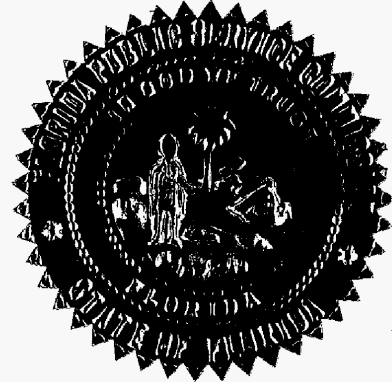


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050059-TL

In the Matter of:

PETITION TO REFORM UNBUNDLED NETWORK  
ELEMENT (UNE) COST OF CAPITAL AND  
DEPRECIATION INPUTS TO COMPLY WITH  
FEDERAL COMMUNICATIONS COMMISSION'S  
GUIDANCE IN TRIENNIAL REVIEW ORDER,  
BY VERIZON FLORIDA INC.



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PROCEEDINGS:                   AGENDA CONFERENCE  
ITEM NO. 8

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

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

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

1 APPEARANCES:

2 LEIGH HYER, ESQUIRE, representing Verizon Florida

3 Inc.

4 MATTHEW FEIL, ESQUIRE, representing FDN

5 Communications.

6 TRACY HATCH, ESQUIRE, representing AT&T.

7 JEREMY SUSAC, ESQUIRE, representing the Florida

8 Public Service Commission Staff.

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

1  
2 CHAIRMAN BAEZ: Commissioners, we are on Item 8.

3 MR. SUSAC: Commissioners, Jeremy Susac on behalf of  
4 the Commission staff.

5 Item 8 is staff's recommendation in Docket Number  
6 050059 to deny Verizon's request to reform its UNE cost of  
7 capital and depreciation inputs. Various parties are present  
8 to address the Commission today, and staff is available for  
9 questions.

10 CHAIRMAN BAEZ: Thank you, Mr. Susac.

11 And just for the benefit of those that are waiting,  
12 we have a couple of dockets that are waiting out there. What  
13 my intention is, is to dispose of this or have the Commission  
14 address this docket that we have in front of us that just got  
15 introduced and also take up Item 12, the Tampa Electric  
16 petition. And then we are going to break for lunch. And we're  
17 going to come back, say, about an hour after and reconvene and  
18 take up the storm docket. So for those of you, Item 11 is  
19 going to be taken up after lunch, which will proceed after  
20 these next two dockets, Items 8 and 12. Thank you, and sorry  
21 for the interruption.

22 Mr. Susac, do you want to introduce the parties or  
23 are we --

24 MR. SUSAC: Since it's Verizon's petition, I believe  
25 Verizon can go first.

1 CHAIRMAN BAEZ: Correct. Go ahead.

2 MS. HYER: Hi. I'm Leigh Hyer for Verizon. Good  
3 morning, Commissioners.

4 CHAIRMAN BAEZ: Good morning.

5 MS. HYER: Verizon objects to staff's recommendation  
6 on both substantive and on procedural grounds. With respect to  
7 the substantive grounds, in the recommendation staff, quote,  
8 agrees with Verizon that the 9.63 percent cost of capital input  
9 does not technically comply with the TRO. That 9.63 percent  
10 cost of capital input is the one that was approved by this  
11 Commission in the UNE docket in November of 2002. In other  
12 words, staff admits that that rate, because it was derived  
13 prior to the FCC's clarifications in the triennial review  
14 order, or TRO, that it's not TELRIC compliant as it stands.

15 However, staff does not advocate actually updating  
16 that rate that it concedes is not TELRIC compliant. It makes  
17 two claims to try to justify leaving that rate in place. They  
18 are two important leaps of logic that we think have no basis.

19 First of all, staff claims that the Commission can  
20 simply import the cost of capital input from the collocation  
21 docket that was approved by this Commission in September of  
22 2004, claiming that it is TELRIC compliant for collocation  
23 services and you might as well apply it for UNE services, as  
24 well. That's problem number one.

25 Second of all, staff claims that although 9.8 percent

1 is obviously different than the 9.63 percent rate, that it  
2 concedes is not TELRIC compliant, that we should leave the 9.63  
3 percent rate in place and not change it, claiming that a strong  
4 case can be made that the cost of capital has decreased since  
5 the Commission approved the 9.8 percent return in September of  
6 2004. However, staff does not actually make that case. They  
7 just say it could have been, it could be made, therefore, let's  
8 just leave it in place.

9           With all due respect, this recommendation is very  
10 arbitrary. The Commission can't simply take a cost of capital  
11 derived in a collocation docket for a collocation cost study  
12 and then import it into a UNE cost case. The contexts are very  
13 different, and this Commission explicitly distinguished those  
14 two contexts when it originally approved the cost of capital of  
15 9.8 percent in the collocation docket.

