

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

PETITION BY VERIZON FLORIDA INC.
TO REFORM INTRASTATE NETWORK ACCESS
AND BASIC LOCAL TELECOMMUNICATIONS
RATES IN ACCORDANCE WITH SECTION
364.164, FLORIDA STATUTES.

DOCKET NO. 030867-TL

PETITION BY SPRINT-FLORIDA,
INCORPORATED TO REDUCE INTRASTATE
SWITCHED NETWORK ACCESS RATES TO
INTERSTATE PARITY IN REVENUE-NEUTRAL
MANNER PURSUANT TO SECTION
364.164(1), FLORIDA STATUTES.

DOCKET NO. 030868-TL

PETITION FOR IMPLEMENTATION OF
SECTION 364.164, FLORIDA STATUTES,
BY REBALANCING RATES IN A
REVENUE-NEUTRAL MANNER THROUGH
DECREASES IN INTRASTATE SWITCHED
ACCESS CHARGES WITH OFFSETTING
RATE ADJUSTMENTS FOR BASIC SERVICES,
BY BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 030869-TL

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

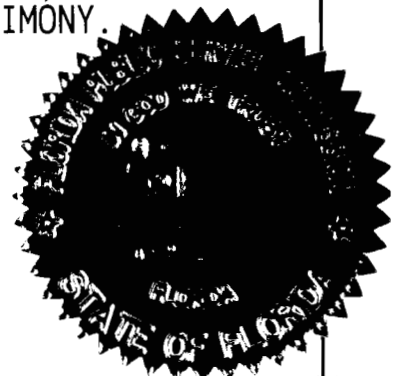
DOCKET NO. 030961-TI

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VOLUME 15

PAGES 1864 THROUGH 1945

PROCEEDINGS: HEARING



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

6 DATE: Friday, December 12, 2003

7 TIME: Commenced at 9:00 a.m.
8 Recessed at 8:45 p.m.

9 PLACE: Betty Easley Conference Center
10 Room 148
11 4075 Esplanade Way
12 Tallahassee, Florida

13 REPORTED BY: JANE FAUROT, RPR
14 Official FPSC Reporter
15 (850) 413-6732

16 APPEARANCES: (As heretofore noted.)
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I N D E X

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CHAIRMAN JABER: Ms. Keating, if I am looking at the list of witnesses correctly, we have gone through all the witnesses for the hearing, but I know that there are outstanding requests for official recognition, so let me have you remind me what those are.

MS. KEATING: Actually we have got a couple of outstanding, what I believe are stipulated exhibits. A couple of them are in response to Commissioners' questions during the course of the hearing. The first one that I would like to ask be marked, and I believe the next exhibit number is 84, unless I have lost count.

CHAIRMAN JABER: What is the exhibit you want marked?

MS. KEATING: It is Florida Public Service Commission Lifeline data request responses dated October 2003, and the exhibit shows the number of Lifeline customers for various incumbent companies and the ancillary services they take.

CHAIRMAN JABER: Is that this?

MS. KEATING: Yes, the handwritten document.

CHAIRMAN JABER: Okay. So it is responses to data requests on Lifeline customers. That will be marked Exhibit 84.

(Exhibit 84 marked for identification.)

MS. KEATING: The second thing I have, and I'm not

1 sure, Madam Chairman, if Commissioners have received both
2 pieces of this, but it would be a composite exhibit, and these
3 are -- this is survey data gathered by the University of
4 Florida on behalf of the FPSC.

5 CHAIRMAN JABER: Is this the updated information
6 Commissioner Davidson was asking for?

7 MS. KEATING: Correct.

8 CHAIRMAN JABER: Update to the fair and reasonable
9 rate study.

10 MS. KEATING: This is as of January through June
11 2003.

12 CHAIRMAN JABER: February through June 2003. I see
13 you all laughing. I know you think I'm going to make a Gator
14 joke. It's too late. February through --

15 MS. KEATING: January through June 2003.

16 CHAIRMAN JABER: Thank you. And that survey data
17 will be marked as Composite Exhibit 85.

18 (Composite Exhibit 85 marked for identification.)

19 MS. KEATING: And then last is actually a correction
20 to an exhibit that was already entered into the record, but it
21 also appears that we have not entered the confidential
22 information, so I am just going to suggest that we add this one
23 on rather than try and correct the earlier one. This would be
24 a confidential exhibit. It is BellSouth's corrected responses
25 to staff's Interrogatories 103 and 104, and it is a

1 confidential exhibit.

2 CHAIRMAN JABER: Okay. BellSouth's corrected
3 response to Staff Interrogatory 103 and 104 will be identified
4 as Confidential Exhibit 86. And all three of those exhibits
5 you have reached stipulation on in terms of being entered into
6 the record, Ms. Keating?

7 MS. KEATING: I believe so.

8 (Confidential Exhibit 86 marked for identification.)

9 CHAIRMAN JABER: Mr. Twomey, you had your microphone
10 on.

11 MR. TWOMEY: Yes, ma'am, we stipulated to it. I just
12 want to observe for the record that the -- not wanting to
13 deprive the Commission of the survey data from the University
14 of Florida, that we don't -- AARP doesn't think that the
15 information on what the take rates for seniors on any other
16 service besides strictly telecommunications services is
17 relevant to this proceeding.

18 CHAIRMAN JABER: All right. With that noted, but no
19 objections to the exhibits coming into the record, Exhibits 84
20 through 86 will be admitted into the record.

21 (Exhibits 84 through 86 admitted into the record.)

22 CHAIRMAN JABER: Any other exhibits?

23 MS. KEATING: No, Madam Chairman, none that I am
24 aware of.

25 CHAIRMAN JABER: I'm going to ask all the parties if

1 there are any other matters that we need to entertain before we
2 take up closing arguments. So starting over here with
3 BellSouth.

4 MS. MAYS: No, Madam Chair.

5 CHAIRMAN JABER: Verizon.

6 MR. CHAPKIS: No.

7 CHAIRMAN JABER: Sprint.

8 MR. FONS: No, Madam Chairman.

9 CHAIRMAN JABER: Public Counsel.

10 MR. BECK: None.

11 CHAIRMAN JABER: Attorney General's office. AARP.

12 MR. TWOMEY: No, ma'am.

13 CHAIRMAN JABER: Knology.

14 MR. MEROS: No, ma'am.

15 CHAIRMAN JABER: AT&T.

16 MR. HATCH: No, ma'am.

17 CHAIRMAN JABER: MCI.

18 MS. McNULTY: No.

19 CHAIRMAN JABER: Staff.

20 MS. KEATING: No, ma'am.

21 CHAIRMAN JABER: Commissioners.

22 MR. FONS: Madam Chairman, may I ask a question?

23 CHAIRMAN JABER: See, I already passed you.

24 MR. FONS: I know, but I just found a folded document
25 in front of me that I know was handed out previously, and it is

1 the U.S. Census Bureau poverty 2002, and I don't show this as
2 being marked as an exhibit.

3 CHAIRMAN JABER: If I am thinking of that document, I
4 took official recognition. If it is the same document, that is
5 the federal poverty income level, Mr. Fons?

6 MR. FONS: Yes.

7 CHAIRMAN JABER: Yes, I already took official
8 recognition of that.

9 MR. FONS: Thank you.

10 CHAIRMAN JABER: Any other interruption, Mr. Fons?

11 MR. FONS: Not yet.

12 CHAIRMAN JABER: With the break that we took a few
13 minutes ago, do you all need any other breaks before closing
14 arguments, or can we get to closing arguments? Speak now or --

15 MR. TWOMEY: Madam Chair, Ms. Keating came by some
16 time ago and asked if --

17 CHAIRMAN JABER: Do you need a few minutes?

18 MR. TWOMEY: -- we would have a few minutes to
19 prepare, and --

20 CHAIRMAN JABER: 15 minutes or longer?

21 MR. TWOMEY: I think 15 minutes is adequate for me.

22 CHAIRMAN JABER: Okay. Well, how about we come back
23 at 6:30, we will entertain closing arguments, and remind all
24 that the prehearing officer had already established a time
25 period as set for 8 minutes each party. Okay. Thank you.

1 Please pick up all of the confidential information you have
2 passed out.

3 (Recess.)

4 CHAIRMAN JABER: All right. Let's get back on the
5 record. We are ready for closing arguments, eight minutes a
6 party. Commissioners, I propose that we start with the ILECs,
7 since it is the ILECs' petition, and then turn to the IXC's for
8 their argument, and conclude with the consumer advocates. And
9 I suppose I should ask have you all agreed on an order, Mr.
10 Beck?

11 MR. BECK: Yes. I think when we reach our point I
12 would go and then Mr. Twomey would go and General Crist would
13 conclude.

14 CHAIRMAN JABER: Okay. That sounds good. Ms. White.

15 MS. WHITE: Thank you, Madam Chairman, Commissioners.
16 I know we are all ready for this to end, but I do have some
17 final thoughts that I think we need to talk about. First,
18 let's talk about the statute that has brought us to this point.
19 The Statute 364.164 was passed by the legislature and signed
20 into law by the governor. The law wasn't of your doing, but
21 you do have to implement it, and you have to implement it as it
22 is written, not as some of the parties to this proceeding wish
23 it had been written.

24 In this regard, this statute or at least the least
25 the part everyone is concerned with is perfectly clear. It

1 brooks no interpretation. Section 364.164 requires you to
2 consider whether granting BellSouth's petition will, "Remove
3 current support for basic local telecommunications service that
4 prevents the creation of a more attractive competitive local
5 exchange market for the benefit of residential customers."
6 Period. There isn't anything ambiguous about that language.
7 Any supposed ambiguity is clearly contrived.

8 Moreover, this language in the statute is perfectly
9 logical and consistent with what this Commission is telling the
10 legislature. In your recently completed report on competition
11 in Florida, on Page 17, you stated, and I quote, "UNE-P rates
12 are based on the ILECs' forward-looking costs to provide local
13 service, while local rates historically have been subsidized in
14 order to make them more affordable. Thus, even though
15 Florida's UNE rates may be comparable to other states, CLECs
16 may find the residential market less attractive."

17 There really isn't any room for controversy here. No
18 matter how hard the AARP and the OPC try to deny it, support
19 for basic local rates does exist, and cannot be wished away.
20 Now, there has been a question raised about whether you can
21 consider before approving BellSouth's petition the impact of
22 the pass-through of the reduction in access charges on
23 residential customers. The short answer is no, you can't. The
24 statute requires that the ILEC reduce its access charges to
25 parity, and provides that the reduction can be used -- can be

1 offset by increases in basic local telecommunications services,
2 which is a defined term. That is the revenue neutrality that
3 is required by the statute. The statute does not require bill
4 neutrality, it requires the change be revenue neutral to the
5 local exchange company.

6 Can you review what the IXC's are doing to make sure
7 they follow through on the flow-through of the reductions?

8 Sure. They are subject to your jurisdiction and you can do
9 that. Can you make sure that every person who experiences an
10 increase in basic rates gets a corresponding decrease in
11 intrastate toll rates? No, you can't. The law neither
12 contemplates that nor allows it.

13 With all this said, however, let's not lose sight of
14 the main point. The law that has brought us here relates to
15 competitive market enhancement. Now, you all have done a great
16 job of promoting competition. 29 percent statewide of business
17 lines and 9 percent statewide of residential lines are now
18 served by competitors. The difference in those two numbers,
19 however, according to your own report, the competition report,
20 turns on the difference in the price of basic local services.
21 Importantly, you have direct uncontroverted evidence in this
22 record that this is, in fact, true. You heard the witness from
23 Knology.

24 Notwithstanding that Dr. Gabel and Dr. Cooper think
25 they know better, Mr. Boccucci is probably the best person here

1 to tell you what will really happen with and without rate
2 rebalancing. He made it a pretty clear. When he is looking at
3 a \$9 basic local rate in Florida versus a \$15 basic local rate
4 in Tennessee, he is going to go to Tennessee. He is voting
5 with his capital. He couldn't have been any clearer about the
6 impact of current local telecommunication rates on competitive
7 entry. I heard Dr. Cooper sort of scoff at Knology's business
8 case, but it should be interesting to note that Knology in the
9 Panama City exchange has 35 to 40 percent of the residential
10 access lines.

