is noticed  
14 for all the parties that were in the prior item. And this is a  
15 very serious issue as far as taking this discussion and  
16 importing it back into those petitions. I mean, there's a  
17 separate notion in the statute about returning the benefits,  
18 and I think that's a stand-alone benefit consideration for the  
19 Commission when they talk about making sure that they police  
20 the flow-through appropriately, whether they let the market say  
21 there's "X" number of millions of dollars of cost reductions  
22 out there, and let everybody govern themselves accordingly, or  
23 they take a more involved stand to ensure that those benefits  
24 are returned. That's a stand-alone matter and should not be  
25 imported into the other section. That's our position on that.

1           CHAIRMAN JABER: Commissioners, do you have any other  
2 questions? Commissioner Deason.

3           COMMISSIONER DEASON: I have a question for  
4 Mr. Hatch. You used the terminology "revenue cap" in relation  
5 to staff's recommendation. I need to understand, how do you  
6 interpret that term "revenue cap"?

7           MR. HATCH: It's not clear to me. That's one of the  
8 questions that we had intended to ask the staff if this item  
9 were deferred, is, what does this really mean? Are you talking  
10 about a cap on our revenues, or are you talking about a cap on  
11 rates? What are you talking about?

12           If it's a cap on revenues, we really disagree with  
13 that because I don't think that that was ever contemplated by  
14 the statute. If it's a cap on a specific rate, then that  
15 creates a whole series of problems that you have to attend to.  
16 And, again, it would allude to something that Mr. Anthony has  
17 said. In a competitive marketplace, you reduce Service A and  
18 all of a sudden a month down the road everybody else had  
19 reduced Service B and you say, damn, I really have to fix this.  
20 So you raise those rates and move it over here.

21           Now, at the end of the day, you have still flowed  
22 through the benefit, not to a specific customer or to a  
23 specific ratepayer, but you have done what that statute has  
24 asked you to do, is flow it through to residential and business  
25 customers in the aggregate. And so when you start talking

1 about what you can reduce or increase and when, then it becomes  
2 really dicey in a very dynamic competitive marketplace.

3 COMMISSIONER DEASON: What significance do you put on  
4 the change of the term "rate" to "revenue" in the statute?

5 MR. HATCH: In the original flow-throughs in the  
6 original statute there were some questions about, gee, you  
7 reduced this rate, but it's not the rate that you reduced  
8 forever, and there was some rate increases amongst various  
9 carriers. The question became is, is this correct? Is this  
10 allowable? And so in order just to obviate those -- well, just  
11 to finish out that prior point is, at the end of the day, the  
12 staff audited AT&T, and the staff determined that we had flowed  
13 through everything that was expected of us to flow through.  
14 And it wasn't done with a rate for a specific period of time.  
15 It was done with a number of rates, both business and  
16 residential, going up and down all over, but at the end of the  
17 day, we flowed through every penny of it.

18 CHAIRMAN JABER: But aren't they revenues that have  
19 to be associated with the access charge reductions?

20 MR. HATCH: Yes.

21 CHAIRMAN JABER: Will that be easy for staff to  
22 determine? I interrupted you, Commissioner Deason. Do you  
23 mind if I follow-up?

24 COMMISSIONER DEASON: No, that's fine.

25 CHAIRMAN JABER: Will that be easy for us to

1 determine, Mr. Hatch?

2 MR. HATCH: When you start talking about tracking  
3 dollars, the answer is no. It's not easy. But here's --

4 CHAIRMAN JABER: Let me tell you why I'm asking. I  
5 thought about this so much last night that I actually for the  
6 first time in a very long time pulled out my telephone bill.  
7 This is one of those where, you know, someone else in my family  
8 gets to pay the bill. And it occurs to me that that someone  
9 else got us on an international one-rate plan for AT&T. And  
10 we've got that bundled service, apparently, with a flat rate,  
11 and then I've got the in-state connection fee, the \$1.88, and  
12 then I have something, bill statement fee, which you need to  
13 explain to me, perhaps. \$1.50 in a bill statement fee. I  
14 don't think we're responsible for that, staff. I don't think  
15 the agency is responsible for that.

16 COMMISSIONER DAVIDSON: I've got some problems with  
17 my bill as well if you could --

18 CHAIRMAN JABER: Yeah.

19 (Laughter.)

20 CHAIRMAN JABER: My question is this, Mr. Hatch.  
21 Just looking at my bill, I can see clearly the in-state  
22 connection fee that may go away if we grant these petitions.  
23 But I've got this international one-rate plan. Now, components  
24 of that under your -- what you just said may go up, components  
25 may go down, and I know looking at my bill I won't be able to

1 tell. How can staff tell?

2 And, by the way, the part about who's paying the bill  
3 from now on will change because I'm with Commissioner Deason,  
4 I'm going to go get the Sam's card.

5 MR. HATCH: The answer to your question is I don't  
6 know exactly how that's going to be done. There has to be some  
7 sort of a mechanical process that can be worked out to track  
8 the revenue levels in terms of here's where you started, here's  
9 where you ended, and at the end of the day, you don't have  
10 those revenues. And that's the answer to the question.