16           Second of all, the Commission can't simply assume  
17 that a TELRIC compliant cost of capital from the collocation  
18 docket has somehow decreased since September of 2004, and now  
19 it's, you know, about 9.63 percent, so we can just leave it in  
20 place. You can't do that without actually developing the  
21 record to prove that assumption. You need the facts.

22           Now, with respect to our procedural objection,  
23 Verizon objects to the recommendation to issue a PAA order in  
24 this matter, rather than simply setting the case for a hearing.  
25 Verizon has already filed its -- it has filed its petition and

1 filed its testimony with the petition, and we are proposing  
2 that the Commission set it for hearing and establish a  
3 procedural schedule for that. A hearing in this case is  
4 ultimately going to be inevitable. Even if the Commission were  
5 to adopt staff's recommendation to issue a PAA order that  
6 implements what they have recommended, Verizon is going to  
7 protest that PAA, and then there will be a hearing on that  
8 matter. We don't see any reason why we should have to wait  
9 and -- why the Commission should wait for that procedural  
10 hurdle for the hearing that is going to be inevitable anyway.  
11 Instead, we would propose that we go ahead and set this matter  
12 for hearing.

13 Now, with that summary out of the way, I wanted to  
14 sort of expand on a couple of the points that I have made.  
15 First of all, with respect to staff's recommendation that we  
16 simply, you know, adopt the cost of capital input from the  
17 collocation docket, even if the Commission's cost of capital  
18 input from the collocation docket is TELRIC compliant with  
19 the -- you know, based on the TRO clarifications, the  
20 Commission can't simply use that for UNE pricing. The contexts  
21 are different.

22 For a collocation cost study, as the Commission  
23 recognized in its order explicitly when it rejected Verizon's  
24 risk premium in the collocation docket, that a cost study for  
25 collocation assumes that collocation will be requested in

1 central offices that exist in Florida today, and there won't be  
2 any new construction involved. Therefore, quote, TELRIC rates  
3 will not be based on the assumption that the telecommunications  
4 network will be reconstructed each time rates are set. That  
5 was the justification in the collocation order for the lower  
6 cost of capital input.

7 But in the UNE context, the FCC has said that TELRIC  
8 rates must be based on that very assumption. Specifically, the  
9 FCC specified in the local competition order in 1996 that UNE  
10 cost models should seek to measure the cost of reconstructing  
11 and operating the local exchange network using the most  
12 efficient technology in current wire center locations.

13 Thus, for TELRIC purposes there is a fundamental  
14 difference between a collocation environment where the  
15 Commission assumes no new central office space is constructed,  
16 and the network element environment where you must assume a  
17 scorched node environment. That is that you assume that the  
18 entire network is newly reconstructed except for the central  
19 offices.

20 Obviously, the risks in the marketplace are much  
21 higher in that kind of environment. Verizon has to have -- be  
22 provided the opportunity to recover its costs, and the risks in  
23 the marketplace, the risk that Verizon is not able to recover  
24 its cost of a totally newly reconstructed network is something  
25 that the Commission needs to take into consideration. And that

1 was not taken into consideration in the collocation docket.

2           This and other distinctions between TELRIC  
3 assumptions for collocation and TELRIC assumptions for UNE cost  
4 studies clearly demonstrates that this Commission cannot simply  
5 pluck the cost of capital input from the collocation docket and  
6 claim that it is TELRIC compliant for a UNE cost study. You  
7 need to have a hearing and listen to the facts and the evidence  
8 before you make any kind of assumption like that. It is just  
9 not proper.

10           And, also, the Commission has a statutory obligation  
11 under Section 364.013 to encourage investment in  
12 telecommunications infrastructure. And if this Commission's  
13 goal is to promote facilities-based competition, which it  
14 should be and which it must be under that statute, then it is  
15 important to make sure that we send the proper pricing signals  
16 to the market. And in order to do that we need to correct the  
17 cost of capital input in light of the TRO.

18           Now, Verizon also disputes that the cost of capital  
19 of 9.8 percent that was ordered in the collocation docket is,  
20 in fact, TELRIC compliant. Specifically, the Commission  
21 imposed a 9.8 percent rate on Verizon, but a 10.24 percent rate  
22 on BellSouth without explaining, you know, what the differences  
23 were in the risks, why Verizon's risks were lower. In  
24 addition, they applied a -- you applied a book value capital  
25 structure rather than a market value capital structure. And



1 the FCC's Wire Line Competition Bureau has explained how under  
2 the TRO clarifications the market value structure is the  
3 appropriate one.

4 But the most fundamental problem with this -- and,  
5 you know, all of this would come out in a hearing -- the  
6 biggest problem with staff's recommendation is just simply  
7 taking the collocation risk factor without change and importing  
8 it into a UNE docket.