11 Now, there is clearly a problem here that has to be
12 troubling to you and to all of us. If residential rates are
13 priced below cost, so that competitors won't come to the
14 market, or will only come to certain segments of the
15 residential market, wouldn't residential subscribers rather
16 have a below cost rate than a rate increase? That is a good
17 question. The problem with the question is that the
18 legislature has answered it at the state level and Congress has
19 answered it at the federal level. They said competition is the
20 answer. Moreover, even the folks here who have objected to
21 these plans concede that competition does bring benefits to
22 customers, to consumers. Where consumers' rates are above
23 cost, competition drives the rates to cost. Even where this
24 doesn't happen, competition brings innovation and choices.

25 The legislature has made that decision. Now, does

1 that mean that the people that you have heard from who object
2 to these increases or who say they can't pay them are just out
3 of luck? That these people will just have to drop off the
4 system? That people on Social Security will have to go without
5 phones? No, it doesn't mean any of that. The law clearly
6 provides for increased protection of Lifeline customers if the
7 petitions are granted by adding the eligibility criteria of 125
8 percent of the poverty level. I recall that the Verizon
9 witness testified that they currently have 21,000 Lifeline
10 customers and expect to add 20,000 more under their plan.

11 The federal poverty threshold Ms. Keating hold us
12 through one of our exhibits is about \$28,000 for a family of
13 four, which means the threshold for Lifeline service at 125
14 percent of the poverty level under these proposals will be
15 approximately \$35,000 for a family of four. I think you are
16 right to be concerned about these people, but the same law that
17 requires you to grant these petitions based on the evidence
18 presented here has addressed those concerns.

19 Now, under the statute you can grant or deny
20 BellSouth's petition. However, if you grant BellSouth's
21 petition we would make our compliance tariff filing consistent
22 with the commitments that we have made here on the record.
23 Specifically, increasing Lifeline eligibility to 135 percent of
24 the federal poverty level; and, two, increasing our proposed
25 nonrecurring charges such that the BellSouth recurring rate

1 increase for single line residential service would be lowered
2 by approximately 36 cents.

3 Let me close by telling you that we all know this
4 isn't easy. There are tremendous pressures being exerted here.
5 We know this is unpopular, but in this case the hard thing, the
6 unpopular thing is the right thing. Approving BellSouth's
7 petition will make the legal telecommunications market more
8 attractive. In turn, this will induce enhanced competitive
9 entry and that will benefit not only residential customers, but
10 all customers in Florida. Thank you.

11 CHAIRMAN JABER: Ms. White, I'm sure I will have
12 other questions later, but I need to clarify your last point.
13 You have agreed to increase your proposed nonrecurring charges
14 such that the local rates will be lowered by 36 cents from your
15 proposal?

16 MS. WHITE: Such that the single line residential
17 service increase would be lowered by approximately 35 cents
18 with the shortfall made up in increasing one of the
19 nonrecurring charges.

20 CHAIRMAN JABER: Okay. Does that matter -- is that
21 number correct regardless of which methodology we might select,
22 the typical or the mirroring?

23 MS. WHITE: Yes, ma'am.

24 CHAIRMAN JABER: The number is the same?

25 MS. WHITE: Yes, ma'am.

1 CHAIRMAN JABER: Okay. Mr. Chapkis.

2 MR. CHAPKIS: Good evening, Madam Chair,
3 Commissioners. I want to sincerely thank you and staff for all
4 of your hard work and exceptional efforts over the last few
5 days. You have heard from all the witnesses, and the
6 evidentiary record is now complete. That record demonstrates
7 that Verizon's rate rebalancing plan meets the statutory
8 criteria and it is in the public interest.

9 First, using the Commission's own UNE costs, Verizon
10 has demonstrated that its basic rates are supported. As
11 Verizon's witnesses have explained, these UNE costs
12 conservatively estimate the incremental cost of providing basic
13 service. Second, Verizon has demonstrated that its rate
14 rebalancing plan removes support for basic services in a
15 balanced fashion. Third, Verizon has demonstrated that the
16 existing rate structure impairs competition for residential
17 customers. This fact is supported by specific evidence of
18 competition in Verizon's territory.

19 Let's recall the unrebutted testimony of Mr. Evan
20 Leo. He explained that in Verizon's territory there are 100
21 business customers served by competitive facilities for every
22 one residential customer. When you include resale and UNE-P,
23 the ratio is still 10-to-1. The lack of competition for
24 residential customers in Verizon's territory is also supported
25 by common sense economics. Recall the testimony of Dr. Carl

1 Danner. He validated the simple yet straightforward notion
2 that the low cost prices stand in the way of competitors who
3 must recover their costs from selling a service. Verizon's
4 opponents were unable to address this evidence head on. They
5 put forward no credible explanation for the obvious lack of
6 competitive interest in Verizon's residential customers.

7 Fourth, Verizon has demonstrated that reforming its
8 basic local rates promotes residential competition. Knology, a
9 real world competitor, brought this fact into sharp focus. As
10 Felix Boccucci explained, Knology entered Verizon's territory
11 in anticipation of rate reform. And Knology's commitment to
12 future investment in Florida is dependent on the approval of
13 the ILECs' petitions. Knology demonstrated how competition
14 will provide large benefits to customers of all incomes and
15 ages in terms of service quality as large dollar benefits on
16 their bills, not just for phone service, but for cable TV and
17 for Internet access, as well. Verizon's opponents were unable
18 to explain away the specific affirmation of a competitor like
19 Knology.

20 Fifth, Verizon has demonstrated that increasing
21 competition benefits consumers. In the Florida act, the
22 legislature found that the competitive provision of
23 telecommunications services is, "In the public interest." The
24 legislature also found that competition will, "Provide
25 customers with freedom of choice, encourage the introduction of

1 new telecommunications services, encourage technological
2 innovation, and encourage investment in the telecommunications
3 infrastructure." The testimony provided at the hearings
4 demonstrates in no uncertain terms that the legislature's
5 findings which were signed into law by the governor, are
6 supported by empirical evidence and economic theory.

7 Verizon's opponents have relied on three basic
8 arguments in support of their petition. The record
9 demonstrates that each of these arguments is incorrect. First,
10 Verizon's opponents stand economic theory on its head in an
11 effort to deny that subsidies really exist. They present a
12 couple of different versions of the loop allocation theory. On
13 one hand, Dr. Cooper relies on the same theory he put forward
14 and this Commission rejected in the fair and reasonable docket.
15 On the other hand, Dr. Gabel attempts to dress up his loop
16 allocation theory in a misapplication of economic pricing
17 principles.

18 As the ILEC witnesses and the IXC economists have
19 explained, the loop is really a cost of network access and thus
20 a cost of basic service. Thus, Dr. Gabel's reliance on loop
21 allocation principles is misplaced. Moreover, as the Sprint
22 witness explained, Dr. Gabel's theory must also be rejected in
23 any event on empirical grounds because it makes assumptions
24 that are inconsistent with a real world telephone network.

25 Second, Verizon's opponents claim that some sort of

1 severe harm will befall this state if you bring the price of
2 basic service in alignment with our costs. This is not right.
3 This is wrong. The Florida Commission is not the first
4 commission to undertake rate rebalancing. You have heard
5 specific evidence from people who were involved in pricing
6 reform and significant policy-setting jurisdictions, akin to
7 Florida, including California and Massachusetts.

8 Contrary to the contentions of those opposed to rate
9 rebalancing, the testimony from the hearing room shows that
10 pricing reform in those states caused no harm to universal
11 service and no customer outcry. The same can be said for prior
12 experiences at the federal level. Pricing reform Initiated by
13 the FCC actually benefitted universal service by bringing
14 millions of new customers onto the network.

15 Did Verizon's opponents present evidence suggesting
16 that rate rebalancing proved harmful in other jurisdictions?
17 No. They produced no evidence, none that pricing reform has
18 ever caused harm in another jurisdiction. Consequently, there
19 is every reason to believe that pricing reform would be
20 successful in Florida, just as it was in California, just as it
21 was in Massachusetts, and just as it was at the federal level.

22 Third, Verizon's opponents claim that ratepayers and
23 low income customers in particular will be severely harmed if
24 this Commission brings prices more in line with our costs. The
25 record in this proceeding shows otherwise. As Verizon Witness

1 Danner explained, the low income customers will be the biggest
2 beneficiaries of pricing reform. They are going to receive the
3 benefits of access reductions, but they won't be subject to the
4 same basic rate increases.

5 What's more, this Commission and the industry have
6 gone to great lengths to protect these customers. The
7 Commission has requested and Verizon has agreed that upon
8 approval of its petition it will not increase Lifeline rates
9 for two years after its in-state access rates are in parity
10 with its federal access rates. In addition, the Commission has
11 requested and Verizon has agreed that upon approval of its
12 petition it will expand the Lifeline eligibility criteria
13 significantly to 135 percent in Florida. Accordingly, the
14 argument that poor customers will be severely harmed is simply
15 not true.

16 Fourth, Verizon's opponents argue that the IXCs don't
17 plan to flow-through a significant percentage of access
18 reductions to residential customers. As an initial matter,
19 this claim should not be considered when making a decision on
20 Verizon's petition. The statute does not provide that the
21 Commission may consider how and to what levels IXCs may flow
22 through the access rate reductions in rendering a decision. In
23 any event, the argument that IXCs don't plan to flow-through a
24 sufficient percentage of access reductions is incorrect. It is
25 especially incorrect in Verizon's service territory. Verizon

1 Long Distance, a company that now has 50 percent of the
2 residential lines in Verizon's territory, has testified that it
3 will flow-through the access reductions to both residential and
4 business customers based on the relative proportion of access
5 minutes associated with these classes of customers. This means
6 that a substantial majority of the access reductions will
7 accrue to Verizon's Long Distance residential customers.

8 And this brings me to my last point. This Commission
9 and the industry have invested considerable resources to bring
10 the benefits of competition to residential customers. Just
11 think of the efforts that have been undertaken; interconnection
12 arbitration, reciprocal compensation, numbering, number
13 portability, resale discounts, OSS in the 271 review,
14 collocation, UNE costing and pricing, universal service, and
15 now the implementation of the triennial review order. And yet
16 there is one thing that remains to be done. One critical step
17 to bring competition to the residential customer. That step is
18 bringing local rates more in line with our costs in Florida.

19 This Commission should finish the work that it
20 started. It should carry out the will of the legislature and
21 bring the benefits of competition, the benefits of innovation,
22 the benefits of investment that other progressive states are
23 beginning to enjoy so that Floridians can enjoy these, too.
24 And it should do this by approving Verizon's plan.

25 If this Commission grants Verizon's petition, we

1 would, in fact, make our compliance tariff filing consistent
2 with the representations we have made on the record with
3 respect to the increase in the Lifeline eligibility to 135
4 percent of the federal poverty level. We would also increase
5 our proposed nonrecurring revenues from 1.2 million to 2.4
6 million, so that our basic local rates would be raised by \$1.2
7 million less than they otherwise would be. We also represent
8 that if our petition is granted we would agree not to increase
9 our Lifeline rates for four years consistent with the BellSouth
10 proposal. Thank you.

11 CHAIRMAN JABER: Thank you, Mr. Chapkis. Mr. Fons.

12 MR. FONTS: Thank you, Madam Chairman. We have had a
13 hard three days. At the beginning I was convinced that we
14 would not be able to make it in three days, but because of the
15 Commission's efforts we have achieved this. And you need to be
16 applauded for that.

17 This is a tough area and it has got a lot of complex
18 issues. We have had a full and open exchange of ideas, we have
19 had a full and open exchange of information, and Sprint-Florida
20 has benefitted from the give and take that has taken place in
21 this proceeding. And we hope that the Commission, and the
22 consumers, and the Attorney General have learned from this
23 exchange, as well. And this exchange has been driven solely by
24 the 2003 act. That's why we are here.