11 CHAIRMAN JABER: And I'm teasing you. I'm  
12 theoretically someone that should understand the bill. The  
13 difficulty I've had -- and let me send a very strong signal.  
14 It is not my intent to be an obstacle as it relates to how  
15 these cases are governed but yet to flush out the record so  
16 that we make the best decision at the end of the day.

17 If these are questions you can't answer today, what's  
18 wrong with flushing out the record in the proceedings we've got  
19 coming up so that we can answer these questions? I'm taking  
20 you back to what Mr. Beck suggested and, frankly, back to what  
21 I said in the previous item. What is wrong with delving into  
22 these issues in the hearings that are scheduled December 10th,  
23 11th and 12th?

24 MR. HATCH: From a practical standpoint, I don't  
25 think you need to. And I don't think -- because these

1 proceedings are so important and they're going to be  
2 controversial and difficult to get through in the time you've  
3 already got allowed to engraff an entirely different proceeding  
4 on top of them is I don't think a good idea.

5 CHAIRMAN JABER: Well, then how will I answer the  
6 customer's question, the average customer that says, where is  
7 my bill going down, and where will my bill come up? How do I  
8 answer that question?

9 MR. HATCH: You answer that question after we have  
10 filed our tariffs and after we have selected the services and  
11 the rates to be reduced. That's how you answer that question  
12 to customers.

13 CHAIRMAN JABER: And after the hearing is concluded.

14 MR. HATCH: Yes. In terms of whether there will be  
15 an access reduction, the answer to that is yes. But how we  
16 flow it through and the permutations and combinations  
17 surrounding the flow-through, you don't have to have an answer  
18 to that today to decide whether the access reduction is  
19 appropriate in the first instance. The statute is it very  
20 clear that we have to flow all this through. There's just no  
21 way around that. So once you've decided to embark down that  
22 path, you have more than enough opportunity to decide whether  
23 we have done it correctly pursuant to the statute.

24 CHAIRMAN JABER: What's the bill statement fee of  
25 \$1.50?



1 MR. HATCH: I don't know.

2 CHAIRMAN JABER: You need to find out.

3 MR. HATCH: I'll be glad to relay that to you.

4 COMMISSIONER DAVIDSON: Chairman, yes -- or sorry,  
5 Commissioner Deason.

6 COMMISSIONER DEASON: Yeah. Back to the question of  
7 the term being changed from "rate" to "revenue" in the statute.  
8 It raises a question for me, and perhaps if the parties are  
9 willing, they can express their opinion, what happens with  
10 stimulation factor of reducing access charges? And what I mean  
11 by that, if the petitions are granted and we approve local rate  
12 increases, those are stable, predictable recurring amounts,  
13 relatively. I see Mr. Fons shaking his head back there. You  
14 pay your phone bill every month, don't you, Mr. Fons? Or else  
15 you'd be terminated. Just keep your seat.

16 Access charges are, on the other hand, though, are  
17 discretionary services. The customers choose whether they're  
18 going to make a long distance call or not. One would assume  
19 with basic economics is that if access charges are reduced, it  
20 would stimulate demand and that there would be access charges  
21 reduced, long distance rates reduced stimulate demand, and that  
22 you actually could create more revenue by the access reductions  
23 than if you were just to keep a static amount of usage. Are  
24 those the type issues we're going to address at the hearing?  
25 Are they going to be addressed in your filing, or we just

1 ignore that?

2 MR. HATCH: Commissioner Deason, this Commission's  
3 had an extraordinarily long history dealing with the issue of  
4 stimulation and rate reductions. After all of the years that I  
5 worked here and even since, no one has ever been able to figure  
6 out how you identify stimulation. It is a wonderful economic  
7 theory. It's probably correct in academic and pure aggregate  
8 economic circles, but you cannot identify and track  
9 stimulation. We tried it with EAS and it just wasn't possible.

10 COMMISSIONER DEASON: Well, maybe you need to refer  
11 to the water folks because when we implement a large rate  
12 increase, they say there's the opposite effect, that we have to  
13 actually increase rates more to generate the revenue  
14 requirement because there's going to be reduced consumption at  
15 high gallonage rates. Isn't that a basic economic theory as  
16 well?

17 MR. HATCH: Yes. But the problem is, is that you've  
18 got a static monopoly market, and you don't have multiple  
19 providers offering multiple things changing on a day-to-day,  
20 hour-to-hour basis.

21 CHAIRMAN JABER: Commissioner Deason, Mr. Rehwinkel  
22 wants to answer your question. Do you want that?

23 COMMISSIONER DEASON: Sure.

24 MR. REHWINKEL: If I might. That issue is addressed  
25 in the statute, Commissioner Deason. And the definition of

1 revenue neutral in 364.164(7) obviates the need for the  
2 Commission to go into that inquiry because the billing units  
3 for purposes of making the rate changes are the most recent 12  
4 months for both the local monthly recurring rate units and the  
5 access units. If any stimulation occurs, it will be recognized  
6 in the next year when the Commission looks at the number of  
7 dollars that are associated with an incremental change in price  
8 and again on a 12-month historical basis. That iteration would  
9 occur until parity is reached. So the way the statute reads is  
10 that inquiry would be obviated.