9 Now, the second piece of staff's recommendation is  
10 that the 9.8 percent from the collocation docket is close  
11 enough to 9.63 that we can just ignore the difference. That  
12 lacks any foundation in either the law or common sense. The  
13 difference is not de minimis. It is 17 basis points. And when  
14 you compare the 9.63 percent rate that staff concedes is not  
15 TELRIC compliant with the cost of capital that was ordered for  
16 BellSouth in the collocation docket, you are looking at 61  
17 basis points. This is not de minimis.

18 Staff, nevertheless, claims that a strong case can be  
19 made that the 9.8 percent rate that was ordered in the  
20 collocation docket has since diminished to 9.63 percent; and,  
21 therefore, there is no use in having a hearing in this case.  
22 But staff has not made that case. It just says that it might  
23 be made. This is pure speculation. And no reasonable fact  
24 finder and no appellate reviewer can accept this kind of  
25 speculation as the basis for a factual decision.

1           Now, I will briefly address depreciation since  
2 Verizon has raised it as well in its petition. Staff proposes  
3 that we leave the depreciation inputs from the UNE docket in  
4 place because the FCC did not issue any clarification with  
5 respect to depreciation life or salvage value. And with all  
6 due respect, that is not correct. Actually, what the FCC did  
7 was clarify that under its economic depreciation requirement  
8 ILECs can use accelerated depreciation in lieu of straight line  
9 depreciation in order to capture the expected rate of decline  
10 in prices over time, and has urged state commissions to look at  
11 that issue in their UNE proceedings.

12           One of the things that they said that you could  
13 consider is, quote, whether shorter asset lives represent an  
14 alternative method of capturing this decline in lieu of  
15 accelerated depreciation. And that is what Verizon is  
16 proposing here, shorter depreciation lives as opposed to the  
17 BellSouth lives that the Commission had ordered for Verizon in  
18 the UNE docket.

19           In any event, staff also recognizes in its  
20 recommendation that the existing straight line depreciation  
21 cost studies that are used in UNE proceedings, and that have  
22 been used in UNE proceedings, such as the one here, do not or  
23 may not capture that rate of price decline; and, therefore,  
24 they may result in underrecovery. This is yet another reason  
25 why it is important to take a look at the cost of capital input

1 in the cost study. If you have got a situation where the  
2 TELRIC rates that are imposed based on the way that cost  
3 studies are structured under TELRIC that reduce the ability to  
4 actually recover your costs of constructing this new network,  
5 the theoretical network under TELRIC, it is that much more  
6 important to recognize the risk that the marketplace is going  
7 to see in that environment for an ILEC's ability to attract  
8 capital.

9 Now, I want to briefly, also, address staff's  
10 recommendation in the alternative, which is that if the  
11 Commissioners see merit in Verizon's position, that instead of  
12 setting this matter for hearing and moving forward, that  
13 Verizon be required to recalculate the UNE rates using the  
14 proposed inputs for staff's review first. In other words, they  
15 want to know, you know, what is the bottom line here.

16 With all due respect, this is just a means of trying  
17 to back into the UNE rates. The FCC has given the guidance on  
18 how the cost of capital should be calculated for a UNE case.  
19 You have got to follow TELRIC. You can't figure out what rates  
20 you want and then back into them by manipulating the rate that  
21 would apply to get you there. So with all due respect, we  
22 don't think that this is a permissible way of applying TELRIC  
23 in a cost study.

24 The bottom line is that staff has admitted and, you  
25 know, we obviously agree with this, otherwise we wouldn't have

1 brought this petition, that the existing 9.63 percent rate that  
2 was approved in 2002 does not meet the TELRIC standards as  
3 clarified by the FCC, and so it needs to be updated in order to  
4 send the right signals to the marketplace. And, therefore, we  
5 respectfully request that the Commission go ahead and set this  
6 matter for hearing and establish a procedural schedule so other  
7 parties can submit testimony and we can build the record.

8 CHAIRMAN BAEZ: Thank you, Ms. Hyer.

9 Mr. Hatch.

10 MR. HATCH: Tracy Hatch appearing on behalf of AT&T.  
11 We are here to support the staff recommendation. We think in  
12 view of the way this petition was filed and how it has shaped  
13 up it is the appropriate way to go. With respect to setting it  
14 straight for hearing, we certainly don't object to that. It is  
15 clearly within your discretion to do so. Potentially I think  
16 there is a good probability that either side will protest if  
17 they don't like what happens. Verizon has made it very clear  
18 if they don't like the staff rec, they will protest it. So  
19 setting it for hearing is an option. But let me just add a  
20 couple of points here.

