

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

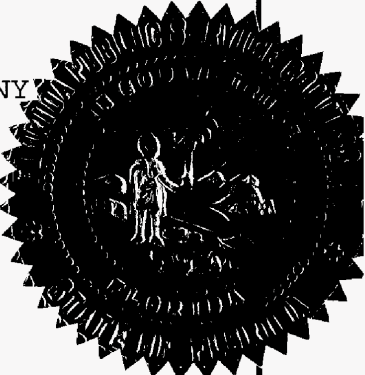
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In the Matter of:

COMPLAINT AND REQUEST FOR SUMMARY DISPOSITION TO ENFORCE CONTRACT
AUDIT PROVISIONS IN INTERCONNECTION AGREEMENT WITH NEWSOUTH COMMUNICATIONS
CORP., BY BELLSOUTH TELECOMMUNICATIONS, INC. DOCKET NO. 040028-TP

COMPLAINT TO ENFORCE INTERCONNECTION AGREEMENT WITH NUVOX COMMUNICATIONS, INC.
BY BELLSOUTH TELECOMMUNICATIONS, INC. DOCKET NO. 040527-TP

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PROCEEDINGS: AGENDA CONFERENCE
ITEM NOS. 4 and 5

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER LISA POLAK EDGAR

DATE: Tuesday, June 21, 2005

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

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1 PARTICIPATING:

2 NANCY WHITE, ESQUIRE, representing BellSouth
3 Telecommunications, Inc.

4 JOHN J. HEITMANN, ESQUIRE, representing NewSouth
5 Communications Corp. and NuVox Communications, Inc.

6 VICKI GORDON KAUFMAN, ESQUIRE, representing NewSouth
7 Communications Corp. and NuVox Communications, Inc.

8 JEREMY SUSAC, ESQUIRE, and JASON ROJAS, ESQUIRE,
9 representing the Florida Public Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN BAEZ: Commissioners, next we have Items 4
3 and 5, which I have been advised are probably best taken up
4 together.

5 MR. SUSAC: That's correct, Commissioner.

6 CHAIRMAN BAEZ: Very well.

7 MR. SUSAC: Item 4 is staff's recommendation in
8 Docket Number 040028-TP to grant BellSouth's motion for summary
9 disposition and enforce an audit provision in its
10 interconnection agreement with NewSouth Communications. The
11 parties are present to address the Commission, and staff is
12 available for questions.

13 CHAIRMAN BAEZ: Ms. White, is it BellSouth's motion?

14 MS. WHITE: Yes, sir.

15 CHAIRMAN BAEZ: Okay.

16 MS. WHITE: Chairman Baez, Nancy White for BellSouth
17 Telecommunications. BellSouth supports both of the staff recs.
18 We think that the staff has done a very thorough job of
19 analyzing this. I have nothing further to add, and I will just
20 save a couple of minutes for rebuttal, if necessary. Thank
21 you.

22 CHAIRMAN BAEZ: Good morning, Ms. Kaufman.

23 MS. KAUFMAN: Good morning, Chairman Baez. I'm Vicki
24 Gordon Kaufman. I'm with the Moyle Flanigan law firm, and
25 appearing with me today is John Heitmann of the Kelley Drye

1 firm. We are here on behalf of NewSouth Communications Corp.
2 and NuVox Communications. And, Mr. Chairman, with your
3 permission, Mr. Heitmann and I are going to split up our
4 presentation.

5 CHAIRMAN BAEZ: Very well.

6 MS. KAUFMAN: I just wanted to give you a bit of
7 background on these cases. They involve BellSouth's demand
8 that it be permitted unfettered discretion to conduct an audit
9 of the circuits NuVox and NewSouth have converted from special
10 access circuits to EEL UNE combinations. And apparently in the
11 NewSouth docket they also want to audit circuits that were
12 ordered directly as EELs.

13 I think it is important that you know that the NuVox
14 contract at issue here is the same contract with the same
15 language that governs the parties' relationship in all nine
16 BellSouth states. This contract was negotiated at one time,
17 and it doesn't have different meanings in different states.
18 The same is true of the NewSouth contract. This dispute before
19 you today is being litigated in six of the nine BellSouth
20 states.

21 With all due respect, Commissioners, we think that
22 the staff recommendations before you are simply in error for a
23 number of reasons. They recommend that you enter a final
24 summary order in this case with no hearing and no discovery.
25 We think that is wrong on the facts, and it is wrong on the

1 law. First, the standard, the Florida standard for the entry
2 of a final summary order has not been met in this case. These
3 are matters of Florida law, and that is what I'm going to
4 discuss in my presentation.

5 Secondly, the staff has misapplied Georgia law. That
6 is a law that the parties, BellSouth, and the staff agree
7 governs the interpretation of these agreements. And Mr.
8 Heitmann will discuss that with you.

9 What I want to do is focus on what the standard is
10 for entry of a final summary order. And I think your staff has
11 done a good job in describing that standard to you, but I think
12 they have erred in its application. I think that you would
13 agree with me that the standard for entry of a final summary
14 order disposition without a hearing is a very high standard.
15 And your staff tells you in its recommendation that you have to
16 exercise extreme caution in entering a final summary order.

17 The legal standard is set out clearly in
18 120.57(1)(h), and it provides that you can enter a final
19 summary order only if there is no genuine issue as to any
20 material fact. And your staff has told you that every possible
21 inference has to be drawn in favor of the party against whom
22 summary disposition is sought. If there is even the
23 possibility of an issue or the slightest doubt that an issue
24 might exist, a final summary order is inappropriate.

25 And we suggest to you that this isn't a close call in

1 this case, and we are beyond even slight doubts for several
2 reasons that I'm going to talk about.

3 First, the interpretation that your staff urges on
4 you is absolutely contrary to the legal analysis that has been
5 applied by three other state commissions in looking at the very
6 same language. We would suggest to you that that in and of
7 itself raises a pretty significant issue that would preclude
8 final summary order in this case.

9 Second, I want to direct you to the staff
10 recommendation. I will look at the NuVox one, but this
11 language appears in both recommendations. If you look at Page
12 9, your staff is basing their recommendation on a statement in
13 which they say, and I quote, this is at the bottom of Page 9,
14 staff believes that this omission was intentional. When they
15 talk about this omission, they are referring to the requirement
16 that a concern be demonstrated and that an independent auditor
17 be engaged. But what I want to focus on is they said staff
18 believes this. This is a factual finding. It is clearly a
19 matter about which staff doesn't have any knowledge, and it is
20 a matter that has been refuted in the affidavit of Mr. Russell
21 filed in this case, as well as the transcript from the Georgia
22 evidentiary proceeding. So you have got an issue of fact
23 there, and staff can't -- you can't base a final summary order
24 on a factual belief of your staff. And you can't make an
25 inference that goes against the moving party.