11 COMMISSIONER DEASON: So you're saying the statute  
12 prescribes what pricing units are to be used?

13 MR. REHWINKEL: Yes, sir.

14 COMMISSIONER DEASON: And so the statute ignores  
15 stimulation.

16 MR. REHWINKEL: Yes, sir. That is the way the statute  
17 is written.

18 COMMISSIONER DEASON: And then where did it place in  
19 the position that if more stimulation, there still would be  
20 benefits for residential customers? That's one of the --

21 MR. REHWINKEL: Could you repeat the question? I'm  
22 sorry.

23 COMMISSIONER DEASON: Then does it boil down to the  
24 fact that if we're ignoring stimulation, then that's one of  
25 the -- we have to utilize that fact in making an ultimate

1 determination of whether there are going to be ultimate  
2 benefits for residential consumers?

3 MR. REHWINKEL: Again, that would presuppose that the  
4 benefit in (1)(c) there is directed at the toll rates benefit  
5 rather than the local competitive market benefit. But if your  
6 question is, if you assume for the sake of argument that that  
7 is the benefit analysis that the Commission undertakes, I think  
8 it will be improper to make an assumption that the statute does  
9 not allow you make in terms of making that benefit analysis.  
10 That's my opinion.

11 COMMISSIONER DAVIDSON: A couple of questions for  
12 Mr. Hatch. In general terms, for 2003 does AT&T have a process  
13 in place to track access charges paid to BellSouth relating to  
14 BellSouth territory? I mean, could you figure out that amount?

15 MR. HATCH: Yes.

16 COMMISSIONER DAVIDSON: For 2004 does AT&T view the  
17 access charge flow-through, the access charge reduction  
18 flow-through that must be passed on to be based upon the amount  
19 of local rate increases set forth in the petition? Is it a  
20 different sort of process? Do we start with that amount? You  
21 won't go through the same process again. It's not going to be  
22 based on calls. It's going to be based upon some amount of  
23 local rate increases being offset by access charge reductions.  
24 That would be the amount of the pass-through for 2004.

25 MR. HATCH: If I understand your question correctly,

1 and I'm not sure that I do, what we will flow through in terms  
2 of rate reductions is going to be calculated based on what we  
3 calculate is our share of the aggregate access rate element  
4 reductions. I mean, the ILECs will publish a tariff and say,  
5 my local switching rate goes from a penny a minute to a half a  
6 cent a minute, just for example sake.

7 COMMISSIONER DAVIDSON: And I understand, but my  
8 point is it's going to be based upon some calculation as  
9 opposed to actual sort of number of calls.

10 MR. HATCH: Yeah. In order to calculate the rate  
11 effect to AT&T, we have to go through and look at our access  
12 units' consumption and match up what the new rates in those  
13 elements are going to be with our consumption patterns and  
14 units. And then based on those current units, then say, oh,  
15 okay, if these rate elements are reduced, this is times the  
16 total number of units for those rates based on our current  
17 consumption at the time we make the calculation.

18 COMMISSIONER DAVIDSON: And you would do that same  
19 process for 2005 and 2006?

20 MR. HATCH: Yes.

21 COMMISSIONER DAVIDSON: Let's say that we're in 2007.  
22 Could you through some combination of the process you've just  
23 described and the process that you have right now in 2003 for  
24 calculating access charges, calculate the amount of access  
25 charge reductions that AT&T is a beneficiary of as a result of

1 the ongoing effect of these petitions?

2 MR. HATCH: Can we do it now and project it forward  
3 to --

4 COMMISSIONER DAVIDSON: No. Can you do it in, for  
5 example, 2007? So if part of our ongoing monitoring activity  
6 we are able to calculate -- well, as a result of this  
7 implementation, as a result of granting these petitions, if  
8 granted, AT&T, for example, is the beneficiary of so much in  
9 access charge reductions that we want to make sure are passed  
10 on to their customers, could that be calculated using some  
11 combination of the methodology you have in place today in 2003  
12 and the analysis that you will engage in to determine what  
13 percent share you would take under the petitions?

14 MR. HATCH: I guess I'm still confused by your  
15 question. Let me see if I can answer it this way and if it  
16 gets you where you want to go.

17 COMMISSIONER DAVIDSON: Well, let me ask you one more  
18 simple way before you answer. In 2007 what's the easiest way  
19 to measure the benefits to AT&T under implementation of this  
20 statute if the petitions are granted?

21 MR. HATCH: In 2007, which is post the end of the  
22 increments, you would go back to the last increment and say,  
23 what was the dollar value of the access reductions. Then we  
24 would then take that dollar value, put it into rate ultimately  
25 revenue reductions. We would reduce our revenues by that

1 amount of money through some combination of rate reductions,  
2 and then that's what you would measure.