21 With respect to whether the staff's original 9.6 is  
22 TELRIC compliant, whether the 9.8 in the collo docket is TELRIC  
23 compliant, I would disagree with counsel for Verizon on whether  
24 the collo ROE is TELRIC compliant. One of the things that was  
25 discussed in the collo case, what she claims is a distinction,

1 is that collo cost of capital should not apply to UNE cost of  
2 capital. We argued that in the collo case, and we lost,  
3 frankly. And essentially what the Commission ended up with is  
4 that you don't have truly service specific cost of capital.  
5 Investment is investment, and it is the company that investors  
6 look to for rates of return, whether to invest their capital.  
7 It is not whether they have collo or whether they have an  
8 unbundled loop or whether they have unbundled switching. Those  
9 are not the issues that investors look at in determining  
10 whether to invest in a company. It is the overall returns of  
11 the company that drive that.

12 Another thing that I would suggest to you is that one  
13 of the things that the staff looked at is whether the 9.8 is  
14 comparable in view of time. I would suggest to you that that  
15 9.8, as was said even in the collo order, that 9.8 is a very  
16 generous cost of capital. One of the things that we argued in  
17 the collo order is that you take the same cost of capital -- if  
18 nothing else, you take the same cost of capital that you  
19 applied for UNEs, since collo is considered amongst the family  
20 of UNEs, certainly at the time. And we lost on that and the  
21 Commission gave them a slightly higher ROE.

22 One thing you have to keep in mind is the FCC has  
23 established what are the standards for cost of capital under  
24 TELRIC. You may or may not be aware, vaguely or otherwise,  
25 that in Virginia there was an arbitration between AT&T and

1 Verizon in Virginia. The Verizon Corporation Commission  
2 declined to arbitrate that case and sent it to the FCC. The  
3 FCC took a good long while before it issued its decision in  
4 that case. And what it said was -- now, bear in mind that the  
5 Virginia arbitration order was done by the FCC staff, the order  
6 in the Virginia arbitration came out after the TRO order. For  
7 cost of capital what the FCC said was 8.2 was a good cost of  
8 capital for Verizon. So that ought to give you -- and that is  
9 post-TRO, so that ought to give you at least some comfort that  
10 the 9.6 or the 9.8 are more than ample in terms of equity rates  
11 for Verizon.

12           Stepping back, one other point that I would like to  
13 make that the staff does not make really in its recommendation,  
14 is the Commission has a very long-standing tradition that it  
15 doesn't look at individual factors in isolation. It takes all  
16 the pieces of the puzzle and makes a complete decision at one  
17 time. And there is some reason for that. Even with my whole  
18 history at the Commission, while I advocated from time to time  
19 that the Commission should, in fact, do limited proceedings and  
20 look at individual factors, the Commission has almost  
21 universally rejected that notion, saying it is not the right  
22 thing to do.

23           In this case what Verizon is asking you to do is set  
24 depreciation, reset depreciation at a higher level, reset the  
25 cost of capital at a higher level, and completely ignoring all

1 the other inputs that go into a cost model. Now, bear in mind  
2 that yet once again in the BellSouth 120-day proceeding, if you  
3 recall that, it was an offshoot from the BellSouth UNE  
4 proceeding, there were issues in the 120-day proceeding  
5 regarding the inflation factors. And what AT&T and MCI argued  
6 in that case was, and even BellSouth conceded on the stand that  
7 inflation had changed, inflation rates had gone down, and that  
8 their original inflation factors were not accurate based on  
9 current information. BellSouth even conceded that. But the  
10 Commission -- but BellSouth further argued that it is not  
11 appropriate to look at anything in isolation, and the  
12 Commission decided that is correct, that you shouldn't just  
13 look at one thing that changed in isolation. Because if you  
14 do, then everybody comes in all the time looking for one  
15 factor.

16 Now, as the Commission has acknowledged, and I think  
17 everybody would acknowledge, factors will change. Costs will  
18 go up, costs will go down. You can't look at one factor to  
19 determine the appropriate rate at any given time for any  
20 particular service or any particular UNE, and I think that is  
21 the situation you have here. They are trying to look at cost  
22 of capital and depreciation out of context with everything else  
23 and get you to change that one thing, when there are other  
24 things that should be changed.

25 CHAIRMAN BAEZ: Mr. Feil.

1 MR. FEIL: Matthew Feil for FDN Communications. I  
2 don't want to redundant of much of what Mr. Hatch said. I  
3 agree with what he said. I want to make a few additional  
4 points, though.

5 With respect to the staff recommendation on Issue 1,  
6 cost of capital, and Issue 2, on depreciation, FDN supports the  
7 end result that the staff is recommending.

8 On the cost of capital question, I wouldn't have  
9 framed the statement precisely the way, perhaps, the staff did  
10 with respect to whether or not the cost of capital approved in  
11 the generic UNE docket was TRO compliant. I think that it is  
12 probably safe to say that the framework of analysis used then  
13 was not TRO compliant because it was before the TRO, but that  
14 is not to say that the end result is not TRO compliant. And we  
15 maintain that it is.