1 I would also point out to you that in the NewSouth
2 recommendation your staff suggests an alternative resolution of
3 the case, which is that you find that Bell has complied with
4 the auditor -- independent auditor and concern requirements,
5 because BellSouth asserts that it has cause to conduct the
6 audit and BellSouth asserts that it has chosen an independent
7 auditor. Again, these are questions of fact that cannot be
8 disposed of in final summary order.

9 And, thirdly, this Commission as a matter of Florida
10 law has held that a final summary order is not appropriate when
11 discovery has not been conducted. In this case, both cases, we
12 have discovery outstanding which has been resisted by
13 BellSouth. I would refer you to your own orders in this
14 regard, for example, Order Number PSC-021464.

15 On this point your staff has directed you to Georgia
16 law, but you need to look to Florida law when you are deciding
17 if the entry of a final summary order pursuant to 120.57 is
18 appropriate. And you yourself have said that it is a very
19 unusual and rare circumstance, and it certainly shouldn't occur
20 until discovery has been conducted in the case. So my point to
21 you this morning is that the standards for entry of a final
22 summary order under Florida law have not been met in this case,
23 and you should not adopt your staff's recommendation.

24 Mr. Heitmann is going to talk to you about the
25 Georgia law issues.

1 MR. HEITMANN: Good morning. In addition to the
2 errors in the staff's recommendation relating to Florida's
3 standard for granting summary final order, it is important for
4 you to consider that staff's arrival at the conclusion that
5 these cases could be disposed of purely as legal matters rests
6 upon a misapplication of Georgia law. Staff fundamentally
7 misapplies Georgia contract law in at least three respects.
8 And it is important for you to understand that the parties and
9 the staff agree that the agreements specify that Georgia
10 contract law is the governing law for these interconnection
11 agreements.

12 First, staff accepts Bell's invitation to look at one
13 section of each agreement in isolation, but these sections
14 which appear in an attachment to each agreement do not
15 constitute stand-alone contracts. If they did, BellSouth could
16 not have looked at the main body of the agreements for the
17 right to file this dispute. Moreover, we would have no
18 indication that Georgia law itself applies. Nobody disputes
19 that Bell has the right to invoke the agreement's dispute
20 resolution provisions, and nobody disputes that Georgia law
21 applies to the construction and enforcement of these contracts.

22 The fact of the matter is that both of the so-called
23 audit provisions are part of a much broader contract, and
24 Georgia law requires that you look to the contract as a whole
25 when interpreting any of its individual sections. Georgia law

1 also requires that you attempt to give meaning to each
2 provision of the agreement. Staff's recommendation
3 impermissibly ignores the Georgia statute, and as Georgia code
4 annotated, 13-2-2, Section 4, in case law on point. In so
5 doing staff renders applicable law provisions in each agreement
6 a nullity and carves out a gaping exception to Georgia law not
7 found in either agreements' choice of law provisions. Georgia
8 law simply does not permit the staff to reform these contracts
9 in a matter that renders null provisions that Bell finds
10 inconvenient and which staff has, unfortunately, ignored.

11 Second, staff's recommendation ignores and, in fact,
12 turns upside down two fundamental principles of Georgia
13 contract law. The first is that the law that exists at the
14 time of contracting is incorporated into the agreement as
15 though expressly set forth therein. Indeed, Georgia law
16 establishes a presumption that contracts are created with
17 reference to and not exception from applicable law. Under
18 Georgia law, an agreement to depart from the requirements of
19 applicable law must be expressed. Unless an exception is
20 included or there is an agreement to abide by particular
21 standards that conflict and thereby displace the requirements
22 of applicable law, Georgia law provides the applicable law
23 governs as that was expressly set forth in the plain text of
24 the agreement.

25 The plain text of the so-called audit provisions

1 contain no language that exempts Bell from the concern and
2 independent auditor requirements established by the FCC. And
3 they also contain no language that conflicts or displaces those
4 requirements, yet the staff construes the silence it finds in
5 the audit provisions to reflect an intention to agree to
6 standards other than those set forth in applicable law.
7 Georgia law bars such a presumption and, in fact, requires a
8 presumption that this silence is to be interpreted to indicate
9 no desire to abandon the concern the independent auditor
10 protections established by the FCC.

11 In adopting this legally impermissible construction
12 in the agreements, staff runs afoul of a second and closely
13 related fundamental tenet of Georgia contract law. Not only
14 does Georgia contract law provide that applicable law is
15 incorporated into agreements unless there is express agreement
16 to abide by different standards, Georgia law affirmatively bars
17 the finding of an implied exception or agreement to abide by
18 other standards. Yet here the staff takes the silence it finds
19 in the so-called audit provisions and implies an intent to
20 create an exception or displacement that the parties did not
21 themselves negotiate and, more importantly, that the parties
22 did not memorialized in express contract language.

23 Georgia law operates to fill the gap, and it does so
24 by establishing a presumption of inclusion and a prohibition on
25 implied exceptions. Staff is not free to find an implied

1 exception. Thus, even if staff were free at this point to find
2 an omission of language regarding the concern and independent
3 audit requirements was intentional, Ms. Kaufman referred you to
4 that point in the staff's recommendation, Georgia law commands
5 that that omission be interpreted the exact opposite way that
6 the staff interpreted it. If there is silence, Georgia law
7 establishes a presumption that applicable law is included.

8 Now, the two staff recommendations are largely alike.
9 Staff does cover a few additional points in the NewSouth
10 recommendation. They appear to rely to some extent on
11 BellSouth's argument regarding a merger provision. And that
12 merger provision says that the agreement represents the
13 parties' entire agreement. However, that merger provision is
14 part of the general terms and conditions of the agreement.

15 Likewise, there are other sections of the general
16 terms and conditions, and in the UNE provision, UNE attachment
17 in particular, that are also parts of that agreement. Those
18 provisions point to Georgia law which operates to incorporate
19 those independent auditor concern requirements in the FCC's
20 supplemental order clarification. The supplemental order
21 clarification is not extraneous material and applicable law is
22 not extraneous material.