3 COMMISSIONER DAVIDSON: Would that be the same  
4 process you would engage in 2008, 2009?

5 MR. HATCH: I guess if forced to, yes. I'm not sure  
6 what that gets you, but, yeah, I'd expect something similar to  
7 that.

8 CHAIRMAN JABER: Commissioners, any other questions?

9 MR. TWOMEY: Madam Chair?

10 CHAIRMAN JABER: Mr. Twomey.

11 MR. TWOMEY: Were the rest of us going to have an  
12 opportunity to answer the questions that were raised by  
13 Commissioner Davidson?

14 COMMISSIONER DAVIDSON: Absolutely. That was my  
15 intent for basically all the parties to have a chance to  
16 answer. I apologize. You're sitting so far away.

17 MR. TWOMEY: Well, I like to do that when the time is  
18 appropriate.

19 CHAIRMAN JABER: Go ahead. I thought you meant sit  
20 far away, you like to do that.

21 MR. TWOMEY: I'm sorry.

22 CHAIRMAN JABER: Go ahead, Mr. Twomey.

23 MR. TWOMEY: Let me start by saying I find it  
24 remarkable somewhat that we would hear this legislation that's  
25 now this law described as murky given that the folks that wrote

1 it, many of them are in the room. But that being the case, or  
2 at least as I allege it, it strikes me, Commissioner Davidson,  
3 that there may be some -- it strikes me there may be some  
4 confusion in your mind about how this thing works. And what I  
5 want to say is, and tell me if I'm wrong, of course, but the  
6 access fee -- the law was written so they could take credit for  
7 reducing things first. So the petitions (sic) don't come in  
8 and ask officially, in a sense, to raise local rates. That has  
9 bad political tones to it. What they, in fact, do is come in  
10 and ask to decrease their access revenues. So those are known  
11 first, essentially. And the IXC's know with specificity what's  
12 going to happen if those decreases are voted up or down as the  
13 law requires.

14           And consequently, if you vote to decrease the access  
15 fees or rates, then the law compels the local companies to  
16 raise their local rates. It's not -- we've heard at various  
17 times people say, well, we may raise and we may not. To the  
18 extent that anybody has said that, I believe they're exactly  
19 wrong. The law, as drafted by them, compels the local  
20 companies to increase their local rates dollar for dollar for  
21 the givebacks they give to the long distance companies.

22           It's my belief and my fear, and you can ask the  
23 industry this, that the reductions in long distance rates, the  
24 actual in-state reductions, whether they be to the residential  
25 or to the business people, only have to remain in effect, I



1 believe, through the time that parity is reached. And so that  
2 there is a -- it's problematic that while at the same time the  
3 local rate increases are forever or until such time as they  
4 choose to increase them at their own will 20 percent. So the  
5 AARP is concerned that the reduction, the flow-throughs may not  
6 be benefiting anybody after parity is reached, and it's  
7 something that we need to be conscious of.

8           So the rate increases are actual. If you approve  
9 these petitions, they're going to be actual. There's no  
10 potential about them or not. And I guess that's all I need to  
11 say. Thank you.

12           CHAIRMAN JABER: Commissioners, again, just to start  
13 the conversation going and maybe generate a motion or not from  
14 the Commissioners, Commissioner Davidson, you asked early on  
15 about feedback for what you propose to add on Page 5 of the  
16 recommendation capturing that 12-month period between  
17 January 2002 and I think you said the end of 2003; was that  
18 right? Yeah. I wholeheartedly agree with that. I don't have  
19 any concerns about that. But my concern is very similar to  
20 what I raised in Item 4A. I can't separate the relevancy of  
21 understanding what the flow-through portion will be between  
22 residential and consumer with what we have to do in those three  
23 petitions that we addressed in 4A. And for that sole reason  
24 and in an effort for me to be consistent with what I did in  
25 Item 4A, I probably will not support staff's recommendation,

1 not because I don't believe in the guidance that you've  
2 provided, but because I think it all needs to be addressed one  
3 shot. It's comprehensive for me. And, frankly, I'm just so  
4 surprised the industry didn't put a comprehensive case because  
5 not to give you the strategy, not to put my judgment into the  
6 judgment that you all considered in how you put on your case,  
7 but the customers want to hear what the financial benefits are,  
8 and being able to tie flow-through reductions on the  
9 residential side is critical in my determination. So for that,  
10 I won't support staff's recommendation but lean on the approach  
11 to combine the issues somehow with what we have in front of us.

12           Saying all of that, the options, if I had to vote on  
13 the options today, I agree with Mr. Hatch and Ms. McNulty. It  
14 defies logic as it relates to a competitive arena in the long  
15 distance side to try to cap whether it's rates or revenues. I  
16 think definitely we need to be moving toward -- lean on the  
17 side of deregulation and not requiring a cap on an industry  
18 that I think without argument is competitive. So I'd much  
19 rather see market forces work in that regard. If I had to vote  
20 today, I wouldn't advocate for any sort of cap. Saying that,  
21 that's also an issue we could have heard testimony on.