16 One of the things that Mr. Hatch pointed out I wanted  
17 to emphasize as well is when the Commission approved the  
18 collocation order and the cost of capital therein at 9.80  
19 percent, that was nine months ago, not two years ago, not three  
20 years ago, nine months ago that order came out. And at that  
21 time the Commission said that it felt that those numbers were  
22 conservatively high on both the cost of equity and the cost of  
23 debt.

24 Ms. Hyer indicated that the Commission had approved  
25 in that case, in the collocation case, a book capital



1 structure. That is not correct. The Commission did not  
2 approve a book capital structure in that case. Rather, the  
3 Commission approved a prudent or optimal capital structure for  
4 Verizon in that case.

5 Ms. Hyer indicated that she didn't think it was  
6 proper for the Commission to incorporate ideas from one order  
7 into a PAA in this setting. Well, in a PAA you can rely on  
8 whatever evidence or information you choose to rely on as long  
9 as you think it is reasonable to do so. And I would submit to  
10 you that at least in this context it is reasonable for you to  
11 rely on, as staff recommends, the cost of capital approved in  
12 the collocation case.

13 Ms. Heir said that she didn't think it was  
14 appropriate procedurally for the Commission to ask the -- to  
15 ask Verizon to submit what the final proposed UNE rates would  
16 be if you changed the cost of capital and depreciation inputs.  
17 Frankly, I don't agree with that. That is something that I  
18 think has been lacking in some of the UNE and collo cost  
19 analysis that the Commission has been doing that oftentimes you  
20 make your decisions without the benefit of seeing what the  
21 rates are before and after. And I think that it is prudent for  
22 you to do that. You do that in the context of electric cases,  
23 water and wastewater cases, telecom cases back under rate base  
24 regulation. It permits you to take in the whole picture, and I  
25 think that you should do that. That was all I had. Thank you.

1 CHAIRMAN BAEZ: Thank you, Mr. Feil.

2 Commissioners, do you have questions?

3 COMMISSIONER DEASON: Mr. Hatch, can we do what  
4 Virginia did?

5 MR. HATCH: I'm sorry, Commissioner Deason?

6 COMMISSIONER DEASON: Can we do what Virginia did?

7 CHAIRMAN BAEZ: Is that a motion?

8 MR. HATCH: I believe that you can, as a Commission,  
9 decline to arbitrate. You have historically not done that, but  
10 I think it is permissible under the Act.

11 COMMISSIONER DEASON: Well, let me take it -- you  
12 know, that question was a little bit tongue-in-cheek. But to  
13 put it on a little more serious note, if we believe staff's  
14 recommendation that things have not materially changed enough  
15 to warrant a hearing, are we still obligated to have a hearing,  
16 or can we just say, Verizon, if you don't think that these  
17 rates are good enough, take it to the FCC?

18 MR. HATCH: I think that Verizon is entitled to file  
19 it here. I think if the Commission declines to arbitrate it,  
20 they can take it to the FCC. To the extent that you think that  
21 nothing has changed sufficiently, and that is your view of the  
22 matter based on the information before you today, then that is  
23 the reason that you issue a PAA. Then the party making the  
24 filing ultimately, under Chapter 120, has an opportunity to  
25 request a hearing in order to put on its full-blown case.

1           COMMISSIONER DEASON: So if we issue the PAA, and a  
2 hearing is requested, we can either hold the hearing here or we  
3 have the ability to refer it to the FCC?

4           MR. HATCH: I believe you could probably decline to  
5 arbitrate it and send it to the FCC, although you have never  
6 done that.

7           CHAIRMAN BAEZ: Under 120?

8           MR. HATCH: Not under Chapter 120. Under 251 and 252  
9 of the Act if the Commission declines to arbitrate a case that  
10 is brought before you, then it automatically would revert to  
11 the jurisdiction of the FCC is my understanding.

12           CHAIRMAN BAEZ: And I guess I'm having -- I guess I  
13 have a little trouble separating how we are issuing a PAA. It  
14 starts getting a little gray there as to what --

15           MR. HATCH: A PAA is a procedural vehicle under  
16 Florida law.

17           CHAIRMAN BAEZ: And do we have to respect the  
18 procedural vehicle all the way through? I mean, we can't very  
19 well issue a PAA under our authority or based on 120 procedures  
20 and then neglect the necessary rights available to the parties  
21 post-PAA.