25 And to put the 2003 legislation in perspective, this

1 legislation in the first instance restores to the Commission
2 the authority to address local basic rates and access charges.
3 The authority that was taken away from this Commission in 1995.
4 But in restoring this authority, the legislature said we want
5 the Commission to look and to focus its examination on the
6 creation of a more attractive competitive market for the
7 benefit of residential consumers.

8 Now, the 2003 legislation comes about not only
9 because of what took place in '95, 1995, but from a long
10 history of using access charges to support below cost basic
11 residential rates. I noted when we were looking at an older
12 order from 1987, that there is an earlier order, and I believe
13 this is the seminal order, the order that puts us where we are
14 today. And that was an order issued as a matter of fact 20
15 years and three days ago.

16 This was the order that the Commission issued prior
17 to the AT&T divestiture, which established access charges as
18 the mechanism for maintaining the revenue flow from long
19 distance toll rates to support below cost basic local rates and
20 universal service. From that date to today, the Commission,
21 the legislature, and the industry have been struggling with how
22 to address this built in subsidy and cross-subsidies between
23 services with the interest of creating a more competitive
24 market initially in the toll area and then ultimately in the
25 local area.

1 This effort was further complicated in 1995 when the
2 legislature opened the local exchange to competition. Up until
3 that time there was a monopoly and the Commission could
4 continue to hold local rates low and there was nobody that
5 could come in to take the business. Now we have to find a way
6 not only to address the creation of a market based toll --
7 competitive based toll market, we have to address how to create
8 a competitive based local market. Especially a competitive
9 local market for residential consumers.

10 It is instructive that the business consumers have
11 reaped the benefits of local and toll competition, and that is
12 simply because the business market was from the beginning a
13 financially attractive market across the board. While there
14 may have been some residential competition, and there is some
15 residential competition flowing from the 1995 act, that
16 competition is not across the board.

17 And so we are here today addressing the IXCs'
18 petitions which seek to bring competition to the residential
19 consumers across the board. The evidence that you have heard
20 over these last three days is compelling testimony. That
21 testimony is that residential competition will occur and will
22 benefit residential local consumers with choices of providers,
23 products, and prices if rebalancing occurs. This is what the
24 legislature intended and this is what Governor Bush demanded in
25 order to sign the 2003 Act. In his letter signing the act, the

1 governor noted, "I am certain that this legislation will allow
2 all Floridians to experience greater options so that ultimately
3 local phone customers will have the opportunity to access new
4 technology and be offered the level of choice and quality that
5 is now commonplace in long distance and cellular phone plans."

6 The decision is now yours to make as to whether the
7 intentions of the legislature and the governor will be
8 fulfilled. As Attorney General Crist pointed out in his
9 comments the other day, you are the Public Service Commission,
10 and your duty is to take care of the public. And that is a
11 broad use of the term public, not one segment of the public,
12 but all of the public. Your title also says service. Service
13 to the public can be inferred from that, but service to the
14 public is not provided by the Public Service Commission.
15 Service to the public is provided by companies and investors
16 who wish to come in and serve the consumer in a profitable way.

17 As you heard yesterday from Mr. Boccucci with
18 Knology, there are companies and there are investors who can
19 and will bring services to all of the consumers in Florida, all
20 of the residential consumers in Florida, but only if they can
21 do so profitably. But the current support for all basic
22 residential local service rates prevents that from happening
23 except on a limited basis in some residential markets.

24 The evidence is further compelling that the
25 residential consumers will directly and tangibly benefit by the

1 more competitive market that will be created by granting
2 Sprint-Florida's petition to reduce the support currently
3 provided by switched access network revenues. So we are back
4 to where we started out 20 years ago. We are grappling with
5 this issue. And now is the opportunity to deal with it once
6 and for all. And as Dr. Gordon has observed, perfection is a
7 laudable goal, but the pursuit of perfection should not become
8 the enemy of the good.

9 And that observation applies not only to the
10 regulators, it also applies to Sprint-Florida, it also applies
11 to the consumers. And to this end Sprint-Florida has already
12 committed and made concessions requested by the Commission.
13 Sprint will commit that if it's amended petition is granted,
14 Sprint will file conformance tariffs and documents that reflect
15 the commitments that Sprint-Florida has made on the record.
16 And if you will recall, these commitments are that we will
17 increase Lifeline to 135 percent of the federal income level,
18 poverty level, and that we will increase the term of exemption
19 for Lifeline customers from three to four years. And we also
20 committed to the Commission that we would increase the time
21 over which we make our increases from three steps over two
22 years to four steps over three years.

23 Commissioner Davidson asked about that --

24 CHAIRMAN JABER: Repeat that.

25 MR. FONS: That we will commit to increasing the time

1 period from two years and three steps to three years and four
2 steps if the Commission grants the petition. Sprint is willing
3 to do this as Sprint's Witness Staihr indicated, and Sprint is
4 further willing to commit if the amended petition is granted
5 that Sprint will file the following tariffs with regard to the
6 rates for the four increments. In 2004, the rate would be
7 \$2.25; in 2005, \$2.25; in 2006, \$1.50, and in 2007, 86 cents.

8 There is record evidence to support this commitment.
9 This proposal is not inconsistent with BellSouth's proposal,
10 Verizon's proposal, nor with BellSouth's Witness Ruscilli's
11 testimony that increases of about \$2 per year would not affect
12 subscribership. This commitment relates only to the recurring
13 monthly rates, not to the single line business rates. Thank
14 you, Madam Chair.

15 CHAIRMAN JABER: Only to the recurring monthly rates,
16 not to single line business. What about the nonrecurring
17 charges?

18 MR. FONS: If you will recall, Madam Chairman, the
19 testimony of Sprint's Witness Mr. Felz that the nonrecurring
20 charges already cover cost, and that any efforts to increase
21 them further would become a barrier to people coming on the
22 network and would be very difficult to maintain in a
23 competitive situation.

24 CHAIRMAN JABER: I'm sorry, I didn't ask the question
25 correctly. I am going back to your agreement with Mr. Shafer's

1 testimony now?

2 MR. FONS: Yes.

3 CHAIRMAN JABER: That doesn't affect the nonrecurring
4 charges?

5 MR. FONS: The nonrecurring charges would be also
6 increased one additional step in compliance with -- as we
7 understand it, but we would certainly consider that.

8 CHAIRMAN JABER: Okay. And remind me what the
9 nonrecurring charge is?

10 MR. FONS: The nonrecurring charges for Sprint are
11 listed on Exhibit 73. And as you can see, the nonrecurring
12 charges are different for residential and business, and they
13 are set forth in the columns headed 9, 10, 11, 12, 13, 14, 15,
14 and 16. And that only those the three increments.

15 CHAIRMAN JABER: Okay.

16 MR. FONS: And we would respread the nonrecurring
17 charges on the same basis that we spread the local rates.

18 CHAIRMAN JABER: That was my question. Thank you.
19 Commissioner Deason.

20 COMMISSIONER DEASON: I think the record speaks for
21 itself, but you also made a commitment you were going to work
22 with this Commission in a workshop to review ECS.

23 MR. FONS: That is correct. I'm sorry, when I gave
24 out the numbers for 2006 and 2007, the 2006 number instead of
25 \$1.50 will be \$1.36, and the rate for 2007, instead of 86

1 cents, will be a dollar.

2 CHAIRMAN JABER: Okay. Let's go through those
3 numbers again, then, Mr. Fons. In 2004 you said 2.25?

4 MR. FONS: That is correct.

5 CHAIRMAN JABER: 2005, 2.25?

6 MR. FONS: That is correct.

7 CHAIRMAN JABER: 2006, 1.36?

8 MR. FONS: That is correct.

9 CHAIRMAN JABER: And 2007, a dollar?

10 MR. FONS: That is correct.

11 CHAIRMAN JABER: And that agreement with Mr. Shafer's
12 testimony will not apply to single line business. And what
13 does that mean, that you will still adhere to your proposal to
14 incrementally increase over a two-year period, three steps?

15 MR. FONS: That is correct.

16 CHAIRMAN JABER: But for nonrecurring charges you
17 will, consistent with Mr. Shafer's testimony, do the three-year
18 four steps?

19 MR. FONS: That is correct. We will respread them.

20 CHAIRMAN JABER: Now -- okay. I will wait. Thank
21 you.

22 Mr. Meros.

23 MR. MEROS: May it please this tribunal. Madam Chair
24 and Commissioners, it has been my great privilege to represent
25 Knology of Florida in this case. Knology of Florida and I

1 deeply appreciate the careful attention that all of you have
2 given us and the respect that you have shown not only to
3 counsel, but to the witnesses and to the public. I personally
4 thank you for that.

5 The issue before this Commission is unquestionably
6 important. It is one that affects greatly the public interest,
7 but the facts now that they are in, and now that you have a
8 record before you demonstrate that the answer is not difficult.
9 The answer I would suggest is apparent from the record.

10 This case has generated understandable concern and
11 even fears about unintended consequences. I respect and
12 appreciate the concerns of people like Florida's great Attorney
13 General sitting here articulating and expressing those
14 concerns. But fortunately, again, the facts and the record
15 that this Commission has before it now and the mountain of
16 evidence that is now before you shows that those fears will not
17 be realized. And that instead, the fears will be replaced by
18 tangible benefits to the customers and the residential
19 customers that this Commission is concerned about.

20 And while the OPC theorizes and hypothesizes about
21 what these petitions do or whether they comply with the law,
22 Knology of Florida has come before you with real life practical
23 common sense facts and information to show you what will really
24 happen. Our case is not based on theory, it is supported by
25 frankly incontrovertible theory, but it is based on facts.

1 What happens here in Florida versus 25 miles north of here when
2 one crosses an imaginary line and goes to Georgia, or when one
3 goes farther down to Dothan, Alabama. Those real facts inform
4 this case in ways that this Commission did not hear from any
5 other witness.

6 What Knology has shown is that these petitions, if
7 granted, will do just what the legislature asked and just what
8 the legislature wanted, and the legislature speaking for the
9 people of Florida. It will create a more attractive
10 competitive local exchange market for the benefit of
11 residential consumers. Not one or two, residential consumers
12 as a whole. And it will induce enhanced market entry. The
13 statute is titled competitive market enhancement. It is not
14 titled retention of anticompetitive monopolistic control over
15 local rates.

16 If the Commission implements this policy, Knology
17 stands ready and willing to expand its existing market in North
18 Florida, and substantially so. To fully implement its plan and
19 its investment in Pinellas County serving all of those, and
20 especially the fixed income citizens of Pinellas County. And
21 it stands ready and willing to aggressively expand in other
22 Florida markets.

23 I would suggest, Commissioners, that this case is
24 about residential consumers and those who would compete far
25 more than it is about the ILECs. And I would ask this

1 Commission to look at what the facts are in the record with
2 regard to those who might want to compete and what those would
3 offer to residential consumers in Florida. The evidence there,
4 I suggest, is unrebutted that it would provide substantial
5 tangible benefits to residential consumers.

6 Now, what are those facts? And I first want to talk
7 about Knology, and also you, as fact-finder, and what you bring
8 to this analysis. Not only do you bring extraordinary
9 technical knowledge of staff and the Commissioners, but you
10 also bring common sense to this and must look at these matters
11 with a sense of who is credible and who is not. Who is telling
12 the whole truth, who is not. Who is speculating about fears
13 that might be there.

14 No one here has suggested that Knology's testimony in
15 any way is untrue, is overstated, or will hurt consumers. And,
16 in fact, it was very revealing, I suggest, that Dr. Gabel and
17 Dr. Cooper, neither one of those witnesses suggested that
18 Knology's testimony was not credible. And, in fact, that was
19 retracted. No one is saying that Knology will not provide the
20 benefits that Mr. Boccucci testified to. They have had that
21 testimony, they have known of that. There is not a hint that
22 Knology's testimony is not exactly what will occur.

23 In 1997, Knology took a calculated risk and came to
24 Florida believing and hoping that Florida would do what had
25 been done in other states, and to be rebalance rates in a way

1 where local rates could be such that Knology could fulfill its
2 business plan of offering local telephone service alone, if
3 possible, but also in conjunction with bundled services. They
4 took that risk, and what happened and what does the evidence
5 reflect in this record? They took the risk and when they did,
6 competition increased. And the incumbent provided additional
7 services, worked at keeping its customers.