22           Commissioners, I'd love your feedback or a motion or  
23 comments.

24           COMMISSIONER DEASON: Well, I'm not sure that staff  
25 agrees with the terminology that they're recommending a revenue

1 cap. And if they do, I need to understand that, and if they  
2 don't, I need to understand how they disagree with that  
3 terminology being used in conjunction with their recommendation  
4 because I didn't read their recommendation that way, but maybe  
5 I was misreading.

6 MS. BULECZA-BANKS: We did not envision that as a  
7 revenue cap at all. We envisioned that they would have the  
8 flexibility to respond to the market conditions and, if need  
9 be, adjust those rates whenever they need to as long as the  
10 total revenue reduction stayed during the period of time.

11 COMMISSIONER DEASON: And there's a question as to  
12 what period of time that is.

13 MS. BULECZA-BANKS: That is correct. And the reason  
14 why those issues came up is because in prior reductions, there  
15 were some issues raised that once those reductions came into  
16 place, a couple months later, they were changed, and they were  
17 increased. And we had some feedback to the Commission that  
18 that was difficult, and staff wanted to bring that to your  
19 attention.

20 CHAIRMAN JABER: And I appreciate that clarification  
21 and, Commissioner Deason, your question because it gives me an  
22 opportunity to clarify my thoughts in that regard. But the  
23 very fact that a time period would be established I would take  
24 issue with. And whether it's a cap -- it's called a cap is  
25 probably in the eyes of the beholder. But in any case, I don't

1 think the period has to be established if I had to vote on it  
2 today. But, see, what a hearing does for me is it reserves the  
3 ability to hear argument on those options.

4 MS. BULECZA-BANKS: I envision cap as always this is  
5 the max you could go, and that would never be the case -- well,  
6 in my opinion, because there obviously could be other areas  
7 where you're making more revenue. We would certainly, you  
8 know, not wish the companies not increase their revenues at any  
9 point but in order to make sure that that one -- those  
10 reductions were actually flown through at some point.

11 COMMISSIONER DEASON: In an effort to move this along  
12 and maybe try to expedite and simplify, if at all possible,  
13 what -- it's not a motion; I guess it's question. What would  
14 be wrong with issuing staff's recommendation as a PAA with the  
15 understanding that if it's protested, we'll just incorporate it  
16 into the hearing that's going to take place in mid-December?  
17 If it is not protested, well, then it becomes final. If it is  
18 protested and the parties wish to gauge in further discussion  
19 and come to the hearing with a stipulation as to how the  
20 logistics are going to work out, that would be fine too.

21 CHAIRMAN JABER: Yeah, I thought about that,  
22 Commissioner Deason, as I was thinking about this  
23 recommendation and how I would vote overall, so I started  
24 looking at the dates. Even if staff expedited this order,  
25 which I can't imagine they'd have any trouble with, it's a

1 21-day protest period. And just doing the math, it would be  
2 nearly impossible to keep the December 10th hearing and yet  
3 allow an opportunity for testimony and for discovery.

4           Intervenor testimony was due October 31st. Rebuttal  
5 testimony is due November 19th. If we vote today to go ahead  
6 and incorporate these issues into the hearing, just assuming  
7 for purposes of this discussion that you do, I suppose parties  
8 can file rebuttal testimony November 19th. The math doesn't  
9 work out.

10           COMMISSIONER BAEZ: Madam Chair?

11           CHAIRMAN JABER: Commissioner Baez.

12           COMMISSIONER BAEZ: Have we ever shortened a protest  
13 period?

14           CHAIRMAN JABER: We have because we used to have the  
15 statutory authority that allowed us to do it.

16           COMMISSIONER BAEZ: But now we don't?

17           CHAIRMAN JABER: Do we have that in telecom?

18           MS. KEATING: Not in telecom. It was in water.

19           COMMISSIONER BAEZ: Thank you.

20           COMMISSIONER DEASON: Well, Madam Chairman, how do  
21 you envision under your approach? How do we get to the issues  
22 in a way that we still abide by the 90-day clock?

23           CHAIRMAN JABER: You want to reconsider 4A?

24           COMMISSIONER DAVIDSON: Reconsider 4A.

25           CHAIRMAN JABER: Anybody want to reconsider 4A?

1 All kidding aside, Commissioner Deason, let's flush  
2 out the option of identifying broad issues --

3 COMMISSIONER DEASON: I mean, we can meet the 90 days  
4 by just denying the petitions today.

5 CHAIRMAN JABER: You're so right.

6 COMMISSIONER DEASON: But I don't think that's  
7 legally correct. When they ultimately deny them --

8 CHAIRMAN JABER: Well, there's a burden --

9 COMMISSIONER DEASON: -- but that's after hearing an  
10 opportunity to be heard and hearing evidence.

11 COMMISSIONER DAVIDSON: I have a question on the  
12 options which sort of gets to what you are talking about. And  
13 I agree wholeheartedly, Chairman, that especially in the LD  
14 market it's a robust, competitive market. But I'm trying to  
15 look at this from a project finance standpoint, so to speak.  
16 And one of the first steps you engage in is to calculate the  
17 term of the project. Here the project is a company's flow  
18 through of access charge reductions. And I'm struggling with  
19 what's the term of that project. I mean, I understand that  
20 staff has given us options 12 months, 3 years, or no months,  
21 but the reality is AT&T, MCI, the companies may benefit for a  
22 period of ten years from these access charge reductions.  
23 Perhaps they need to be flowed through for ten years, perhaps  
24 one. I ultimately think market forces will act as a real  
25 market cap against reversal and sort of increasing the charges,

1 but I don't know what the term of this project is, as I sit  
2 here.