22           MR. HATCH: The way the typical PAA process works  
23 under the Administrative Procedure Act, and there is some minor  
24 differences vis-a-vis the Commission and how it operates under  
25 PAAs, because there is a provision in Chapter 120 that says if

1 you don't protest everything, the things that you don't protest  
2 are deemed admitted. But setting that aside, the whole  
3 function of a PAA historically, and the reason it was created,  
4 was to allow parties that had an argument to bring it to the  
5 Commission. And rather than go all the way through the process  
6 of putting on a case and getting a decision, if the Commission,  
7 based on just what it saw before them, said this looks like a  
8 reasonable resolution, so they issue a proposed agency action.  
9 Then if both sides say, okay, that is good enough, it obviates  
10 the necessity of litigation. That is the whole purpose of the  
11 PAA.

12           Once you have gone through that exercise, if somebody  
13 files a protest, I mean, essentially, the PAA goes poof. It  
14 has no further legal effect. It's as if it never happened once  
15 the protest is filed. Then you revert to the formal litigation  
16 process under 120.57(1). That's the whole point of the PAA.  
17 It was designed and created essentially by the Commission to  
18 avoid having to go through a hearing every time if there was,  
19 you know, the notice and opportunity.

20           CHAIRMAN BAEZ: I understand that, but I guess I'm  
21 trying to marry up what you have represented -- what you  
22 represented to Commissioner Deason as an option, a very  
23 attractive option, I might add. But, you know, that we can --  
24 that under 120 when something is presented for us, we can say,  
25 you know what, we are just not going to entertain it.

1 MR. HATCH: I think for matters under the Telecom Act  
2 there are two jurisdictional venues. The first one is here.  
3 You can choose to exercise that jurisdiction or you can choose  
4 not to. This is a matter that would be under the Telecom Act.

5 Now, in the normal course of things, in the absence  
6 of Telecom Act, for example, in the electric industry, if  
7 somebody brought something to you, you are the jurisdiction in  
8 this state. There are no other jurisdictional vehicles for  
9 you. So in a sense I believe you are obligated to perform your  
10 statutory duty and hear it. The Telecom Act has given you a  
11 safety valve, if you want to think of it that way, in some  
12 sense. Where I think you can decline to -- you have  
13 jurisdiction in the first instance, but I think you can decline  
14 it under the Telecom Act and send it to the FCC.

15 CHAIRMAN BAEZ: Commissioners, any other questions?

16 MR. HATCH: I'm not suggesting you do that, but I  
17 think just intellectually. And you might want to check with  
18 your general counsel on this issue, as well. He has been in  
19 this business longer than I have.

20 CHAIRMAN BAEZ: I gave him a quick glance, and I  
21 don't know. I'm not a card player, but he doesn't seem to be  
22 leaning back in his chair. There's no tell there.

23 MR. MELSON: Commissioners, I think you may be  
24 answering some potentially unanswerable questions. This is not  
25 an arbitration, per se. And it is arbitrations, I think, under

1 the federal act where the FCC clearly steps in if the state  
2 agency declines to arbitrate.

3 If you were going to decline to hear this, to hear a  
4 case and to leave it to the FCC, you might want to consider  
5 doing that at the very outset rather than, as you say,  
6 proceeding down a path of a PAA which, at least, arguably, you  
7 know, triggers some state law processes.

8 We have also got another provision in Chapter 120.  
9 It sort of says notwithstanding anything in Chapter 120, in  
10 implementing the Telecom Act of 1996, you are authorized to  
11 employ procedures consistent with the federal act. As I sit  
12 here today trying to --

13 CHAIRMAN BAEZ: What does that mean, consistent with  
14 the federal act.

15 MR. MELSON: -- trying to fit all those puzzle pieces  
16 together and tell you absolutely what you can or can't do, I  
17 don't feel real comfortable doing that.

18 CHAIRMAN BAEZ: And following, you know, the  
19 tongue-in-cheek spirit in which it was offered, unfortunately  
20 this is a rate that we set ourselves. I think it would be -- I  
21 would feel kind of irresponsible not addressing it. But having  
22 said that -- and, Commissioners, I don't know what you think, I  
23 think we really need to address the issue of how -- you know,  
24 we are going to go to hearing on this. And I think maybe I  
25 would like to focus on your thoughts as to the value of

1 actually issuing a PAA.

2           COMMISSIONER DEASON: Let me ask another procedural  
3 question. If we issue a PAA, is the question of depreciation  
4 and ROE the only issues that are permissible, or can other  
5 parties raise other issues as it pertains to the ultimate  
6 bottom line UNE rates? And that was part of Mr. Hatch's  
7 presentation. And it seems to me, you know, that when we do  
8 employ the PAA process, part of the process is that, you know,  
9 it is kind of weighing the bird in the hand versus two in the  
10 bush. If you protest something, well, then you may be subject  
11 to litigate something that you are happy with. Somebody  
12 else -- you know, you can accept this or that. And once you  
13 open up the door, litigation is open and all issues are fair  
14 game when it comes to establishing UNE rates. And that's part  
15 of the risk of filing a petition like this.