8 But since that time what has happened is the local
9 telephone rates have been such that Knology is operating at a
10 net loss and has decided at this point that it cannot expand in
11 its existing market here with the current rate structure. It
12 cannot provide the jobs in Panama City and in Pensacola and
13 Fort Walton, it cannot provide the services with the sort of
14 subsidy that exists in Panama City. And regardless of what the
15 ILECs' costs are, we know for a fact that Knology is facing the
16 difference between \$9 in local rate in Panama City versus being
17 able to obtain \$15 25 miles down the road across the line in
18 Georgia. Those are real numbers and real facts.

19 Knology purchased the Verizon facilities in Pinellas
20 County and will honor its commitment. That commitment at this
21 point and the facts reflect is an expenditure of \$35 million.
22 What the facts also reflect in the written testimony is that
23 Knology would like to expend up to \$100 million in that very
24 market to improve services, to improve the network, to provide
25 the sort of benefits that Mr. Boccucci talked about. They

1 cannot fulfill that sort of commitment under the current rate
2 structure, and they have made that very clear.

3 Mr. Boccucci told you that he receives calls daily to
4 get into other markets, but he cannot finance that, he cannot
5 get the money necessary to come in and help consumers if this
6 system continues as it is, which is nothing but a detriment to
7 the residential consumers that this Commission is so
8 appropriately concerned about. There are better alternatives
9 in Knoxville, Tennessee, or Greenville, South Carolina than
10 presently exist in Florida.

11 Now, I briefly want to talk about Dr. Gabel and what
12 Dr. Gabel said about Knology in an effort to try to attack the
13 credibility of Knology. If the Commission recalls, Dr. Gabel,
14 about the only thing he could say about Knology is that in its
15 10K report it made some comment concerning access charges and
16 that access charges were not beneficial to Knology. What Dr.
17 Gabel did not tell this Commission is in the very 10K that he
18 was referencing, which is in Footnote 104 of his rebuttal
19 testimony, the comments made by Knology related to two small
20 ILECs that Knology, Inc. owns outside of Florida. The access
21 charge comments were by Knology as ILECs, not as a CLEC. And
22 it is absolutely clear on the same page where Dr. Gabel read
23 from that it relates to Interstate Telephone and Valley
24 Telephone, two ILECs which Knology owns.

25 On the very preceding page what Dr. Gabel also failed

1 to inform you of is that, again, Knology said with regard to
2 number portability in that same 10K, that while number
3 portability benefits our competitive local exchange carrier
4 operations as CLEC, it represents a burden to Valley Telephone
5 and Interstate Telephone. Again, Knology is speaking as an
6 ILEC in that situation, not as a CLEC. But Dr. Gabel didn't --

7 MR. BECK: Chairman Jaber, I want to object. Counsel
8 is referring -- I don't know what he is referring to, because
9 it is not evidence in the case what he is referring to.

10 CHAIRMAN JABER: Let me ask you, Mr. Beck. Counsel
11 referred to a footnote in the rebuttal testimony.

12 MR. BECK: Yes, the footnote referred --

13 CHAIRMAN JABER: Are you suggesting that footnote is
14 not in the testimony or that it is not in the record?

15 MR. BECK: There is a footnote where Dr. Gabel gives
16 the reference to where the excerpt from the 10K came from.
17 Now, apparently the 10K is not in evidence. There is a
18 footnote that gives a reference for that. Now, apparently what
19 counsel is doing is citing excerpts from the 10K. The 10K is
20 not in evidence and we don't know what the context is. He
21 should have asked Dr. Gabel about this if he wanted to use it
22 in closing arguments.

23 CHAIRMAN JABER: So your objection is the closing is
24 outside the scope of the testimony?

25 MR. BECK: Yes.

1 MR. MEROS: May I respond to that, please, ma'am?

2 CHAIRMAN JABER: Absolutely.

3 MR. MEROS: The 10K is in evidence. It was
4 referenced in 104, and the website is there with the full 10K,
5 the paper.

6 CHAIRMAN JABER: Mr. Meros, what was the exhibit
7 number on the 10K report?

8 MR. MEROS: There is not an exhibit number on the 10K
9 report. The website is 104, and the citation from there is on
10 Footnote 104.

11 CHAIRMAN JABER: Well, I think we are talking past
12 each other. I want to know where in the record is the 10K
13 report.

14 MR. MEROS: The 10K report is not in writing in an
15 exhibit in the record.

16 CHAIRMAN JABER: Okay. Then you need to move on. I
17 am going to sustain the objection and ask you to move on.

18 COMMISSIONER DAVIDSON: I will say, Chairman, that
19 information was useful for me. I asked Dr. Gabel specifically
20 about this, and you had instructed the witness that he would
21 have an opportunity in closing to address this. So, thank you,
22 sir.

23 CHAIRMAN JABER: That's fine, but this is not an
24 opportunity to try to bring in new evidence into the record.
25 That is fundamentally unfair, so you need to move on.

1 MR. MEROS: I certainly understand that, but I want
2 to make sure I'm not trying to do anything that is not in the
3 record. When they cite --

4 CHAIRMAN JABER: Mr. Meros, I just ruled. You need
5 to move on.

6 MR. MEROS: Yes, ma'am. Now, with regard to Dr.
7 Cooper, Dr. Cooper said, in fact, in response to Commissioner
8 Deason's testimony or question that he was not saying that
9 there aren't any benefits to a bundled service provider coming
10 in. And, in fact, in response to the question he did not
11 identify any particular, or any specific reason why Knology
12 would not offer the services that are being -- that are being
13 offered by them. In fact, they will.

14 The real facts show not only benefits in bundled
15 services, but in a particular benefit to those that purchase
16 telephone services and cable TV services, just those two. And
17 Mr. Boccucci's testimony says that at least with regard to
18 their customers, virtually every one of their customers
19 purchases telephone and cable TV. Now, what did he say? That
20 in that circumstance in many markets they can price cable
21 services at up to \$15 less than what on average they might be.
22 And they have mentioned \$45. And in markets where they are
23 competing with others, those cable prices can be \$30.

24 Now, let's assume that in Panama City there is local
25 telephone at \$9 and that goes up to \$15. But let's assume

1 further that you pay \$45, because Knology is not yet there.
2 You can have realistic situations where Knology can come in and
3 other competitors and offer -- with the additional telephone
4 rate of \$15, have a cable rate of \$33, or \$30, or \$35. And
5 what happens? The customer pays less. Pays less in actual
6 dollars than it otherwise would.

7 Now, is there any realistic testimony in the record
8 here that suggests that persons and elderly on fixed income do
9 not need or have cable TV in substantial numbers? I would
10 suggest not. And Exhibits 84 and 85, I believe, are powerful
11 proof of the benefits that Knology can provide. 84 shows that
12 with Lifeline customers approximately 70 percent of those
13 customers throughout the state have ancillary services. 85
14 shows that 50 percent of persons 61 and older have Internet
15 connections. And what that shows is bundles are real and
16 bundles provide extraordinary services to people of all stripes
17 in Florida.

18 And what Mr. Boccucci also said is connection
19 charges, other nonrecurring costs in their environment will
20 often go away. Is there a benefit to not only having lower
21 cable TV prices, but waived connection fees and other charges?
22 Is there a benefit, as Mr. Boccucci states, to having
23 residential customers treated with the same respect and the
24 same speed as business customers? Is there a benefit to
25 residential customers to have someone answer the phone at the

1 phone company quickly and come to their house within 24 hours
2 rather than three days? And the answer to that is yes.

3 For all of these reasons, I urge the Commission to
4 permit Knology and those who would compete with Knology the
5 opportunity to provide these benefits to residential consumers.
6 Thank you.

7 CHAIRMAN JABER: Thank you, Mr. Meros. Mr. Self, are
8 you making the closing argument?

9 MR. SELF: Yes, I am. Thank you, Commissioners.
10 Today, Commissioners, you are standing near the end of the
11 beginning. As you have heard, for the last 20 years the
12 telecommunications market has been in transition from monopoly
13 to competition. The last piece of this beginning has been the
14 proverbial last mile, local service competition. The Florida
15 Legislature has placed in your hands a law which gives you one
16 of the critical tools to set in place a more competitive local
17 exchange market for the benefit of all customers, and
18 especially residential customers.

19 I want to try and sum up three days in basically
20 three points. First, to specifically answer the question of
21 Page 571 of the prehearing order, no, this Commission is not
22 authorized to consider the benefits to toll customers in making
23 a decision in this case. The answer to this question arises
24 from two principles of statutory construction. As a matter of
25 law, it is well established that the plain meaning of a statute

1 shall always control. And if the statute is clear and
2 unambiguous then you must not look beyond the words in the
3 statute. But even if you believe that the statute in question
4 here is somehow ambiguous, so that you can, in fact, look
5 beyond the four corners of the words on the piece of paper, the
6 extrinsic evidence that you have received regarding legislative
7 debates and post-enactment comments by legislators, however
8 well intended, have been found by the courts to be unreliable
9 indicators of legislative intent. And thus, irrelevant for
10 statutory construction purposes.

11 Looking to the second statutory construction issue,
12 the legislature has told you what you must consider. And under
13 the doctrine -- and pardon my Latin here -- but *expressio unius*
14 *est exclusio alterius*, that is all you can consider.

15 Section 364.164 authorizes --

16 CHAIRMAN JABER: How do you spell that?

17 MR. SELF: I actually wrote it out of the book.

18 Basically, the principle, of course, is the exclusion of -- or
19 the statement of one thing is the exclusion of another.

20 Section 364.164 authorizes the ILECs to file
21 petitions. These are not joint petitions with the IXC's or the
22 CLEC's, and there is nothing in 364.164 that authorizes you to
23 consider the benefits to toll customers when reducing access
24 charges. Indeed, compliance with the flow-through question is
25 statutorily separate and distinct from the decision process for

1 the approval of these petitions and you must not mix the two.

2 Turning now to my second point, the job before you.
3 In the statute there are four and only four things you shall
4 consider when deciding whether to grant these petitions. And
5 if we can look at 364.164(1), and I am speaking now of the
6 Subparagraphs (c) and (d). Resolution of these two
7 considerations is essentially a math problem, and the record
8 shows the numbers add up except for the Verizon PICC issue.

9 CHAIRMAN JABER: I didn't start it. They started
10 laughing. You said the numbers add up except for the PICC
11 charges.

12 MR. SELF: Yes. Thank you. To briefly address this
13 issue you must exclude the PICC from the Verizon interstate
14 access component, and if do you that then the interstate
15 revenues do not come into the intrastate equation, and so there
16 would be no impact on rebalancing. This is because the revenue
17 neutrality equation in the statute is only as between local
18 rate increases and access charge reductions, not as between
19 interstate access and intrastate access.

20 However, if the PICC is included, Verizon has
21 calculated it incorrectly. You cannot achieve an interstate
22 average revenue per minute by using intrastate minutes. Their
23 inclusion of the PICC at the interstate level as a traffic
24 sensitive rate element is contrary to all of the access reform
25 that has occurred both at this Commission and at the FCC.

1 Now, turning to Subparts (a) and (b) of 364.164(1).
2 Looking first at Subparagraph (a), there is competent
3 substantial evidence of record, and indeed it is overwhelming
4 that the local exchange market has a very limited level of
5 competition, and that there is a positive benefit by removing
6 the current support for basic local service. The unrefuted
7 evidence from AT&T, MCI, Knology, and the other carriers of the
8 benefits of removing this support include a choice of
9 alternative carriers and services, improvements in service
10 quality, innovations in products, creation of cost pressures
11 that will ultimately lead to lower prices to consumers, and the
12 ability to compete with the ILECs on a symmetric basis. In
13 other words, the prices paid for access will be closer to the
14 costs the ILECs incur to provide service, which is critical to
15 local service competition when you compete with an ILEC that
16 provides both local and long distance service.