3 I'm sitting here looking at Options 1, 2, and 3, and  
4 I agree with -- I understand the rationale between 3, but we  
5 also have an obligation to make sure that these access charge  
6 reductions are passed on. Does that obligation end at year  
7 one, at year two? I mean, I just don't know. And that's the  
8 fundamental issue I have here. I don't know what I would vote  
9 out right now.

10 CHAIRMAN JABER: And obviously I don't think they can  
11 answer that for us today. Certainly I can't. But that's why I  
12 suggested that maybe those were arguments that we would benefit  
13 from at a hearing.

14 Let me go back to Commissioner Deason's question.  
15 Let's talk about the notion that everyone can file testimony on  
16 general issues related to Item 5 on November 19th. Prehearing  
17 statements are due November 21st. The hearing is currently  
18 scheduled for December 10th.

19 Commissioner Deason, absent using that as an  
20 opportunity, I really don't know how to answer your question  
21 unless the parties, of course, are willing to waive the 90-day  
22 clock, but it's not between December 10th and the end of the  
23 year there's going to be an opportunity for hearing dates.

24 COMMISSIONER DEASON: Ms. Keating, what do you  
25 believe we should do?

1 MS. KEATING: One idea that we've been sort of  
2 tossing around during your discussion is that one thing that  
3 you could potentially do without revisiting Item 4A is to set  
4 this matter directly for hearing, consolidate it for purposes  
5 of hearing with the hearing that is scheduled in this docket.  
6 You might want to consider providing a direct testimony filing  
7 date somewhere in there, but that is something that you could  
8 do. It would be tight admittedly, but procedurally I believe  
9 that you could accomplish that.

10 CHAIRMAN JABER: Do you think -- whether you call it  
11 direct testimony or rebuttal testimony and, you know, how we  
12 get there procedurally, do you think that November 19th -- it's  
13 the date that parties had to file rebuttal testimony anyway.  
14 Does that work?

15 MS. KEATING: I think it would -- not knowing right  
16 now exactly what would need to be filed, I would lean towards  
17 that date at a minimum of being the date that you would want to  
18 look for testimony. You could perhaps set that up as a  
19 slightly bifurcated filing schedule, perhaps, where you have  
20 direct testimony on certain issues filed on dates that are  
21 slightly askew from the currently set dates that are designated  
22 for the issues that are set up in the access charge reduction  
23 docket. Just an idea.

24 CHAIRMAN JABER: You know, that's a good point. The  
25 90 days applies to us as it relates to the petitions filed by



1 the LECs, but the reason this determination is important is  
2 truly from the logistical standpoint, you believe, and I  
3 support, Commissioners, I think I've heard you support as well,  
4 that these flow-through reductions should happen as  
5 concurrently as possible. So that's why this determination  
6 would be necessary to come into that 90-day time frame, not  
7 because the statute requires it, but because we want -- if  
8 there is an implementation, we want that implementation to  
9 happen concurrently.

10 COMMISSIONER DEASON: You don't think that this  
11 information will be useful in determining if there are benefits  
12 to residential consumers?

13 CHAIRMAN JABER: I do. Well, obviously based on what  
14 I said in Item 4A I do.

15 COMMISSIONER BAEZ: And while I think I agree with  
16 you, I think I heard Ms. Keating say that this was just a  
17 consolidation for hearing purposes. I mean, that in essence  
18 just preserves the two cases separately, and I guess I'm at a  
19 loss as to how you employ one and the other.

20 MS. KEATING: If you're consolidated for hearing,  
21 that still allows you to hear the information that you want to  
22 hear at the same time. It would still be a part of the same  
23 record --

24 COMMISSIONER BAEZ: Is it part of the same record?

25 MS. KEATING: -- for purposes of making your

1 decision. It does not necessarily, though, presume that you  
2 have to use the information pertaining to the toll reductions  
3 in making your decision on the access charge reduction dockets.

4 CHAIRMAN JABER: And that, in fact, would be an issue  
5 in the case. When any sort of flow-throughs should be made  
6 would actually be an issue in the case that we would decide.

7 MS. KEATING: That's how I would interpret it, yes,  
8 ma'am.

9 COMMISSIONER BAEZ: Let me get it straight. In terms  
10 of the statements that the Commission has made today, their  
11 preference that some kind of information along these lines in  
12 terms of financial benefits and reductions in the long distance  
13 or in the toll market, we would be able to hear that evidence  
14 at the same -- get that information and hear that evidence and  
15 testimony at the same time. We would then be free to -- we  
16 would have the option to let -- to weigh that in our  
17 consideration in the access reduction docket, correct, or am I  
18 misunderstanding?