16           MR. MELSON: Again, we have got our unique provision  
17 in Chapter 120 that says, in the event of a protest of a PAA,  
18 essentially the only issues that go forward to hearing are  
19 those that are protested. And the first item we took up this  
20 morning was a rule proposal that would allow protests and then  
21 cross-protests to bring in additional issues. Without that, I  
22 think the ordinary rule would be if you were to do it as a PAA,  
23 in essence, you are limiting it to the issues that were raised  
24 in the petition and ruled on in the PAA.

25           COMMISSIONER DEASON: So we could reject it as a PAA

1 and just say we are going to set -- Verizon, if you really want  
2 to go forward with this, you feel that strongly about it, all  
3 issues are on the table.

4 MR. MELSON: Set it directly for hearing and let the  
5 parties follow the normal issue identification process where  
6 ultimately a prehearing officer rules what is an appropriate  
7 scope for the proceeding.

8 COMMISSIONER DEASON: And that would be permissible?

9 MR. MELSON: That would be permissible, yes, sir.

10 CHAIRMAN BAEZ: And I feel compelled to allow some  
11 fancy dancing now, I guess.

12 Ms. Hyer, how do you feel about that, in light of  
13 your suggestion --

14 MS. HYER: Well --

15 CHAIRMAN BAEZ: -- adverse to the PAA?

16 MS. HYER: I mean, I think that what we would like  
17 for the Commission to do is to go ahead and set this matter for  
18 hearing. The other parties would then -- we would then set a  
19 procedural schedule. The other parties would file their  
20 testimony, and they, you know, raise whatever they raise.

21 CHAIRMAN BAEZ: So you are okay with the --

22 MS. HYER: Well, that's not that we are proposing.  
23 We don't think -- because I do take issue with -- I think it  
24 was Mr. Hatch that made this point, that this is a case where,  
25 you know, everything gets put back on the table. We would



1 argue that it doesn't, because we are not talking about an  
2 issue where, you know, since the rates were set, you know,  
3 inflation changes or, you know, this or that occurs so that a  
4 rate that was correct when made or an input that was correct  
5 when made has changed over time.

6 We are talking about a completely different situation  
7 here where the inputs, because the FCC's clarification came  
8 back and said -- you know, they didn't say this is new. They  
9 said this is a clarification of what you should have done. And  
10 it is not the Commissioners' fault with respect to this rate;  
11 it is just that the clarification in the TRO came after the  
12 fact. But what that meant was that the inputs when made were  
13 incorrect. And we're just asking that we update them so that  
14 the correct inputs that should have gone in in the first place  
15 are there and that there is no reason to change everything  
16 else. But the other parties, you know, when they come in, you  
17 know, they can argue what they argue with respect to that.

18 CHAIRMAN BAEZ: So you're not -- I guess I want to  
19 understand. We're going to go back, and if I understand your  
20 argument, whatever inputs Verizon feels were inappropriate or  
21 incorrect at the time are the only ones that are to be  
22 corrected. It is not an update. It is not, in fact, an update  
23 of any inputs. It is not inputs as of today what you are  
24 suggesting.

25 MS. HYER: Yes. It is not updating in the sense that

1 we are updating, you know, everything to take into  
2 consideration, you know, things that have changed in, you know,  
3 the economy, et cetera, since that time. What we are saying is  
4 that the inputs when they were issued were incorrect. The FCC  
5 has said you are actually supposed to look at competition, you  
6 know, future competition and a lot of the other risk factors  
7 that were not taken into consideration. So it is updating in  
8 the sense of putting in the correct rate that should have been  
9 there at the beginning, and then the rates are what the rates  
10 will be.

11 We don't think that there is any grounds for  
12 necessarily, you know, and we were not asking for the  
13 Commission to, you know, update any other input based on, you  
14 know, external factors that aren't based on the TELRIC  
15 methodology. We are just asking the Commission to apply the  
16 correct TELRIC methodology for inputs that were not correctly  
17 set.

18 COMMISSIONER DEASON: So are you saying, then, we  
19 should go back and apply the methodology specified by the FCC  
20 as if we knew what that standard was back two years ago and  
21 calculate cost of capital as it would have been two years ago,  
22 or do we take that standard and apply it to today's economics  
23 and determine what the rate is as of today compliant with that  
24 standard set forth by the FCC?

25 MS. HYER: Well, I think you should probably -- you

1 might as well do the latter.

2           COMMISSIONER DEASON: All right. So you are talking  
3 about updating, then, what we did before. And if we update  
4 something, why don't we just open it up to all updates?

5           MS. HYER: Well, I mean, we are not -- we are not  
6 coming in and asking you to do an entirely new UNE rate  
7 proceeding. We are just asking that the incorrect inputs be  
8 updated. And be updated -- I'm using the wrong term, but that  
9 they be corrected so that the proper TELRIC methodology  
10 applies.