17 Finally, it is important to say that this law does
18 not contain a net revenue test for residential customers as a
19 precondition for approval. That is not the revenue neutrality
20 that is specified in the law. Your approval of these petitions
21 may seem hardheaded, as Dr. Mayo discussed, but you have the
22 ability to do so in a softhearted manner. The 2003 Act
23 included specific additional authority for Lifeline service.
24 And as the ILECs have acknowledged, both their witnesses and
25 here now in their closing statements, and as Dr. Mayo also

1 discussed, there are opportunities to do more, and you should
2 implement those that have been presented to you and you should
3 move forward to consider the other options that are available
4 out there. But such concerns cannot obstruct or delay you from
5 fulfilling your statutory duty in this case.

6 On the basis of competent substantial evidence of
7 record you must approve these petitions with the exception of
8 the Verizon petition that I have already discussed. By
9 granting these petitions you have the extraordinary opportunity
10 to do something truly historic for Floridians. You cannot in
11 this proceeding resolve all of the other necessary components
12 for a fully competitive local market, and indeed we are going
13 to be back here in the next couple of months dealing with some
14 of those other piece-parts. But you can here within the
15 mandate of this statute in a hardheaded but softhearted way act
16 in the public interest and take an essential step forward for a
17 competitive local exchange market. Thank you.

18 CHAIRMAN JABER: Thank you, Mr. Self. Mr. Anthony,
19 before you present, Mr. Fons, were you speaking for both your
20 petition and for Sprint Communications Company?

21 MR. FONTS: I was speaking only for Sprint-Florida.

22 CHAIRMAN JABER: Okay. And, Mr. Chapkis, is the same
23 true on your long distance?

24 MR. CHAPKIS: I was speaking only for Verizon
25 Florida, but no one is going to speak on behalf of the long

1 distance company and close on behalf of the long distance
2 company.

3 CHAIRMAN JABER: Is the same true, Mr. Fons, for you?

4 MR. FONS: That is correct.

5 CHAIRMAN JABER: Okay. Mr. Anthony.

6 MR. ANTHONY: Thank you, Madam Chair. I will be very
7 brief. The previous speakers have all addressed the question
8 of why the petitions filed by the LECs should be approved, and
9 BellSouth Long Distance on whose behalf I am appearing concurs
10 in their statements. BellSouth Long Distance believes the LECs
11 have proven their case and that rates should be rebalanced as
12 they describe in their petitions. So all I am going to do is
13 take a very few minutes to address some of the issues that are
14 specific to BellSouth Long Distance and perhaps other long
15 distance carriers.

16 The record of this case shows that BellSouth Long
17 Distance has stated that it will flow-through to all of its
18 customers the access reductions that it will receive from the
19 local exchange carriers, and that BellSouth Long Distance will
20 flow-through to its residential customers their pro rata share
21 of those reductions. Each of those customers, even if they
22 don't subscribe to a particular plan today that may receive a
23 reduction, will have the opportunity to change to another plan,
24 or if they don't believe that the offers provided by BellSouth
25 Long Distance suit their needs, can change to another carrier

1 who also will have reduced its rates to reflect the access
2 charge reduction. So all of these customers will have the
3 opportunity to benefit if they make any long distance calls at
4 all.

5 BellSouth Long Distance believes that the highly
6 competitive nature of the long distance market in Florida will
7 ensure that the rate reductions that are required by the
8 statute will continue. There was some discussion about some
9 rate increases by one or two of the companies that provide long
10 distance service in Florida, but that ignores the hundreds of
11 traditional long distance carriers that provide service in this
12 state, and it also ignores the new types of providers of long
13 distance services, the voice over Internet protocol providers,
14 the wireless providers, all of who will provide extreme
15 pressure to keep rates at cost.

16 The only other point I want to make is to discuss Mr.
17 Ostrander's proposal about how to pass through the access
18 reductions to a long distance carrier's customers. He stated
19 that he thought those reductions ought to be passed through to
20 reflect the percentage of the increase that the local exchange
21 carriers put on their residential customers. If 90 percent of
22 the increase went on residential local customers, 90 percent of
23 the benefit ought to flow through to the customers of the
24 interexchange carriers. There is simply no linkage there and
25 that argument must be rejected. As Dr. Mayo stated in his

1 summary of his testimony, this is a competitive market and it
2 would be inappropriate to dictate how to pass through these
3 reductions. Indeed, Dr. Gabel himself said in response to one
4 of Commissioner Davidson's questions, if a market is
5 competitive it should no longer be regulated. And to require
6 an IXC in a competitive market to have to flow through access
7 reductions in a prescribed manner ignores the reality of that
8 market and would be counter-productive in the long run.

9 In summary, I would strongly urge this Commission to
10 approve the LEC petitions. Thank you.

11 CHAIRMAN JABER: Okay. Have I forgotten any of the
12 company participants before we move on? All right. Mr. Beck.

13 MR. BECK: Thank you, Chairman Jaber. I want to
14 thank the Commissioners for hanging in there for the last three
15 days. There is times when it has been very tough. Last night,
16 Chairman Jaber, when you had us go till 9:00 o'clock without a
17 dinner break, it was particularly tough, but we all made it.

18 Also I want to thank the prehearing officer,
19 Commissioner Bradley. We filed lots of motions to compel in
20 this case. We were having trouble getting documents that we
21 needed from the carriers, and the prehearing officer, I think,
22 ruled on them expeditiously and got us the documents that we
23 needed and we appreciate that.

24 When we spoke on Wednesday morning of this week on
25 the motion for summary final judgment, I told you that the

1 evidence in this case would show that if you grant these
2 petitions it would result in a massive transfer of wealth from
3 residential customers to business customers. Now after three
4 days of hearings you have heard the evidence, and I believe
5 that it shows exactly what I told you earlier. We know what
6 the local increases will be as the companies have proposed
7 them. Verizon, the first increase will be \$1.58, the total
8 amount will be \$4.73 on local and residential customers.
9 BellSouth, \$1.25 assuming their lower estimate, 3.75 total at
10 the end of the two-year period. Sprint, in their petition they
11 proposed an increase of \$2.95 the first year. They have now in
12 the argument, closing statements they are reducing the first
13 year to 2.25, yet the total, of course, is still 6.86, the
14 total increase that will be on residential customers.

15 You know from the public hearings that you held
16 throughout the state that some -- how some residential
17 customers use toll right now and how they deal with the high
18 costs of their telephone bills. The Sam's card, I think, was a
19 favorite mentioned I think in almost every hearing that we had.
20 And customers were very cost conscious and are trying to keep a
21 lid on their telephone bill use them. 3.5 cents a minute more
22 or less is what you have heard from the customers throughout
23 the state. That is not going to change as a result of these
24 petitions. Those cards are set on a national basis, they
25 charge -- at least the Sam's one charges the same for in-state

1 and interstate usage. So what you will have for those very
2 cost conscious customers who are trying to keep their bills
3 down, you will have the local rate increases that we just
4 discussed from the companies, yet there won't be any offsetting
5 long distance reductions for people who use the Sam's cards and
6 other means, such as dial-around to do it.

7 Now, we also have the information from the carriers,
8 and we have that because you required the long distance
9 companies to file that information. We wouldn't have had it
10 without that. It is hard to talk publicly about the
11 information because it is almost all confidential, but what you
12 do have is knowing the percent of the increases that fall on
13 residential customers, and it is about 90 percent. It's a
14 little bit different for -- some were more, two are a little
15 bit less, but about 90 percent of these increases fall on local
16 customers.

17 You have the major carriers telling you that they are
18 going to flow through access reductions in the same proportion
19 as they have access revenues that relate to revenue and
20 business. Now, you know what those percentages are. I can't
21 tell you, I can't verbalize it here, but we have discussed it a
22 number of times and I know you know what they are. It is in
23 the Ostrander last rebuttal testimony. There is a chart and it
24 shows what those percentages are. And you know that it is not
25 even close. The comparison of what residential customers are

1 going to have to pay on the one side compared to the percentage
2 that they will get back through the flow through of access
3 charges by the carriers is very different to say the least.

4 We have also heard what some of the impact will be on
5 specific customer groups. Dr. Danner had evidence on behalf of
6 Verizon of what he thought would be the impact on the elderly.
7 He claimed in his rebuttal testimony that for all customers he
8 thought it would raise bills about a dollar net, but the only
9 way he did that was through assumptions that heavily weighted
10 flow-throughs to residential customers and does not reflect
11 what the carriers said they are going to do. So for his
12 statement that the overall impact will be about a dollar on all
13 customers, I say nonsense, it is not true. You saw an earlier
14 version that he had done of that where the estimate was
15 different. Even that doesn't reflect how the access charges
16 are going to flow through. I can't tell you what that number
17 was, but you saw it in the evidence.

18 He also did an impact on how the changes would affect
19 different age groups, and although we can't say what the exact
20 numbers are, he did admit that when you compared the impact on
21 the very elderly compared to the younger customers under one
22 scenario was about a 3-to-1 difference, and another was about a
23 5-to-1 difference.

24 There was some interesting testimony, I believe, by
25 Sprint Witness Felz yesterday about what the impact of rate

1 rebalancing had in other states. If you will recall he said in
2 Ohio six months after they did rate rebalancing about one
3 percent of the customers left the network. I think .5 percent
4 in the other state that he referenced. And there were some
5 slight reductions overall in all their states, but it was
6 nowhere close to the impacts they saw in those two states. So
7 there is another impact, I think, that is a concern. I asked
8 him what would one percent of Sprint's residential subscriber
9 base would be and it was total 1.2 million customers, 12,000
10 customers if that analogy were there.

11 There were a lot of negative impacts on residential
12 customers relating from this, the proposals. It is hard to
13 believe that we have heard, I think, several of the counsel at
14 the table here say that you are not supposed to look at whether
15 these proposals benefit residential customers. You saw early
16 on we had a document from BellSouth for their own internal use
17 where they set out what they believe the statute required, and
18 whether the petitions would benefit residential customer was
19 one of those criteria. You have heard the legislative history
20 that has been argued, I think, extensively by Mr. Twomey, and
21 then the testimony of his Witness Dr. Cooper. I don't think
22 there is any question that this Commission is required by the
23 legislation to determine whether these proposals will benefit
24 residential consumers.

25 And, again, there is a number of ways you can divide

1 up the consumer base. One is the local user versus toll user,
2 but another way you can divide it up is the residential versus
3 business consumer, and that is the way the legislation requires
4 you to look at it. It is a separate requirement to benefit
5 residential customers. And what is that opposed to, it is
6 opposed to business customers, because there is no question --
7 there is going to be some questions of benefits from business
8 customers, you have seen that in the evidence, but you have to
9 determine whether the overall impact of the proposal benefits
10 residences.

11 Where are we going with the petitions? I asked Dr.
12 Banerjee, who is a witness for BellSouth, about his criticism
13 of Dr. Cooper's suggestion, it is also by the suggestion of our
14 witness that to benefit the customers there has to be some
15 corresponding relationship between the increases and the
16 reductions that would occur. And I asked him what he thought
17 and he kind of said what good would that do. You know, the
18 point of doing this is to raise the bills, the total bills that
19 the customers pay. And, of course, that is what the evidence
20 has shown you.

21 I think the impact we have shown you in the evidence
22 of where we are going in this that, first of all, the package
23 prices of the companies are not going to be increased in this
24 case. If you recall the testimony of Dr. Leon of Verizon, he
25 had a chart up there comparing the packages that certain

1 competitors charge, the packages that the incumbents charge,
2 the packages that are offered by cell phone companies. None of
3 those items are going to change in this case. They are staying
4 the same.

5 What you are going to see is what Dr. Banerjee called
6 making lower revenue customers higher revenue customers. That
7 is what is going to happen in this case. The petitions will
8 make the residential customers higher revenue customers instead
9 of being lower revenue customers to try to push -- and the
10 result of that will be to push customers onto these packages.
11 You have seen some confidential documents early on in the case,
12 and I think that that is the conclusion, the only conclusion
13 you can reach.