19 MS. KEATING: No, sir, I don't think so. But what I  
20 was going to say is I don't think -- you have the opportunity  
21 to hear that information regardless of whether you consolidate  
22 the dockets for hearing anyway. I guess it's just the point  
23 that I was trying to make. You could receive that kind of  
24 information in the case anyway depending upon whether the  
25 parties believe that that's something necessary to support

1 their burden of proof or to make their burden of proof in  
2 making their cases. So I guess I'm -- maybe I'm missing the  
3 point of your question.

4 COMMISSIONER BAEZ: No. I was just trying to go back  
5 to something you had said or at least I thought I heard you  
6 say, and I'm trying to get it --

7 MS. KEATING: All I'm saying is that I believe that  
8 you can consolidate these dockets for a hearing, have the  
9 hearing in December. You will have one record, but that  
10 doesn't necessary presume that you are determining that the  
11 toll increases are a matter necessary for rendering a decision  
12 on the petitions themselves.

13 COMMISSIONER BAEZ: And by saying that -- but by  
14 saying that, I mean, it cuts both ways; is that --

15 MS. KEATING: Yes, sir --

16 COMMISSIONER BAEZ: All right. Fair enough.

17 MS. KEATING: -- that the decisions are not  
18 necessarily entirely intertwined, but that the issues are to  
19 some extent it would beneficial to have the information  
20 presented at one time with a decision to be made thereafter as  
21 to whether they are integrally related.

22 COMMISSIONER BAEZ: Thank you.

23 CHAIRMAN JABER: Commissioner Deason.

24 COMMISSIONER DEASON: I have a question for Mr. Beck.  
25 Early on you suggested consolidation. Do you disagree with

1 what Ms. Keating is saying?

2 MR. BECK: No. I agree with what she said.

3 CHAIRMAN JABER: Mr. Twomey, I know you've had your  
4 hand up.

5 MR. TWOMEY: Yes, ma'am. I was just going to join  
6 basically and echo what Mr. Beck just said in response to  
7 Commissioner Deason's questions. I think it's less complicated  
8 than it might seem on the surface. I see you as having fully  
9 the right to add issues to this case for consideration, and I  
10 don't see this going much further than that. You're directing  
11 the parties to address another issue and file testimony.

12 CHAIRMAN JABER: Commissioners, let me say this for  
13 you and also for all of the parties here. I'm telling you, I  
14 need this information. I don't know how to be more blunt. I  
15 need this information. Whether we did it in 4A or we do it  
16 now, I am telling you, this is information I was looking for,  
17 intended to have, very surprised we didn't have it.

18 MR. REHWINKEL: Madam Chairman, may I ask a question  
19 at this time? You're at Commissioner discussion time.

20 CHAIRMAN JABER: If you think the question is going  
21 to be helpful.

22 Go ahead, Mr. Rehwinkel.

23 MR. REHWINKEL: When you talk about you needed this  
24 information and one of the things that I would like to ask as  
25 an IXC in this part of the question, is it your intention that

1 what we would file would be public information?

2 CHAIRMAN JABER: Well, that's a fair question.

3 MR. REHWINKEL: You know, I vehemently disagree with  
4 the notion. This issue went to the Prehearing Officer. He  
5 issued an order and it was not appealed pursuant to the  
6 Commission's rules on this net benefit issue.

7 CHAIRMAN JABER: Yeah, but Mr. Rehwinkel --

8 MR. REHWINKEL: And I'm not disputing that.

9 CHAIRMAN JABER: Mr. Rehwinkel, let me interrupt you  
10 for a minute because I'm trying to be so blunt, but you keep  
11 coming back to the parties and whether they appealed or not.  
12 Forget the parties for just a minute. As a decision-maker, I  
13 am telling you, this is information I need to make the most  
14 informed decision and be able to explain it at the end of the  
15 day.

16 Let's take one question at the time. With regard to  
17 confidentiality, it was never my intent that our  
18 confidentiality rules wouldn't apply in this case as they do  
19 with every case.

20 MR. REHWINKEL: Well, I feel the need to explain  
21 myself --

22 CHAIRMAN JABER: Go ahead.

23 MR. REHWINKEL: -- because I feel like we're being  
24 criticized for not doing something that we read the statute on,  
25 the state of the case on the issue was where it was. Now, we

1 are at a point in the case that is getting very late, and we  
2 have to make some decisions. So the question arises, if we  
3 were to go down this path and provide this information, which  
4 we in good faith are at this point without it, would we be able  
5 to make a filing of some sort of strawman tariff or  
6 representation that would be given the highest level of secrecy  
7 because of this competitive issue? You know, I get in trouble  
8 all the time for using basketball or sports analogies, but you  
9 see, late in the game when the two-point game and the team  
10 comes out and sets up their play, the other team calls time out  
11 and goes back to the huddle and comes up with defensive  
12 strategy to counter it. That's the way the marketplace works  
13 when people see what kind of signals you're giving about where  
14 you're going to be making changes, et cetera.