23 Finally, in the NewSouth recommendation, staff points
24 to references in certain sections to the supplemental order
25 clarification, and infers that the absence of a reference to

1 the supplemental clarification in the audit provision implies
2 an intent to deviate. Again, under Georgia law you cannot
3 construe the contract to have an implied exclusion or an
4 implied intent to deviate from the standards of applicable law.
5 Georgia requires you -- Georgia law requires that the parties
6 do that expressly.

7 So, in sum, the concern and independent auditor
8 requirements established by the FCC in the supplemental order
9 clarification are incorporated into the two interconnection
10 agreements by operation of Georgia law. The so-called audit
11 provisions of these two agreements do not operate independent
12 from other provisions of the agreements. These provisions, in
13 any event, do not expressly exempt Bell from the concern and
14 independent audit requirements and they do not contain any
15 other terms conflict and thereby displace those requirements.
16 The exceptions Bell claims and which staff finds are not found
17 in the plain text of the agreements. The presumption of an
18 intent to exclude and the finding of implied exceptions as
19 argued by Bell and as accepted by staff are barred by Georgia
20 law.

21 Thus, if Bell is to be entitled to any of the relief
22 it seeks in these dockets, the Commission must establish an
23 evidentiary hearing to resolve whether Bell has, indeed,
24 established sufficient concern to trigger its limited audit
25 right and to establish whether Bell has indeed selected an

1 auditor that satisfies the independent auditor requirement. On
2 the latter point it is noteworthy that the Georgia Commission
3 rejected the first entity that Bell selected to conduct an
4 audit. And the second entity, KPMG, recently indicated in a
5 letter to BellSouth that its independence was compromised, and
6 that as a result it was suspending work on the Georgia audit.
7 In Mr. Hendrix's affidavit in the NuVox case, he cites KPMG as
8 being the entity that BellSouth has retained for this audit.

9 In closing, NuVox and NewSouth simply want you to
10 enforce the agreements as they are and not how Bell suggests
11 they should be reformed. Accordingly, NuVox and NewSouth
12 respectfully request the Commission deny staff's
13 recommendation, require Bell to respond to discovery, and issue
14 an order establishing procedure in this case as the issues to
15 be resolved already have been identified and agreed upon by
16 staff and the parties. Thank you very much.

17 CHAIRMAN BAEZ: Ms. White.

18 MS. WHITE: Yes. Just a couple of minutes. For over
19 two years BellSouth has been trying to exercise its rights
20 under these two contracts to audit the enhanced extended links
21 of NewSouth and NuVox. The bottom line here of all that you
22 have heard from NuVox and NewSouth is that, okay, you can do an
23 audit, but you can only do it when we think it is appropriate,
24 when it is under terms that we like and that we set forth, that
25 if it is only acceptable to us.

1 Let's go to the contract. The contracts specifically
2 state BellSouth may at its expense and upon 30 days notice to
3 NewSouth or NuVox audit NewSouth/NuVox's records not more than
4 once in any 12-month period, unless an audit finds
5 noncompliance with the local usage options referenced in the
6 June 2nd order in order to verify the type of traffic being
7 transmitted over combinations of loop and transport network
8 elements, period.

9 Now it doesn't take a rocket scientist to understand
10 that BellSouth may at its sole expense and upon 30-days notice
11 to the party audit their records. That is all we are trying to
12 do. They want to use -- try to use a tortured interpretation
13 of the interconnection agreement and Georgia law to support
14 their claim that all of these other conditions have to be met
15 before the audit can be started. And that's just crazy. They
16 want to have a hearing on everything.

17 The appropriate time for a hearing is after the audit
18 is concluded. BellSouth has absolutely no right to self-help
19 under these contracts. If we get audit findings that say that
20 NuVox or NewSouth is not abiding by the terms of the contract,
21 then we have to come to the Commission and say, Commission,
22 look at these audit findings. There are some things that need
23 to be done and we need you to order that they be done. We
24 can't just take our own actions. That is when a hearing is to
25 be held.

1 I guess I don't have anything further. I mean, the
2 bottom line is the contract says what it says. We believe it's
3 clear. We believe the staff recommendation is thorough. We
4 believe that if any case meets the standard for summary
5 judgment, these cases do. Thank you.

6 CHAIRMAN BAEZ: Commissioners, questions?

7 COMMISSIONER DEASON: I have a question for staff.

8 CHAIRMAN BAEZ: Okay.

9 COMMISSIONER DEASON: What is the significance of the
10 Georgia law as it applies to this contract and how did you
11 interpret that?

12 MR. SUSAC: The significance of the Georgia law, this
13 agreement is governed by Georgia law and construed by Georgia
14 law. And under Georgia law, if we have a fully integrated
15 contract, which here we do between the parties, then we only
16 look to the four corners of the agreement. And when reviewing
17 the four corners of the agreement, if the language is plain and
18 unambiguous, then you stop your analysis right there and you
19 enforce the agreement. This agreement in our review is clear
20 and concise that BellSouth may at its sole expense audit
21 NewSouth's records on 30-days notice once in a 12-month period.

22 COMMISSIONER DEASON: Are there any facts that are in
23 contention or in dispute that you just simply state that you
24 believe this is certain fact, or do you know that the facts are
25 as they are represented?

1 MR. SUSAC: Commissioner, a factual issue isn't
2 present here. It's a purely legal analysis. As counsel for
3 NewSouth and NuVox stated, if this was a factual situation,
4 then summary disposition would not be appropriate. For
5 example, in a car wreck where there is a factual issue whether
6 the light was red or green. That would not be appropriate for
7 summary disposition, because you have competing testimony.
8 Here there is no competing testimony. We are simply looking at
9 a contract, reading it, and if it is clear and unambiguous, we
10 are enforcing it, and that is all that staff is recommending.

11 CHAIRMAN BAEZ: Can you -- go ahead, Commissioner.

12 COMMISSIONER EDGAR: And I'm going to come back, if I
13 may.

14 Ms. Kaufman, you said that, I believe, you had three
15 points when you said that, from your analysis, the application
16 of the standard was not completely in agreement with your
17 interpretation. One point was the questions of fact are in
18 existence. The second was -- or the third, I believe, was that
19 discovery had not been conducted, and can you tell me what the
20 first point was?

21 MS. KAUFMAN: The first point or the second point?

22 COMMISSIONER EDGAR: I think it was the first when
23 you went through the list of three.

24 MS. KAUFMAN: My first point was, as I mentioned in
25 my opening remarks, this case is being litigated in six of the

1 nine Bell states. Three of the -- we already have decisions in
2 three of the states, which are directly contrary to what your
3 staff is recommending to you. And, in particular, in the
4 Georgia decision, they did conduct a hearing in that case, and
5 they looked at the identical language that you and your staff
6 are looking at, and they reached a 360-degree opposite
7 conclusion of what your staff is suggesting to you. So to me,
8 that in and of itself tells me that summary disposition is not
9 appropriate, and that there are further factual inquiries that
10 you need to make.