14 These packages are available today. It is not going
15 to change as a result of these petitions. In fact, any
16 customer who wants these packages can purchase them, they are
17 there. Rates aren't going to change after these petitions are
18 there. The same packages, same availability of those things,
19 consumers can pick them or not. Their own witness, or staff
20 Witness Greg Shafer mentioned his view of that phenomenon. I
21 asked him about it this afternoon when he testified. He said
22 he does not really -- what he said is, "I do not really view a
23 result that leads to some consumers migrating to a higher
24 priced service as a positive competitive outcome from
25 consumers." That is the testimony of your own witness.

1 Commissioners, people see this for what it is. It is
2 simply an attempt by the companies to raise their rates. It is
3 going to raise there bills. There is no question in the
4 evidence before you, that is the precise outcome of these
5 proposals. They are going to raise customers' bills. There
6 has been nothing to show, no analysis done to show that the
7 offsets, the intangible benefits that the companies put before
8 you, there is nothing to show that those intangible benefits
9 offset the negatives that are obvious from the evidence before
10 you. So, the petitions before you fail the test of benefitting
11 the residential customers and we ask you to deny them when you
12 decide this case. Thank you.

13 CHAIRMAN JABER: Thank you, Mr. Beck. Mr. Twomey.

14 MR. TWOMEY: Thank you, Madam Chairman,
15 Commissioners. First, I would like on behalf of AARP and my
16 other clients echo Mr. Beck's thanks for the Commission's
17 attention and Commission Bradley's stellar work as prehearing
18 officer. We appreciate it greatly.

19 Commissioners, these hearings have provided evidence
20 validating many of the fears consistently expressed by AARP
21 throughout the 14 service hearings you so graciously held.
22 One, this legislation was written by industry as suggested by a
23 comment in a footnote of Dr. Cooper's testimony of
24 Representative Richardson. They will result in the largest
25 rate increases in the history of this state. \$355.5 million or

1 thereabouts irrespective of how many years and months they are
2 distributed over.

3 You had evidences that the companies are, in fact,
4 despite the claims of statutory revenue neutrality, are saving
5 money for themselves by these increases, if, in fact, they are
6 granted. You heard the testimony and you saw the exhibits of
7 both Witness Fulp and Leo showing, I think, fairly enough that
8 access is dropping dramatically to the detriment of these
9 companies. They are losing it to wireless, instant messaging,
10 e-mail, as you recall in Mr. Leo's exhibit. They are losing
11 the money, and as we have said all along by you approving these
12 increases you will transfer it, you will stop the bleeding, you
13 will transfer it to the backs of predominately residential
14 customers.

15 Ninety percent of the \$355 million will be
16 apportioned generally to the residential customers, the
17 remainder to the single line business. While the vast majority
18 of the interstate toll relief, Commissioners, will go to the
19 companies' big business customers. Big business customers who,
20 as you all know by the way the law was written received no
21 local rate increases whatsoever. We saw the exhibits and the
22 testimony, heard the testimony of the three IXC's showing that
23 their big business plans, the plans that cater to customers
24 that had the highest minutes of use volume would receive the
25 bulk of the reductions. Again, there is the confidential

1 information you saw in each IXC's presentation or exhibit. You
2 know the numbers, you know what they are. They are going to
3 come out eventually. They are going to come out and be public
4 eventually and the public is going to know what little they are
5 getting for residential versus the big business people who
6 aren't going to pay rate increases.

7 These petitions if you approve them will result in
8 rate increases for the customers of three ILECs of 35 to 90
9 percent. 35 to 90 percent as compared to, again, the miniscule
10 number you saw that the ILEC is proposing to give back to the
11 residential customers. In addition, they propose to give back
12 many of those increases through the use of the elimination of
13 the in-state connection fee, which you heard many customers
14 don't pay and, therefore, can't benefit by the elimination of
15 it.

16 Several companies said they would attempt to reduce
17 the charge straight off which reduces the amount of access
18 reductions available to go to just the residential portion.
19 Those in-state reductions are netted against not all customers
20 reductions, but just the residential. Not the big business
21 folks. They don't have to those that didn't promise to, those
22 IXCs who promised to eliminate their in-state connection fees
23 don't have to do it by operation of law until July of 2006, and
24 then only again if they have access revenues left to net them
25 against.

1 As pointed out by Mr. Beck, it is clear from your
2 public hearings that many residential customers don't make many
3 in-state toll calls. Many make more interstate toll calls.
4 Many that do make in-state toll calls testified to you they use
5 methodologies, either the Sam's Club card, wireless and so
6 forth, which are unlikely to receive any benefit from these
7 reductions if they go through.

8 I think it is fair to suggest that the uniform dollar
9 implementation of the rates across all rate groups irrespective
10 of the size of the rate group and the density of them will lead
11 to the inhibition of competition rather than inducing it, as
12 opposed to alternative methods like the historic method of this
13 Commission of making increases -- applying increases on a
14 percentage basis. You can refer to the exhibits we examined
15 showing that the difference between the rates would be approved
16 and the UNE-P rates would be greater or what they were and
17 showing that they have to be greater mathematically if the
18 companies selected a different method of doing this. I submit
19 to you this is not -- it is intentional.

20 Let's talk about Lifeline for just a minute. The
21 Lifeline customers of BellSouth have the protection due to the
22 work of the Attorney General and the Public Counsel, the 125
23 percent eligibility irrespective of whether these rates are
24 increased or not. I would submit to you that while it might be
25 okay if the companies voluntarily increased their Lifeline

1 eligibility to 135 percent of the federal poverty level, you
2 cannot use it, Commissioners, as an excuse or a justification
3 for increasing these massive rates, these massive rate
4 increases. It would be better if the Commission and the
5 companies focused their efforts on finding out, educating the
6 people, and taking a bigger take rate for those that are
7 already eligible. You know that it is miserably small as it
8 is.

9 If you don't approve the rate increases, the Lifeline
10 customers won't be subject to any rate increases other than
11 those allowed by statute, which is the inflation minus one
12 percent as is the case for all customers. If you approve these
13 increases, they are going to be subject to the increases in
14 four years at the latest, and there is no evidence in this
15 record, evidence of any other type of financial assistance will
16 help them offset those increases.

17 The Statute 366.164(1)(a) we submit is about as
18 ambiguous as it can be if you look at it independently of what
19 the companies have repeatedly told you that it says. It is
20 ambiguous. It is ambiguous and that allows you to refer to the
21 legislative debates. I don't know why the other parties are
22 afraid of the legislative debates except for the fact that if
23 you read them, and I encourage that you do, one after another
24 of the legislators tell you what they think they were passing
25 in that law. That there had to be residential benefits found

1 before you could increase rates. It was part of your
2 discretion. They said repeatedly that competition had to be
3 found to exist, real competition.

4 The Knology testimony notwithstanding showed -- their
5 assertion showed Knology came here in '97. It came here.
6 There wasn't any access revisions on the scene. They bought
7 the Verizon system notwithstanding that access rates haven't
8 been increased yet. AT&T said it is going to Miami. Well,
9 they are going there. Rate increases haven't been granted,
10 access hasn't gone down yet, but they are going to high density
11 areas. They are not going to Havana.

12 Read the debates, Commissioners, the floor debates.
13 These are the people that are telling you what they think the
14 law said. They are the people that are going to have to
15 explain your votes to their constituents in a few short months.
16 Residential customers will lose and lose big, especially the
17 most elderly. We know that. We saw the Verizon exhibit Mr.
18 Beck just spoke to you. There is no evidence in this record of
19 actually increasing competition, again, notwithstanding
20 Knology. And there is all -- we don't have any evidence even
21 of the theoretical intangible competition or benefits like
22 increased choice and so forth, let alone evidence of increased
23 financial benefits to residential customers.

24 The local loop. I submit that you are not bound by
25 your 1999 decision. This Commission is not bound by that. The

1 finding that -- the finding that all the costs of the loop have
2 to go on the backs of residential customers or on basic local
3 service on the basis of cost causation isn't something you have
4 to do. It is not logical, especially in light of current
5 experience which shows that there are bundles that use the
6 local loop. There is an increased take constantly on vertical
7 services and the like, revenues from all of these services that
8 can't exist without the loop. Remember the dumbbell exhibit.
9 Remember the taxicab hypothetical. If you choose to allocate
10 the costs of the local loop to all the services that could not
11 exist but for the existence of the loop, you won't have local
12 support.

13 Recall the public testimony, Commissioners, as
14 requested by Mr. Beck. Recall the testimony of the real
15 witnesses, the believable witnesses that told you they couldn't
16 afford an increase. They weren't making it now. The ILECs
17 have not met their burden. You need to be softhearted, you
18 need to deny these increases. Thank you.

19 CHAIRMAN JABER: Thank you, Mr. Twomey. Mr. Attorney
20 General.

21 ATTORNEY GENERAL CRIST: Thank you, Madam Chair and
22 members of the Commission. I want to echo the comments you
23 have already heard, the gratitude, frankly, for your hard work.
24 You have been here a long time. I think I am going to be even
25 more efficient than eight minutes, I will endeavour to be. And

1 I also want to thank Jack Shreve and Cecilia Bradley and George
2 Lemieux (phonetic) that have worked hard on this. Commissioner
3 Bradley, I want to thank you for the intervention you granted
4 the Office of Attorney General. I also want to compliment and
5 thank my colleagues at this table for civil tone of these
6 hearings. It is most appreciated.

7 You are to be commended for a wise decision, the wise
8 decision that you made earlier to reconsider the ruling
9 PSC-03-1331 to rule that the impact on residential consumers
10 must be considered. Before you today, Commissioners, is the
11 largest single rate increase in the history of the State of
12 Florida. According to public accounts \$355.5 million.

13 Two things you must consider under the new law,
14 Florida Statute 364.164R1, does the proposed rate hike benefit
15 residential consumers, and, two, is it revenue neutral. This
16 proposal is neither. Nor is it in the public interest. While
17 the phone companies can specifically articulate how much the
18 proposed increase will cost the people of Florida, they cannot
19 state with any certainty what the decrease will be, who will
20 receive it, nor when they will receive it.

21 We learned from the testimony that even if there is
22 some decrease, not all residential consumers will receive it.
23 In fact, some residential users will use long distance -- who
24 use long distance will not receive a decrease. That I suggest
25 to you, Commissioners, violates the language of 364.164 on its

1 face. That provision does not say the benefit can only go to
2 some residential consumers as some of you questioned. The word
3 some is not in the provision.

4 In closing, this historic rate increase does not
5 benefit the people, does not beneficial the residential
6 consumer, and it is not revenue neutral. You should not agree
7 to the largest rate increase in Florida history based on the
8 hope and speculation that there will be a benefit of an unknown
9 size that may arrive at an unknown time to an unknown portion
10 of Florida citizens. The people of Florida deserve better.

11 Testimony today indicated that the detrimental impact
12 on the elderly would be the most severe. As Mr. Beck already
13 indicated in his closing, as much as five and a half times more
14 severe than to any other citizens in our state. That cannot
15 and should not stand. The people deserve better.

16 I have heard some words in other closings that
17 attempt to sweeten the pot. Maybe to make it a little easier
18 for you to go ahead and grant this large increase. But by
19 sweetening the pot, that does not do justice to the people of
20 Florida. It does not serve the public. So we in the Attorney
21 General's Office, along with Public Counsel, along with AARP,
22 would implore you to please deny these petitions. Thank you
23 again for your courtesy.

24 CHAIRMAN JABER: Thank you, General Crist.

25 All right, I think we are done with closing

1 arguments. Commissioners, let me give you all an opportunity
2 to ask questions first, and when we are done I may turn to
3 staff and give them an opportunity, since they have got to work
4 on a recommendation for us. Do you have questions?

5 Commissioner Bradley. Commissioner Davidson. Commissioner
6 Baez.

7 I have clean up questions, because I don't want us to
8 have these questions later and not have the benefit of the
9 practitioners. If all of the attorneys turn to 364.164(1), I
10 think it is. And what I would like to do is just propose this
11 question to everyone and if you would like to weigh in, fine.
12 If you don't, that's fine, too. But my question is how would
13 you define final order in 364.164, Sub 1? Mr. Fons.