15 CHAIRMAN JABER: So your concern relates to how other  
16 competitive carriers react to the information.

17 MR. REHWINKEL: And I'm sure they would have the same  
18 exact concern. I mean, everybody would --

19 CHAIRMAN JABER: Well, are you suggesting --

20 MR. REHWINKEL: -- love to see what the other side  
21 is going to do.

22 CHAIRMAN JABER: Are you suggesting that anything  
23 more than the PSC's confidentiality procedure should be put in  
24 place? I mean, we don't have --

25 MR. REHWINKEL: I've got no issue with the way it's

1 been handled in the past, but again, we have a multitude of  
2 parties here. And that's just a very difficult issue.

3 CHAIRMAN JABER: In all fairness, you're asking very  
4 good questions. And let me tell you what I was looking for,  
5 and you can take that for whatever it is worth.

6 Commission Davidson very appropriately talked about  
7 the timing of the flow-throughs with the increases in the  
8 access charge reductions. I have that concern. Show us the  
9 matching concept. Help us understand where the financial  
10 benefits -- and I understand you disagree with how to qualify  
11 the benefits, but if you assume for a moment, as I have been  
12 very blunt in saying, the financial benefits are important to  
13 me. If you can show me that where a residential consumer gets  
14 an increase, they will also see some sort of financial benefit  
15 in the short term, and then long term maybe there are other  
16 kinds of benefits --

17 MR. REHWINKEL: Well, keep in mind also, please, that  
18 there's an extremely steep slippery slope here. I understand  
19 we've been talking about consolidating dockets and it's kind of  
20 a very tentative mating dance for these dockets. But what you  
21 have to consider is, if you set a standard about this net  
22 benefits, there is I don't know how many million customers out  
23 there, well, then this demonstrative tariff, how comprehensive  
24 does it need to be, and do you have to go through and show each  
25 individual customer what their bill is going to look like? I

1 don't believe that the Legislature intended --

2           COMMISSIONER DAVIDSON: I have to jump in here. I  
3 don't think that's what you have ever requested, Chairman.  
4 It's not what I anticipate. And you're sort of taking us on  
5 the slippery slope and I'm not there yet. I mean, I appreciate  
6 that. And from my standpoint, I'm looking at this  
7 consolidation as an efficiency move. It may be that the end of  
8 it we don't consider information, maybe we do. But on this, I  
9 think the only point we've ever -- that I've tried to make, and  
10 I think the Chairman has tried to make and the rest of the  
11 Commissioners have tried to make, is that we want to be able to  
12 assess whether and to what extent there is some pairing up in  
13 broad terms residential, residential business, business. I  
14 don't think one Commissioner up here today has said yes or no,  
15 there must be a dollar-for-dollar benefit to every single  
16 customer in the state of Florida.

17           Put on your best case as we go forward, and help give  
18 us the information so that we can see how this is going to  
19 work, the benefits and the burden and in what markets. And if  
20 you can only present a case on a very broad market, then that's  
21 all you can do. If you can present it on specific customer  
22 groups, then that's what you do. If you present it on certain  
23 services or bundles, that's what you do. But I'm looking at  
24 this where just this is a procedural move to generate some  
25 greater efficiency, and it's up to the parties to present their



1 cases.

2 CHAIRMAN JABER: And a better record. And,  
3 Mr. Rehwinkel, at the end of the day, if there aren't  
4 dollar-for-dollar benefits or even something close to that, the  
5 record should distinguish why that's not important. But as we  
6 sit here today, that's not what we have in front of us, and  
7 maybe it sounds better for you when another Commissioner says  
8 it, but Commissioner Davidson has captured it. I've been  
9 trying to say it all morning.

10 MR. REHWINKEL: It's helpful to hear. Thank you.

11 CHAIRMAN JABER: Okay. Commissioners, what's your  
12 pleasure?

13 COMMISSIONER DEASON: I move the Keating plan.

14 COMMISSIONER BAEZ: I second the Keating plan.

15 MS. KEATING: Please retitle it.

16 CHAIRMAN JABER: That was half an hour ago, Beth, but  
17 I think you were suggesting that we move to consolidate the  
18 docket, have testimony dates established that allow us to keep  
19 the December 10th hearing dates.

20 MS. KEATING: That's correct, Madam Chairman.

21 CHAIRMAN JABER: So was that the Keating plan?

22 COMMISSIONER DEASON: That's the Keating plan.

23 CHAIRMAN JABER: So there was a motion.

24 COMMISSIONER BAEZ: Second.

25 CHAIRMAN JABER: And a second.

1 All those in favor say "aye."

2 (Simultaneous affirmative responses.)

3 CHAIRMAN JABER: Commissioners, we have a long --

4 Item 5 is approved as articulated herein.

5 We have a long day ahead of us. How about we take an  
6 hour break and come back and finish agenda and then go  
7 immediately to Internal Affairs.

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CERTIFICATE OF REPORTER

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

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

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

DATED THIS 10th DAY OF NOVEMBER, 2003.

*Tricia DeMarte*

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