11 I think that Mr. Susac said there are no facts in
12 dispute, and that the staff didn't rely on any facts in making
13 their recommendation to you. But the comment that I quoted out
14 of the recommendation where staff said they believe that the
15 omission of reference to the auditor and concern requirements
16 was intentional, I ask you how in the world could the staff
17 know that? And is it -- with all due respect, isn't that a
18 factual matter?

19 You heard Mr. Heitmann explain to you what the law in
20 Georgia is on that. I didn't hear Ms. White contradict that in
21 any way. Those are facts that are in dispute, and they are
22 controverted, contrary to Mr. Susac's remarks, by the
23 affidavits of NuVox in this case, by the sworn testimony
24 attached in this case taken from the Georgia evidentiary
25 proceeding.

1 COMMISSIONER EDGAR: I would like to hear from
2 BellSouth.

3 MS. WHITE: Yes, ma'am.

4 Well, first of all, Ms. Kaufman is in error when she
5 says that there are three states where this has been decided,
6 and it has all been in NuVox and NewSouth's favor. Both North
7 Carolina and Kentucky rejected the arguments of NuVox and
8 NewSouth and immediately ordered an audit. They are in the
9 process of those right now. And as far as Mr. Heitmann's claim
10 that KPMG has been blocked and has dropped out of it, that is
11 because they have been sued by NuVox and NewSouth. I believe
12 that the staff has interpreted Georgia law correctly when it
13 says you have to look at the four corners of the document, and
14 the interconnection contract is plain, and I don't believe
15 there is an issue of material fact.

16 COMMISSIONER DEASON: I have a question for
17 Ms. Kaufman.

18 CHAIRMAN BAEZ: Commissioner Deason.

19 COMMISSIONER DEASON: I am just trying to focus on
20 the end result. What's the problem with having an audit done?

21 MS. KAUFMAN: Commissioner Deason, there is no
22 problem with having an audit so long as the prerequisites to
23 conducting the audit are met. And it is NuVox and NewSouth's
24 contention that they have not been met by BellSouth in this
25 case.

1 COMMISSIONER DEASON: What are those?

2 MS. KAUFMAN: Okay. Those are that a concern be
3 demonstrated as to specific circuits. And second, that an
4 independent auditor be retained to conduct the audit. Those
5 are two issues that are factual in nature and that are
6 controverted by the materials in front of you.

7 COMMISSIONER DEASON: Now, what is wrong with the
8 process of conducting the audit. And if you disagree with the
9 independence of the auditor, you can question the results of
10 the audit at that time?

11 MS. KAUFMAN: There are a couple of things wrong with
12 that. It puts the cart before the horse. It takes resources,
13 personnel, people in NuVox and NewSouth to deal with the audit.
14 It takes time. There is no sense, in our view, in conducting
15 -- going through the strenuous audit process, and then at the
16 end of the day finding out that, basically, it was a waste of
17 time because the entity chosen by Bell alone to conduct the
18 audit was not independent; and, therefore, the results are
19 meaningless. That's something that needs to be determined
20 before the audit begins.

21 Ms. White is correct that KPMG is in litigation,
22 because in the view of NuVox and NewSouth, they have breached,
23 seriously breached, the confidentiality agreement in conducting
24 the Georgia audit. And I think that clearly compromises their
25 independence, and I think they themselves have recognized that.

1 COMMISSIONER DEASON: Have you all tried to sit down
2 with BellSouth and agree on who would be an independent auditor
3 and go forward with the audit, instead of bringing all this to
4 us?

5 MR. HEITMANN: Commissioner Deason, if I may, I would
6 like to respond to that. We have from time to time sat down
7 with BellSouth and sought resolution of the independent auditor
8 issues as well as the entire case. This is a case, as
9 Ms. Kaufman indicated, that has been litigated in six states.
10 It is currently before three district courts in various forms.
11 We have not been successful in reaching a resolution with
12 BellSouth.

13 We had, frankly, thought that KPMG would have served
14 fine as an independent auditor. It was very much to our
15 surprise that KPMG breached an NDA it had in place with NuVox.
16 And it did so by feeding information to BellSouth. When we
17 discovered what KPMG was doing, we challenged them. And I
18 think we caught their hands deep in the cookie jar, and we
19 decided to protect our rights and go to court. KPMG has sent a
20 letter to BellSouth indicating that its independence has been
21 compromised and that it can no longer continue with that
22 Georgia audit. I don't think that KPMG can be starting an
23 audit here in Florida. So I think we would have to look to
24 another entity.

25 I would suggest that there is a way that the parties

1 could agree on an independent auditor, which would be to pick
2 one that nobody has a challenge to, and then sit down together
3 and establish a plan of audits that neither side can say the
4 other is trying to train or influence the auditor and come up
5 with a plan that this Commission approves that is fair and not
6 biased.

7 COMMISSIONER DEASON: You just said a plan that this
8 Commission -- we approved the interconnection agreement.

9 MR. HEITMANN: Yes.

10 COMMISSIONER DEASON: And it looks to me like
11 reasonable people could take that language and get an audit
12 done in a timely manner. And if you dispute the results of the
13 audit, bring it to us. That's all.

14 CHAIRMAN BAEZ: I guess I'm trying to understand --
15 Ms. White, maybe this question is to you. I'm trying to
16 understand whether or not the independent auditor
17 requirements -- I mean, for arguments sake, let's say that they
18 have been incorporated into the agreement if you apply Georgia
19 law, certainly. What is it that gives you pause with those
20 independent auditors?

21 MS. WHITE: Well, I mean, we're in agreement that
22 we're going to have an independent auditor. I mean, first it
23 was KPMG, but that is not going to happen now that they have
24 been sued. And, in fact, the letter that KPMG sent to
25 BellSouth said their independence had been compromised because

1 of the lawsuit and not because KPMG had done anything wrong.
2 So I think that is a big disputed fact as to the litigation
3 between NuVox, NewSouth, and KPMG.

4 We are not planning to use an auditor affiliated with
5 BellSouth. We are planning on using an independent auditor
6 that is going to do an audit in accordance with the -- I knew I
7 would lose this. Commission Deason knows it, I'm sure. The
8 AICPA standards, American Institute of -- something like that.