14 MR. FONTS: Madam Chair, from Sprint-Florida's
15 standpoint we believe that the final order is an order that
16 would otherwise be appealable or subject to some other action,
17 but it would be the final order of the Commission. We would
18 presume that it should be a written final order.

19 MR. SELF: Chairman Jaber.

20 CHAIRMAN JABER: Okay. Mr. Self, hang on. If I
21 interpreted what you said correctly, you agree it would be just
22 the final order that memorializes our vote and would undergo
23 the normal possible reconsideration and then subsequently
24 appeal?

25 MR. FONTS: Right. Setting forth your rationale for

1 whatever decisions you reach.

2 CHAIRMAN JABER: And that it is the order itself that
3 needs to be issued within 90 days, not just our verbal
4 decision?

5 MR. FONS: That is correct.

6 CHAIRMAN JABER: Mr. Self.

7 MR. SELF: Yes. Section 120.52(7) defines a final
8 order, or the statute says, "Final order," means a written
9 final decision which results from a proceeding under
10 Section 120.56, Section 120.565, Section 120.569, Section
11 120.57, Section 120.573, or Section 120.574, which is not a
12 rule and which is not accepted from the definition of a rule
13 and which has been filed with the agency clerk, and includes
14 final agency actions which are affirmative, negative,
15 injunctive, or declaratory in form. A final order includes all
16 materials explicitly adopted in it. The clerk shall indicate
17 the date of filing on the order.

18 CHAIRMAN JABER: Great. Now, I am assuming if there
19 is disagreement with that position, someone would say
20 something. Okay. Now, contrast that with 364.164(2). When we
21 have to -- if this Commission grants the petitions, when we
22 have to confirm by order that the revenue baskets are
23 consistent with the decision, this part of the statute says
24 shall be final for all purposes. I would like your opinion on
25 what that means, "final for all purposes."

1 MR. FONS: Madam Chair.

2 CHAIRMAN JABER: Mr. Fons.

3 MR. FONS: I believe that the order shall be final
4 for all purposes means with regard to Subsection 2, and the
5 Commission's compliance with that section.

6 CHAIRMAN JABER: So, again, this doesn't mean we have
7 to do -- this does not mean we have to issue an order including
8 reconsideration within 45 days.

9 MR. FONS: That is correct. But if you don't, if
10 reconsideration is still an issue, what we are saying is that
11 that is a final order upon which the parties can rely to take
12 whatever action needs to be taken. Because it would be very
13 difficult in one sense to make a change in one direction and
14 then have to have that come back for -- to put the toothpaste
15 back in the tube would be impossible.

16 CHAIRMAN JABER: So in your opinion both of those
17 provisions were designed to give companies and parties
18 certainty, not designed to mandate that we issue an order
19 including reconsideration within those time periods?

20 MR. FONS: It is to give the parties certainty, yes.

21 CHAIRMAN JABER: Ms. White, again, just clean up.
22 You repeated the commitment to 1 and 2, if I recall correctly,
23 expanding the Lifeline program, that the changes to the
24 nonrecurring charges, you did not mean to leave out the
25 four-year provision in your closing argument.

1 MS. WHITE: No, we had already put that in our
2 petition, so that was a commitment that we had made from the
3 beginning. I was just detailing the two commitments that were
4 made during the course of the hearing.

5 CHAIRMAN JABER: Okay. With regard to ECS, Sprint
6 has committed to working with the Commission, if this body
7 decides to initiate some sort of proceeding or workshop to
8 delve into those issues. Is that same commitment made by
9 BellSouth and Verizon?

10 MS. WHITE: It is made by BellSouth.

11 CHAIRMAN JABER: Mr. Chapkis.

12 MR. CHAPKIS: It is made by Verizon, as well.

13 CHAIRMAN JABER: Okay.

14 COMMISSIONER BRADLEY: Madam Chair.

15 CHAIRMAN JABER: Commissioner Bradley.

16 COMMISSIONER BRADLEY: Yes. I think for the record
17 we need to be a little bit clearer as to what the commitment is
18 and what the purpose of the commitment is.

19 CHAIRMAN JABER: Okay. Let me see if I can help in
20 that regard. What would all three companies -- and this is on
21 the spot, I don't really mean to do that, but if as part of our
22 consideration in this proceeding, or in another one, what
23 issues would you recommend we review in looking at ECS
24 generally, and then specifically in reaction to some of the
25 customer's concerns we heard at all the service hearings?

1 Ms. White.

2 MS. WHITE: Quite frankly, at this point in time I
3 have nothing to offer. I'm sorry.

4 CHAIRMAN JABER: Sprint, we talked a lot -- I think
5 it was yesterday. What I had in mind, and I think you agreed,
6 was a transition period toward the eventual elimination of ECS
7 charges. And then Mr. Shreve very appropriately pointed out
8 that a legal issue is probably appropriate, as well. Have you
9 thought beyond that at all?

10 MR. FONS: I have. There is a legal issue. In the
11 '95 act there is a savings clause, 364.385, and it specifically
12 says that no new proceeding governed by the laws existing prior
13 to July 1, 1995 shall be initiated after July 1, 1995. And
14 that had to do with regard to applications for extended area
15 service.

16 CHAIRMAN JABER: That is for EAS. That contrasts
17 with ECS?

18 MR. FONS: EAS and ECS are virtually the same thing,
19 it is just a different way of skinning the cat with a different
20 name.

21 COMMISSIONER DEASON: I beg to differ with that.

22 CHAIRMAN JABER: Yes, exactly. ECS generates --

23 MR. FONS: Is extended calling service.

24 CHAIRMAN JABER: And that generates a rate.

25 MR. FONS: Yes, it generates a rate. The extended

1 area service or extended calling service, it applies to both.
2 It says that all applications for extended area service routes
3 or extended calling service, so it falls within the same -- and
4 that is not to say that we cannot proceed, but I think we need
5 to examine further the basis upon which we would proceed, but
6 Sprint-Florida is committed to doing that.

7 CHAIRMAN JABER: Let me ask you this, because I
8 thought about this again yesterday afternoon and last night.
9 Many of us have not participated in an ECS proceeding because
10 frankly we haven't needed to. I wonder if at the very least it
11 is time for a Commission workshop, a very informal process
12 where we could start with educating all of us on -- I don't
13 even know which territories still have frankly ECS rates. The
14 only reason I have been thinking more and more about it is we
15 heard a lot of that testimony in the service hearings and it
16 got me to thinking about the appropriate transition period for
17 eliminating that kind of rate in a truly competitive
18 environment. That can stand alone from this proceeding as far
19 as I am concerned.

20 COMMISSIONER DEASON: Madam Chairman, I agree that
21 every Commissioner should have some experience with at least
22 one EAS or ECS --

23 MR. FONS: It is public hearings all over again.

24 CHAIRMAN JABER: And I'm sure the only dates
25 available, Chairman Elect Baez, are like that February week,

1 right?

2 COMMISSIONER DAVIDSON: Why did you point to me?

3 CHAIRMAN JABER: Because --

4 COMMISSIONER DAVIDSON: Well, aren't you having in
5 February, also?

6 CHAIRMAN JABER: There is that.

7 COMMISSIONER DAVIDSON: Well, don't point to me.

8 CHAIRMAN JABER: Does that help? Commissioner
9 Bradley, does that help?

10 COMMISSIONER BRADLEY: Yes.

11 CHAIRMAN JABER: Okay. Sprint, if we were to
12 continue with -- if we agreed with some aspect of your
13 proposal, or all of your proposal, you have conceded to Mr.
14 Shafer's testimony, but on nonrecurring charges you still want
15 to use -- including nonrecurring charges. If for some reason
16 this Commission wanted to require or allow that nonrecurring
17 charges be spread over a two-year period and three steps, how
18 would that affect your local rate proposal?

19 MR. FONS: I don't believe it would affect the local
20 rate proposal at all. Unless you are changing those rates for
21 the nonrecurring charges, all we would be doing is spreading
22 them differently than they currently exist. But I don't
23 believe it would have any impact on the local rates themselves,
24 the basic local rate itself.

25 CHAIRMAN JABER: Okay. And my final question is,

1 ILECs, do you believe your petitions stand alone from each
2 other?

3 MR. FONS: Yes, we do.

4 MS. WHITE: Yes, ma'am. United we stand only goes so
5 far.

6 CHAIRMAN JABER: I just wanted to make sure.

7 COMMISSIONER DAVIDSON: Chairman, whenever you are
8 finished.

9 CHAIRMAN JABER: I am.

10 COMMISSIONER DAVIDSON: I have a request. I guess it
11 of Legal, and the court reporter, and of the Commission in
12 general. I would like to make sure that we keep the record
13 open until right before we decide, so that if we have
14 additional questions of the companies on Monday or Tuesday we
15 can ask them. I will tell you, I have read every page of
16 testimony. That is the truth. I have taken lot of notes.
17 There is just a lot of material to digest. And we have two
18 options, either to grant the petitions or deny the petitions,
19 and in the event the petitions are granted, there may be
20 additional topics of concern that we wanted to address
21 beforehand. And we may want those topics addressed before we
22 would deny, so that is really sort of a procedural request, and
23 I would ask the companies to be here also to answer any
24 questions.

25 CHAIRMAN JABER: Commissioner Davidson, let me just

1 let you know that I am about to address that in terms of
2 noticing for when we are going to vote. I have to announce
3 that we are going to reconvene the hearing, and I think that
4 satisfies your concern, because we are reconvening the hearing.
5 But we have reached that point. If Commissioners have no
6 questions, I am going to close this out. Okay.

7 MR. SHREVE: Madam Chairman.

8 COMMISSIONER BAEZ: Hold on. I just want to be
9 clear, no questions today, I mean, in light of what we have --

10 CHAIRMAN JABER: Yes.

11 COMMISSIONER BAEZ: Okay. Fair enough.

12 CHAIRMAN JABER: Before we adjourn for this evening,
13 I wanted to take an opportunity to seriously thank first and
14 foremost the Commissioners up here for the last three days, and
15 Commissioner Bradley for an outstanding prehearing order, and
16 all the work you have done to get us here. Because the truth
17 is we wouldn't have been able to finish this hearing without
18 your work ahead of time. Recognizing that, that means the
19 parties, all of the parties and staff must have helped you
20 ahead of time to get us here, too.

21 I have appreciated all of the compliments you have
22 made to the Commission, but the reality is this kind of stuff
23 doesn't happen just with us or even with our staff alone. It
24 takes a very collaborative cooperative approach. I don't know
25 what the outcome is. I don't think any of us know what the

1 outcome is, but I don't think any of us can say that this
2 hasn't been a thorough, full review of all of the facts, and
3 evidence, and arguments that have presented to us. I hope that
4 we have been very deliberative in asking our questions. I hope
5 that you all have been very deliberative in responding. I
6 certainly sense that.

7 I appreciate the courtesy you have extended to us, to
8 our staff, and to each other. This had the potential of being
9 a very, very difficult hearing, and I have to tell you I
10 dreaded it for personal reasons, too, because this is the last
11 hearing that I will conduct as Chairman. So I really didn't
12 want to conduct the last hearing as Chairman and have it be a
13 miserable hearing. So I personally appreciate everyone's
14 goodwill.

15 Staff, you are remarkable as always. You really are.
16 Outstanding job. I can't say enough about what you all do, so
17 I appreciate everyone's hard work.

18 Commissioners, saying that, before I actually
19 formally announce when we will vote, I would like to make sure
20 that when we vote is okay with you. What I had in mind is to
21 announce that we will reconvene the hearing Tuesday, December
22 16th. Recognizing, Commissioners, just to put you on notice,
23 we have an employee ceremony that starts at 9:00. We have an
24 agenda conference that starts at 9:30, but not with a lot of
25 items. And we have Internal Affairs with two items, if I'm not

1 mistaken. What I would like to do is announce that the vote
2 will occur -- the reconvening of the hearing will occur at 1:00
3 o'clock on Tuesday, December 16th. At 1:00 o'clock or after
4 the conclusion of Internal Affairs, but not before 1:00
5 o'clock.