9 CHAIRMAN BAEZ: I've got it. I know about it. It's
10 nice that Commissioner Deason could confirm it for me.

11 MS. WHITE: Okay. But, yes, we plan on using an
12 independent auditor not affiliated with BellSouth. And, I
13 mean, who it is may be up in the air because of the latest
14 situation with KPMG being sued, but we will find someone.

15 CHAIRMAN BAEZ: And is that -- because, I will tell
16 you what, legal motions and applying, you know, arguing whether
17 there are issues of fact and should we have summary orders, all
18 of that is well and good for the lawyers, but it doesn't get
19 the first stitch of an audit started, which is what ultimately
20 is going to resolve whatever conflicts the two companies have,
21 so that the business relationship can move forward. And, you
22 know, at the end of the day people have got to provide service.

23 MS. WHITE: Right. And, I mean, you know, if we use
24 somebody that we believe was not independent, then that is just
25 going to, you know, contaminate the audit at the end of the

1 day, when we want to rely on the findings. And that just gives
2 NuVox and NewSouth a good argument against the findings. So
3 we're interested in using an independent auditor.

4 CHAIRMAN BAEZ: And although I agree with
5 Commissioner Deason's statement, albeit borne of frustration is
6 that we did approve the interconnection agreement, the
7 interconnection agreement should be enough. And to now be
8 arguing over the independence of an auditor, and there have to
9 be some objective standards out there that everyone can accept.
10 And I guess that that is really the reason for my original
11 question. I mean, do we have to argue whether the independent
12 audit requirements of the FCC are applicable or not, rather
13 than take them and say, yes, we can agree at least that this
14 will produce an independent auditor.

15 MS. WHITE: Well, technically and legally, we don't
16 believe they apply. Practically speaking, we are going to use
17 an independent auditor. Now, the problem is, though, I think
18 NuVox and NewSouth want prior approval of the auditor, and I
19 don't believe that that is required, and I don't believe that
20 BellSouth is willing to give that to them.

21 CHAIRMAN BAEZ: And while I appreciate that, I think
22 it is a -- I would have to tell you that it is a waste of this
23 Commission's time if the choice of an auditor becomes a point
24 of contention here. I mean, I don't know what kind of process
25 we would employ to be able to settle an issue like that.

1 MS. WHITE: But the problem is, the experience we
2 have had in the other states, everything is a point of
3 contention. I mean, you know, I hate to say it, but if Saint
4 Peter came down and said I'm the auditor, they would have a
5 problem with it. So, you know, all we can do is the best we
6 can do. And that is why it is important that the audit go
7 forward. And if they have problems with the auditor, they can
8 dispute it at the end of the audit.

9 CHAIRMAN BAEZ: And what about that, Mr. Heitmann? I
10 mean, is there --

11 MR. HEITMANN: I would like to respond to that. In
12 the Georgia case we had contested an entity we hadn't heard of
13 before, a company called ACA, a group of consultants, not
14 auditors. And the Georgia Commission found that we had,
15 indeed, raised reasonable doubt as to their independence. The
16 Georgia Commission also found that compliance with the AICPA
17 standards was required, and that entity, not being a member,
18 couldn't profess on its own to compliance with the AICPA
19 standards.

20 We had suggested that BellSouth use one of the big
21 four accounting firms to serve as an auditor, and they did, in
22 fact, select KPMG. We did not protest. We only protested KPMG
23 when well into the audit we discovered that KPMG breached an
24 NDA. I think if we sign an NDA to protect confidential and
25 sensitive information, competitive information, as well as

1 information pertaining to our customers that is required to be
2 protected under federal law under Section 222 of the Act. We
3 have every right to enforce it. And if we have sued KPMG, and
4 if KPMG has decided that in light of that litigation it can't
5 continue, it is no fault of ours. KPMG breached the NDA by
6 sharing information with BellSouth.

7 CHAIRMAN BAEZ: Hold on. Stop right there because
8 I'm going to lose my train of thought. You have mentioned
9 using one of the -- the suggestion to use one of the big four
10 out of which the choice of KPMG came. What about the big three
11 that are left? Is there any problem with them that either of
12 you know of?

13 MS. WHITE: I'm not aware of any, but then I haven't
14 been involved in the choosing of an auditor, so I can't say for
15 certain.

16 MR. HEITMANN: And I'm not aware of any.

17 CHAIRMAN BAEZ: You're not aware of any?

18 MR. HEITMANN: No.

19 CHAIRMAN BAEZ: I mean, wouldn't it -- I hate to
20 sound like I am talking to my kids here because --

21 MS. WHITE: I would urge my client to use one of the
22 big three that are left.

23 CHAIRMAN BAEZ: And, Commissioner Deason, I don't
24 know how you feel about this or the rest of the Commissioners,
25 but I am going to throw something else out there. You guys,

1 I'm more of a mind to say -- I would be more of a mind to say,
2 you know what, you have got one more shot. And as long as it
3 is one of those big three, I hope nobody is going to be having
4 a problem with this, and let's get an audit done. Because,
5 Mr. Heitmann, the problem with arguing over whether an audit
6 was valid or not before the fact is that we don't have any
7 basis to evaluate the validity of the audit. I think you have
8 got to see the logic of actually letting an audit happen, so
9 that, therefore, you can have a problem with it.

10 MR. HEITMANN: Right. Chairman Deason -- excuse me,
11 Chairman Baez --

12 CHAIRMAN BAEZ: You can make him chairman. He's been
13 itching for it. Well, nevermind.

14 MR. HEITMANN: Our point is that it is clear that the
15 contract incorporates the requirement that there be an
16 independent auditor, and we should start with one. And if we
17 know that the one that has been proposed doesn't suffice, we
18 shouldn't go through that process and waste everyone's time.

19 CHAIRMAN BAEZ: And while I don't disagree with you,
20 the suggestion was out there on the part of your client to use
21 one of the big four. Now, sadly, there is some conflict with
22 KPMG, and there is some argument, I guess, and thankfully that
23 is not before us, as to whether they breached an NDA or not.
24 Now, that is your issue with them.

25 MR. HEITMANN: Right.

1 CHAIRMAN BAEZ: And for all practical purposes, they
2 have been disqualified by circumstances, if nothing else. But
3 my suggestion to you is you had laid out four possibilities of
4 which three are still viable to the best of all of our
5 knowledge. Why can't you pursue that? And now let's pursue
6 it, absent circumstances, why don't we pursue that, so that
7 then we can have something to fight about.

8 It is almost, you know, somebody said putting the
9 cart before the horse to be having a problem with the audit
10 before the audit ever happens. A, I don't think it is properly
11 before us; and, B, it puts us at a great disadvantage to have
12 to decide an issue like this when the practical need is to get
13 an audit done.

14 MR. HEITMANN: Right.

15 CHAIRMAN BAEZ: Go ahead.

16 MR. HEITMANN: I would agree with you, Mr. Chairman,
17 that the parties could do better. And I would say that it
18 sounds like we could certainly try and agree on one of the big
19 three, and there probably are others that we can look to. In
20 any instance, one of them could have a conflict, but I think
21 you're exactly right that we could defuse that issue by trying
22 again.

23 I would point out to you that there is another
24 critical issue about these audits, and that is one of scope.
25 The scope of the audits. The concern requirement that we point

1 you to that is incorporated in the contract establishes a
2 for-cause auditing standard. BellSouth does not have an
3 unlimited right to audit. In fact, during negotiations,
4 BellSouth had proposed language that it audit at its sole
5 discretion. That language was stricken. The FCC adopted a
6 for-cause auditing standard, and they call it a concern
7 requirement, which limits the scope of the audit.

8 For example, the Georgia Commission allowed BellSouth
9 to audit 44 circuits. The Kentucky Commission allowed
10 BellSouth to audit 15 circuits for which they had demonstrated
11 cause. BellSouth in this case wants to audit every single
12 circuit NuVox converted. And I believe in the NewSouth case
13 they want to audit every single circuit that NewSouth
14 converted, in addition to circuits that NewSouth ordered new as
15 EELS.

16 Now, when you order circuits new, you don't certify
17 compliance with the so-called safe harbors in the supplemental
18 order clarification. Those only apply to conversions. So,
19 again, we have a critical issue where the parties, I think, are
20 very far apart on the scope of the audit. And, again, as Ms.
21 Kaufman pointed out, these audits are intrusive. They are
22 burdensome.

23 CHAIRMAN BAEZ: Stop right there, and I would have a
24 question for staff. Has the issue of the scope of an audit
25 ever been before us, or have you ever dealt, at least on the

1 staff level, have you ever dealt with problems as to the scope
2 of an audit? I would imagine BellSouth audits a lot of its
3 wholesale customers.

4 MR. SUSAC: I have no personal knowledge of
5 BellSouth's audits. Staff was recommending that the plain
6 language be enforced and that they should be able to audit
7 NewSouth's records, as the language in the agreement stated. I
8 can't expand on that.

9 CHAIRMAN BAEZ: No, but that wasn't -- I'm not asking
10 you about the recommendation. I'm asking you if anyone on
11 staff has any experience with scope of audit issues. And I
12 hate to be peeling back layers of this onion, because it's
13 starting to make me cry. But, you know, if we are going to
14 get -- and while Ms. Salak is formulating a response, Ms.
15 White, in terms of choosing an auditor, does applying the AICPA
16 standards make sense to you?

17 MS. WHITE: Yes, sir. I don't have a problem with
18 those.

19 CHAIRMAN BAEZ: Okay. And is that something that --
20 I mean, I don't know, and I hate to be alone on this. I would
21 like to hear what the Commissioners' thoughts are. But, you
22 know, rather than making -- personally, I'm uncomfortable with
23 a summary at this point, because I think the more that we talk
24 about it, the more issues arise. But I'm sensing that there
25 may be some willingness to meet halfway in terms of finding an

1 auditor that is reasonable to both based on some objective
2 standards that, Ms. White, you and your clients are willing to
3 accede to and get this audit done. And if there is an issue as
4 to the scope of it, I don't know what Ms. Salak might recall,
5 but maybe there is some kind of guidance that can be used or be
6 of benefit to the issue.

7 COMMISSIONER BRADLEY: Mr. Chairman.

8 CHAIRMAN BAEZ: Commissioner Bradley.

9 COMMISSIONER BRADLEY: I would like to say something
10 before she responds to you.

11 CHAIRMAN BAEZ: Okay.

12 COMMISSIONER BRADLEY: Basically, the summary
13 disposition would allow for us to render a decision without a
14 hearing. And if the issue is going to continue to be the
15 audit, I don't see where we are ever going to get the facts
16 before us that allow us to make a determination as to what the
17 resolution of this dispute should be as it relates to this
18 interconnection agreement. And I'm still open, but I heard
19 what you said about being uneasy about the summary disposition,
20 but I'm just wondering if the summary disposition doesn't force
21 the issue forward.

22 CHAIRMAN BAEZ: You actually make a good point. I
23 mean, I hadn't thought of it that way. And I guess my
24 discomfort probably would never find -- I'm beginning to wonder
25 myself whether even my discomfort in going forward would ever

1 bring it back to us in a way that we could actually decide it,
2 but I would like to hear what --

3 COMMISSIONER DEASON: Mr. Chairman.

4 CHAIRMAN BAEZ: Go ahead, Commissioner Deason.

5 COMMISSIONER DEASON: I would like to offer a
6 suggestion.

7 CHAIRMAN BAEZ: Okay.

8 COMMISSIONER DEASON: And I don't know if it is
9 legally permissible to do, so I would request that Mr. Melson
10 pay close attention to what I'm going to suggest. It may
11 facilitate matters. Part of the frustration I'm experiencing
12 is that I'm an accountant, I think audits should be done.

13 CHAIRMAN BAEZ: See you should have been doing all
14 the talking.

15 COMMISSIONER DEASON: And I don't think it is a wise
16 use of this Commission's time and this bench time and all of
17 these people sitting in this room to listen to these type of
18 arguments about the scope of an audit and who is an independent
19 auditor. That, first of all, should be something that the
20 parties can agree to among themselves consistent with the
21 interconnection agreement.

22 But, nevertheless, we are here. If we legally can do
23 it, can we simply defer action on this summary disposition at
24 this point, designate Ms. Salak or her designee, whoever she is
25 comfortable with, to sit down, talk to the parties, and at her

1 discretion agree to who is or who is not an dependent auditor
2 and what the scope would be. And, hopefully, that would
3 resolve it. And if that doesn't resolve it, and it has to be
4 brought back, I'm inclined to take action to get the audit
5 completed one way or the other. But can we do that to
6 facilitate this in an orderly and efficient manner?

7 CHAIRMAN BAEZ: And I hate to say it, but I think
8 that is an excellent suggestion. And it is sort of what I was
9 trying to lead up to. If we can get one more shot at this,
10 maybe we don't have to be dealing with these legal motions on
11 something that becomes a practical matter. But, Mr. Melson, I
12 am curious as to what your response is.