6 Commissioner Davidson, I think that satisfies your
7 concern. The only thing that I want to also include, and, Mr.
8 Melson, are you still here? Ms. Keating, Mr. Melson, to the
9 degree either of you have a concern, you need to let me know.
10 Because if, Commissioners, we are ready to accept whatever
11 recommendations staff might have and vote, it is important to
12 clarify that that is a post-hearing decision and participation
13 will be limited to Commissioners and staff.

14 Mr. Melson, can you help me with the language. I
15 appreciate and agree with Commissioner Davidson's concern, we
16 want to preserve that opportunity. On the other hand, I don't
17 want parties to think that automatically at 1:00 o'clock there
18 is an opportunity for participation.

19 MR. MELSON: Commissioners, I think in terms of the
20 taking of evidence, that obviously has closed, and your
21 procedural rules say that when you have a post-hearing decision
22 participation is limited to Commissioners and staff. To the
23 extent that a question of another commitment by a company came
24 up, that is probably the type of thing that you could inquire
25 of a company, but that would be very unusual, and I think would

1 be only in the most unusual circumstances that you would expect
2 to hear from parties on that day. It is not a day on which
3 parties should come expecting to be changing their proposals or
4 offering up additional stipulations.

5 CHAIRMAN JABER: Right. And I was worried about
6 that. And, in fact, in those cases, in those very, very rare
7 circumstances we have actually reopened the record to allow
8 additional argument. Are you suggesting we just play that by
9 the ear, and if there is a concern Tuesday at 1:00, then we may
10 be discussing reopening the record?

11 COMMISSIONER DAVIDSON: I think that would be fine.
12 I mean, I think we have fairly wide latitude and discretion on
13 that, so if we need to reopen the record for purposes of taking
14 questions, my thought was we just leave the record open until
15 such time as we say we are going to vote and we would close the
16 record and vote.

17 CHAIRMAN JABER: If you are sensing hesitancy on my
18 part, it is because I need to announce for notice purposes and
19 for all of the people that have been asking when the vote will
20 be. And, Mr. Melson, if you can help us get there, I would
21 appreciate it. Maybe it is enough to say that as it stands
22 today, we expect that the vote will occur Tuesday at 1:00
23 o'clock, or after Internal Affairs.

24 MR. MELSON: That you will begin your deliberations
25 Tuesday at 1:00 o'clock or after Internal Affairs. I think the

1 question of leaving the record open is something within the
2 discretion of the chair. Obviously, I don't think the
3 Commission anticipates taking further testimony or evidence of
4 that nature. If the record remained open it would be only for
5 the purpose essentially of hearing any responses to questions
6 based on the record that the Commission might have. And,
7 again, that is not a normal practice, but it is one you have
8 indulged on rare occasions.

9 CHAIRMAN JABER: Okay. All right. So I think it is
10 fair to say that we will reconvene this hearing Tuesday,
11 December 16th, at 1:00 o'clock or after Internal Affairs, but
12 not before 1:00 o'clock. And we will reconvene the hearing for
13 the purpose of taking a verbal recommendation from our staff
14 and making a bench decision on the matters before us in these
15 cases. And I should take notice that while the record will
16 remain open for the purpose of reconvening the hearing, we do
17 not expect that there will be participation other than from
18 Commissioners and staff at this point. Does that satisfy your
19 concern?

20 COMMISSIONER DAVIDSON: Well, it does, but I want to
21 be clear, as I delve through all of these materials I may have
22 additional questions in terms of commitments of the parties, so
23 I want to make that clear for the record.

24 CHAIRMAN JABER: I hope I just said that.

25 COMMISSIONER DAVIDSON: You did. You said

1 participation limited to Commissioners and staff, so I just
2 don't want to be precluded from asking questions of parties to
3 the case.

4 CHAIRMAN JABER: Mr. Melson, what do you think?

5 MR. MELSON: I think frankly, Chairman, it depends on
6 what type of questions the Commission has in mind. I
7 understood Commissioner Davidson to say questions about
8 additional commitments the companies might make, and to me that
9 is qualitatively different than additional questions, factual
10 questions. So I think that would be within the scope of your
11 discretion to allow those types of questions of parties.

12 CHAIRMAN JABER: Okay. So what more do I need to say
13 or clarify?

14 MR. MELSON: I don't think you need to say anything
15 more. I think with the discussion we have had that would set
16 the parameters.

17 CHAIRMAN JABER: Commissioner Baez.

18 COMMISSIONER BAEZ: And I just want to throw my two
19 or three cents in in terms of what I understand Commissioner
20 Davidson is requesting, and it is something that I can probably
21 support, is I think in a practical sense what we are doing is
22 we are preserving whatever stage we are in here, Mr. Melson, to
23 be to be continued at another portion. I mean, I don't
24 think -- in a practical sense it is no different than if right
25 now -- if we were all of a mind right now the Chairman could

1 close, or whatever the magic word is, and then we would receive
2 perhaps a normal recommendation and have a bench vote today.
3 So at least in my mind the only thing I think we are doing
4 essentially is preserving this moment until we are ready to
5 actually say, all right, participation limited to Commissioners
6 and staff.

7 CHAIRMAN JABER: Let me tell you, I don't mean to be
8 difficult. I really don't. I'm looking for the best
9 procedural way and yet accommodate this Commission, because I
10 want you to have everything you need to make an informed
11 decision. That has always been the goal in this case and every
12 case. But the way we have conducted this hearing so far is we
13 have asked questions and parties have been allowed to respond.
14 I need procedural guidance on how to show up Tuesday and
15 perhaps ask more questions and give adequate notice to the
16 other parties. That is one. I need to also accommodate the
17 noticing requirements that require us to announce a vote.

18 And, Commissioners, maybe I could have feedback from
19 all of us, whatever you decide.

20 COMMISSIONER DEASON: Let me just express a concern.
21 First of all, this entire matter has been handled on an
22 expedited schedule, 90 days, and it is through extremely hard
23 work by all the parties including the staff that we have been
24 able to accomplish as much as we have. And I know that we have
25 a lot of information to digest in a very short period of time,

1 and I can understand the desire by Commissioners to want the
2 ability to ask more questions. I suppose I would be
3 comfortable if it were limited to asking questions of
4 clarification of the record as it exists. But to the extent
5 there are questions to elicit more concessions or changes, then
6 you are basically -- you have to allow all the parties an
7 opportunity to respond to that to indicate why that is good or
8 that is bad, and you are really almost back in a hearing mode.
9 And that is my concern.

10 CHAIRMAN JABER: Let me open it up to the parties,
11 because, I mean, they are the ones that would complain if we
12 did something procedurally incorrect. And you are all
13 practitioners that have practiced here for a number of years,
14 you probably have more insight, frankly, than I do on how to
15 handle this procedurally. Let me start here. Ms. White, Mr.
16 Fons, do you have any input on this?

17 MR. FONS: I believe that the preferable course would
18 probably be as Commissioner Deason has suggested, and that is
19 that at some point there has to be finality before you do the
20 vote. And our suggestion would be that whatever you take out
21 of this hearing room today is what you would vote on on
22 Tuesday.

23 CHAIRMAN JABER: So your preference is that we show
24 up, accept whatever staff has to say, consider whatever staff
25 has to say and vote?

1 MR. FONS: Yes. Of course, if there is questions to
2 clarify the record, that is a different issue.

3 CHAIRMAN JABER: Okay. To be consistent, let me ask
4 the other companies and then I will go to the consumer
5 advocates.

6 MR. HATCH: Chairman Jaber, I am echo -- I mean, I am
7 very sensitive to Commissioner Deason's concern, and also
8 basically I think I agree with Mr. Fons. I think for purposes
9 of your asking questions to clarify what is in the existing
10 record as it stands now, I think that is fine. Basically, it
11 is just a continuation of where we are right now. But if new
12 matters are raised, then it does raise a problem with can we
13 respond, how do we respond, is there an adequate opportunity to
14 respond to new issues, to new matters.

15 COMMISSIONER BAEZ: And honestly, Madam Chair, I
16 don't think that that condition is -- that condition already
17 exists now. I mean, if we were in the Commissioners question
18 stage after closing arguments, that condition exists now. So
19 whatever the conditions, I don't think -- I don't think on
20 Tuesday it becomes any different than it is right this second.

21 CHAIRMAN JABER: Actually it does. If I have
22 understood what Legal has told me, it does in the sense that
23 this was noticed for a bench decision possibly today. When I
24 announce from the bench a continuation, I have to announce a
25 continuation --

1 MR. MELSON: Chairman Jaber.

2 CHAIRMAN JABER: Mr. Melson, and then I haven't
3 forgotten about the consumer advocates. I will come back to
4 you.

5 MR. MELSON: Commissioner Jaber, I think you could
6 say that we are going to resume at 1:00 o'clock or thereafter
7 on Monday in the same posture we are now. Oral argument is
8 finished. The hearing is open for questions from the
9 Commissioners to the counsel recognizing counsel can't testify.

10 CHAIRMAN JABER: Okay. So it would be extending the
11 opportunity for closing arguments.

12 MR. SHREVE: You would be extending this, and you
13 will then make -- at the conclusion of that process you will
14 then move to the bench decision phase and hear a recommendation
15 from staff.

16 CHAIRMAN JABER: But, in the interest of fairness,
17 let me let the consumer advocates speak to that point, too.
18 Commissioner Davidson said that would work. Mr. Beck.

19 MR. BECK: We would agree with the comments by Mr.
20 Fons and Commissioner Deason.

21 CHAIRMAN JABER: Okay. Mr. Shreve.

22 MR. SHREVE: Chairman, I hesitate to do this, but I
23 probably agree with Mr. Fons and Mr. Hatch that may mean they
24 want to change their position. But I think I agree with that.
25 I don't see how you can go forward at that point without

1 offering argument and discovery of whatever might be available
2 down the line on anything new that might come up. I can see
3 why you would want more information at times, particularly
4 consideration after you go through these volumes of evidence,
5 but I think --

6 CHAIRMAN JABER: If I could interrupt you, that is
7 not what Commissioner Davidson is asking. I think there is a
8 desire to preserve an opportunity to ask more clarifying
9 questions and maybe if that generators concessions, fine.

10 COMMISSIONER DAVIDSON: I mean, it is fine. We could
11 take a recess here for a few hours and come back at midnight
12 and resume. It doesn't matter. It is just late, we have gone
13 late, I want to preserve the status quo right now. We could
14 sit and ask companies questions of X, Y, and Z. Not additional
15 factual testimony, but questions about -- clarifying questions,
16 just as you did, Chairman. So I am basically looking to
17 preserve sort of that opportunity in terms of -- in terms of
18 commitments. And perhaps I come back and have none, perhaps I
19 come back and have several.

20 CHAIRMAN JABER: Mr. Twomey.

21 MR. TWOMEY: Well, I'm not going to agree with Mr.
22 Fons after his dumbbell comment, but I will agree with Mr.
23 Shreve.

24 CHAIRMAN JABER: All right. Mr. Melson, based on
25 what you said, I am going to announce what I think is

1 appropriate notice. And if it is not, you just need to let me
2 know that we will adjourn this evening --

3 MR. MELSON: Recess.

4 CHAIRMAN JABER: Okay. Recess this evening with a
5 reconvening of the hearing at 1:00 o'clock Tuesday, December
6 16th, or after Internal affairs, but not before 1:00 o'clock in
7 the same posture we are in now. But I need for the media,
8 because they are hounding Kevin Bloom and my office, I need to
9 say that a vote will occur Tuesday, December 16th.

10 COMMISSIONER DAVIDSON: I say we make them wait until
11 the very end of the day as much as they torture us.

12 CHAIRMAN JABER: No. I have to say -- and there are
13 several in the room, I have to say when I talk about the
14 partnerships and cooperation we have received, I don't mean to
15 leave out the media and the cooperation Kevin Bloom and the
16 rest of us have seen. So you are to be commended, as well.

17 All right. Thanks a lot, good night.

18 (The hearing recessed at 8:45 p.m.)

19 (Transcript continues in sequence with Volume 16.)
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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

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

7

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

10

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

13

DATED THIS 13th day of December, 2003.

14



15

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Administrative Services
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