13 MR. MELSON: Absolutely. You are under no time line
14 to rule on the motion for summary final order. Deferring
15 ruling on that and asking the parties to essentially help
16 mediate a resolution that avoids ever getting to that issue is
17 certainly within your discretion.

18 MS. SALAK: And it is certainly consistent with what
19 we have done in other cases, for example, OSS where we have had
20 independent auditors.

21 CHAIRMAN BAEZ: And I guess that was really the scope
22 of my question. I mean, we have got to have some experience.
23 Certainly although these arguments have never been had here
24 before, I'm sure they have happened almost on a daily basis it
25 seems at times. We have got to have some knowledge base on

1 staff that has seen some type of issue like this before that
2 can get resolved before we start arguing motions.

3 MS. SALAK: I can't remember anything identical to
4 this, but there have been issues of audits and scopes. So,
5 certainly, we would love the opportunity to work with the
6 parties to --

7 CHAIRMAN BAEZ: Commissioner Bradley.

8 COMMISSIONER BRADLEY: Right. And I'm just trying to
9 get this clear in my mind. We are talking about -- we are
10 having a discussion about a point in the interconnection
11 agreement, and it would seem to me that we have veered off
12 course by talking about audits and the scope of the audits. I
13 thought that we were here to deal with the four corners of the
14 agreement. And the agreement simply says that BellSouth may
15 audit once a year based upon some stipulations in the
16 interconnection agreement.

17 Now, I don't know what we accomplish by -- I mean, do
18 we have someone on staff who can mediate this dispute as it
19 relates to the auditor and the expertise of the auditor and the
20 scope of the audit? Is that what is before us, or is it just
21 that BellSouth has --

22 CHAIRMAN BAEZ: Commissioner Bradley, what's before
23 us --

24 COMMISSIONER BRADLEY: -- per the interconnection
25 agreement, it may audit the EELs?

1 CHAIRMAN BAEZ: I think you're right, that that is
2 not -- we have perhaps gone outside of what the motions before
3 us are. I can tell you, as I said before, I'm uncomfortable
4 forsaking the practical aspects of it for the legal. If it was
5 as simple as judge on the motion, you have created a right to
6 audit, and we are never going to see this again, or the audits
7 will get done, and there will be no problem from anybody. You
8 know, maybe that becomes a simpler decision in my mind. I just
9 don't have the confidence that that's going to resolve
10 anything. It may move it forward, as you say, it may kick it
11 into a courtroom, more than likely. I don't feel confident
12 that that is us putting all of the time that we have already
13 spent talking about it --

14 COMMISSIONER BRADLEY: Discussing it, right.

15 CHAIRMAN BAEZ: -- and the staff's time, to its best
16 result. And I'm willing to throw some more good money after
17 bad, as far as we are concerned, in order to try and get some
18 resolution to really truly move the issue forward in a
19 practical sense and not just kick it to a courtroom. Which to
20 me is, albeit, easy -- you know, today I don't feel like that
21 is the best thing to do. I mean, you know, talk to me next
22 week and I may not care.

23 COMMISSIONER EDGAR: If I may, Mr. Chairman, just a
24 comment. I am persuaded that the document speaks for itself,
25 and I'm tending towards being close to being ready to make a

1 motion for the staff recommendation. With that said, however,
2 if there is a way that some of the expertise that we have
3 in-house can help bring the parties to the table so that we can
4 move forward to closer agreement as to the appropriate way to
5 move forward on the audit, if there is a way to fold that into
6 the staff recommendation, then I would like to begin to figure
7 out that language.

8 CHAIRMAN BAEZ: Commissioner Deason, are you still
9 comfortable with your suggestion?

10 COMMISSIONER DEASON: Yes, but I would like to -- I'm
11 intrigued by Commission Edgar's remarks. And if she is willing
12 to make a motion, I would certainly like to hear that.

13 COMMISSIONER BRADLEY: Well, before you make the
14 motion, a stipulation is always, in my opinion, best for both
15 parties, because that means that at least they see it as a
16 balanced outcome. But -- well, let's hear the motion.

17 COMMISSIONER EDGAR: Okay. I'm going to make a shot
18 at this, but then feel free to jump in and help me wordsmith it
19 to get it exactly right. I would make a motion that we move
20 forward with the staff recommendation for Items 4 and 5, with
21 the additional direction that the parties meet with the
22 appropriate people on staff to discuss the scope of the audit
23 and the appropriate, and agreeable to both parties,
24 organization to conduct that audit.

25 COMMISSIONER DEASON: Let me say right up front that

1 I agree with that, but I just want -- but since this has been
2 so contentious, is there anything objectionable to that on
3 BellSouth's part or anything objectionable to that on NewSouth
4 and NuVox's part? Other than I know that, NewSouth, you
5 disagree with the action on the -- because I understand the
6 motion would be that we would approve staff's recommendation on
7 the summary disposition, is that correct?

8 COMMISSIONER EDGAR: That is the motion that I have
9 made, yes, sir.

10 COMMISSIONER DEASON: And I understand that. I don't
11 want to hear argument on that again. I know your position on
12 that. But as far as the workable solution aspect of this, is
13 there anything problematic in your view?

14 MS. WHITE: I guess for BellSouth, maybe if there is
15 some kind of time period put around the working with staff,
16 because if -- you know, we could all say we are working with
17 staff for two years and nothing happen. So I guess I would be
18 more comfortable if there was a time period by which either the
19 parties and staff agree or BellSouth goes on and does what it
20 needs to do, if that makes sense.

21 COMMISSIONER BRADLEY: I think now would be an
22 excellent time for the parties to agree as to a time frame.

23 MR. HEITMANN: Commissioners, if I may comment on
24 that. We would --

25 COMMISSIONER BRADLEY: Do you all need a little time

1 to discuss it?

2 MR. HEITMANN: Sure, I would be happy to discuss --
3 we would be happy to discuss with Ms. White a time frame that
4 would be appropriate. But with regard to the motion, we think
5 we would much prefer to see the action on the staff's
6 recommendation deferred for two reasons, because we think it
7 upends how we do contracts generally. It creates issues much
8 broader than this EEL audit case. The four corners of the
9 document, the four corners of the agreement are much more
10 expansive than that one provision you looked at and Ms. White
11 read, and we need to look at that.

12 COMMISSIONER BRADLEY: Okay. Excuse me. But I
13 think, Commissioner Deason, your request was that we not get
14 back into the four corners of the contract, but deal
15 specifically with the audit.

16 COMMISSIONER DEASON: The question of having staff
17 assistance and trying to bring to a conclusion the question of
18 independence and scope.

19 MR. HEITMANN: We would love staff's assistance on
20 that. We fear that with the grant of summary motion there
21 would be very little incentive for BellSouth to budge off of
22 its position, but we are happy to endeavor upon staff
23 mediation. Again, we had --

24 COMMISSIONER DEASON: You don't know how ferocious
25 our staff can be in discussions with BellSouth.

1 MS. KAUFMAN: Commissioner Deason, I think I do know
2 how ferocious staff can be when they take direction from you.
3 So I think that our clients are happy and would be pleased to
4 try to work with staff and BellSouth. But, as Mr. Heitmann
5 said, I think we would request that you defer ruling on whether
6 final summary order would be appropriate because that really
7 involves a legal issue that you may not have to reach if we can
8 successfully reach agreement.

9 COMMISSIONER DEASON: Mr. Melson, if we adopt staff's
10 recommendation, what is the legal recourse for NewSouth? Is
11 there an appeal of this decision?

12 MR. MELSON: I would think they would have the right
13 to seek review in federal district court, because you are
14 interpreting the interconnection agreement, and those go to
15 federal district court. I guess the slight concern that I've
16 got is that if you do make a final ruling today, that even with
17 staff's good efforts to try to work out the details, one of the
18 parties may feel compelled to go to federal court to protect
19 their rights.

20 COMMISSIONER BRADLEY: Well, we have a motion before
21 us.

22 CHAIRMAN BAEZ: There is a motion -- there is a
23 motion which spurred questions. And --

24 COMMISSIONER DEASON: Well, let me just -- I'm not
25 going to vote against the motion if it gets seconded, but just

1 let me offer what I think is a preferred alternative, and that
2 would be to take Mr. Melson's advice and, hopefully, maybe
3 prevent the necessity of having a federal court appeal, give a
4 very strict time frame for our staff to get these matters
5 concluded, so we can have an audit. And then if that fails,
6 then bring this back promptly to us, and then we can vote up or
7 down the question of summary disposition.

8 CHAIRMAN BAEZ: And, Commissioner Edgar, I appreciate
9 the motion. I will tell you where I am on it, if I hadn't
10 intimated that before. I don't have a problem with the legal
11 analysis of it. And I guess the legal decision is what I'm
12 trying to avoid -- what I would try to avoid if it were up to
13 me only in order to try and get a practical solution to it.
14 And, the notion of deferral to me is more attractive if only
15 because we can say, you know what, we will sit on this for two
16 agendas or whatever, and that keeps the negotiating field open.
17 You haven't created necessarily -- even having said -- even
18 having said that I don't have a problem with the legal analysis
19 on the motion.

20 COMMISSIONER BRADLEY: Wouldn't --

21 COMMISSIONER EDGAR: If I may ask staff -- I'm sorry,
22 Commissioner Bradley. If we are talking about a time frame and
23 a potential deferral, realizing the workload that your office
24 has and other factors, can you give us a feel for what time
25 frame you think would be reasonable with all due haste to bring

1 this back before us?

2 MS. SALAK: Commissioner, if you tell us to be back
3 in two agendas, we will, one way or the other. We will
4 either --

5 CHAIRMAN BAEZ: That, just for your knowledge, is
6 July 19th.

7 Go ahead, Commissioner Bradley.

8 COMMISSIONER BRADLEY: I have another proposition.
9 What I would like to do is second the motion and maybe defer
10 the vote, and then we bring it back. We can either vote it up
11 or vote it down. But I don't think that we need to leave the
12 motion unattended to.

13 COMMISSIONER DEASON: The motion has not been
14 seconded, so -- I mean, it can be withdrawn or modified or
15 amended.

16 COMMISSIONER BRADLEY: Well, I am going to second the
17 motion.

18 CHAIRMAN BAEZ: Oh, you're going to second the
19 motion.

20 COMMISSIONER BRADLEY: And suggest that maybe we
21 defer taking a final vote, but at least we have it before us,
22 which means that the next time we -- when we reconvene and this
23 item is before us, either they have resolved it or then we can
24 vote the motion up or down.

25 CHAIRMAN BAEZ: Where is a parliamentarian when you

1 need one? You know, off the top of my head, I don't think it
2 is an improper request, and the Chair will take it as
3 requested, you know.

4 COMMISSIONER DEASON: Can you second a motion and
5 then table it?

6 CHAIRMAN BAEZ: See that's the -- you know, you never
7 know about agenda items.

8 COMMISSIONER BRADLEY: Mr. Chairman, that's a
9 question for you.

10 CHAIRMAN BAEZ: One day I hold out hope we will veer
11 off and talk about sports instead about Robert Rules of Order.
12 You know, I've felt dumb before and this has probably got to go
13 on the list.

14 MR. MELSON: Commissioner Baez, we don't have any
15 particular rules of procedure that have been adopted. What I'm
16 hearing is a suggestion that the motion be seconded, and then
17 the vote on that deferred until a future agenda at which point
18 it may become moot, and could be withdrawn at that point. I
19 don't any practical problem with that.

20 CHAIRMAN BAEZ: And I'm not seeing a problem with
21 that either. And to indulge Commissioner Bradley's suggestion,
22 the Chair will accept it.

23 The motion has been made and seconded, and we will,
24 as discussed, defer vote on it until July 19th. The parties
25 can mark that down. Please make contact with each other.

1 Ms. Salak, perhaps you need to take a more active --

2 MS. SALAK: Yes, sir, I will.

3 CHAIRMAN BAEZ: -- role to establish contact and
4 report back to us.

5 COMMISSIONER DEASON: Mr. Chairman, I know we
6 mentioned specifically questions of independence and scope.

7 CHAIRMAN BAEZ: Yes.

8 COMMISSIONER DEASON: Obviously, if there are other
9 areas of contention that come to the surface, we need to get
10 everything resolved so we can go forward with an audit.

11 CHAIRMAN BAEZ: I think the view should be broad
12 enough to bring it in for a landing in terms of what the
13 ultimate result has to be. Let's not be shy about it.

14 All right. Thank you for your input.

15 Ms. White, thank you.

16 And we stand deferred on Items 4 and 5.

17 Commissioners, will you indulge me with a ten-minute
18 break?

19 Thank you. We will recess for ten minutes.

20 (Recess.)

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STATE OF FLORIDA)

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CERTIFICATE OF REPORTER

COUNTY OF LEON)

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

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

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

DATED THIS 27th day of June, 2005.



JANE FAUROT, RPR

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