11           I mean, if you know that an input was set based on  
12 the wrong TELRIC methodology because of the FCC's clarification  
13 of what the right TELRIC methodology should have been, then, it  
14 makes no sense to leave that incorrect input in place. We are  
15 not -- in our petition, we are not asking for the Commission to  
16 revisit every other input in the cost study. That is not the  
17 purpose of our petition. If another party, you know, wants to  
18 bring that petition, then that is up to them. But that's not  
19 the relief that we are asking for here.

20           COMMISSIONER DEASON: Can they do it within the  
21 context of your petition if we set it for hearing?

22           MS. HYER: I assume that they can request whatever  
23 relief they want. We would argue against that, but that would  
24 be part of the hearing process.

25           COMMISSIONER DEASON: Oh, I see I'm the prehearing

1 officer on this.

2 CHAIRMAN BAEZ: You start it.

3 COMMISSIONER DEASON: Mr. Chairman, let me tell you  
4 where I am.

5 CHAIRMAN BAEZ: Okay.

6 COMMISSIONER DEASON: And I have reviewed staff's  
7 recommendation very thoroughly. I even reviewed the  
8 collocation order. I was shocked at the length of it when I  
9 got it. Thankfully, Casey just kind of narrowed it down to the  
10 relevant pages.

11 CHAIRMAN BAEZ: And carried it downstairs for you?

12 COMMISSIONER DEASON: He needed, you know, a cart to  
13 carry it in.

14 CHAIRMAN BAEZ: Right.

15 COMMISSIONER DEASON: And I have listened very  
16 carefully to everything that has been said here today. And  
17 where I am is I'm not convinced that there is any need to  
18 change the UNE rates. And I think our current UNE rates are  
19 TELRIC compliant even though they were established before the  
20 order was issued. I just think that it is going to be a  
21 tremendous burden and cost on the Commission and the parties to  
22 litigate this. But if the parties are intent on doing so, you  
23 know, so be it. But I don't think we need to do it.

24 And I'm almost at the point that, you know, if we are  
25 here because the FCC changed the rules again, just let Verizon

1 take it to the FCC and let them determine it. I'm convinced  
2 that these rates are good enough and they don't need to be  
3 changed. We talk about 17 basis points on ROE and whether it  
4 is or is not TELRIC compliant. You know, and maybe the FCC is  
5 a lot smarter than we are, and they can tell the difference  
6 between 17 basis points and whether it is or is not TELRIC  
7 compliant.

8           But when we set a return on equity in an electric  
9 case, we allow 100 points and it is determined to be  
10 reasonable, and anything within that range is considered to be,  
11 because we are not precise enough when we are establishing an  
12 ROE to begin with to get that precise as to whether 17 basis  
13 points makes an ROE reasonable or unreasonable. And maybe if  
14 we go to a proceeding we can get educated to the point that we  
15 can tell that difference. I am just not so sure it is a wise  
16 use of our resources to try to get that precise.

17           MS. HYER: Commissioner Deason, I would like to  
18 actually clarify something. The 17 basis points is just the  
19 difference between the 9.8 percent from the collocation docket  
20 and --

21           COMMISSIONER DEASON: I understand exactly what that  
22 17 basis points is. And I also recognize that our staff is  
23 saying that it is probably, if we go to the full proceeding, we  
24 very well could end up with a ROE lower than 9.63 percent.

25           MS. HYER: Yes, but Verizon believes that that would

1 be -- that that would be improper, which is one of the reasons  
2 why we need to have a hearing. But the cost of capital that we  
3 are proposing here in this docket is not 17 basis points higher  
4 than the 9.63 percent. It is in the nature of  
5 300-and-something basis points.

6 COMMISSIONER DEASON: And if we open up a hearing,  
7 I'm sure that you will have a much higher rate, and I would  
8 assume that there would be other intervenors who would be much  
9 lower than 9.63 percent.

10 MS. HYER: I just wanted to make sure that that was  
11 clear. That that wasn't -- 17 was not what we were proposing.

12 COMMISSIONER DEASON: So, Mr. Chairman, I don't  
13 really know what to do, other than I don't think we need to  
14 have a full-blown docket to look at these UNE rates.

15 CHAIRMAN BAEZ: You know what the sad part about it  
16 is --

17 COMMISSIONER DEASON: Do we have the ability just to  
18 reject the petition? And if they are dissatisfied with that,  
19 they can take it to the FCC. But we are not going to set it  
20 for hearing. We will just reject it. We're satisfied UNE  
21 rates are adequate and TELRIC compliant. Or is that something  
22 that we have to do after hearing?

23 MR. MELSON: I think you probably have to do that  
24 after hearing, Commissioner.

25 COMMISSIONER DEASON: Well, let's send it to the FCC.

1           CHAIRMAN BAEZ: Wait, wait, wait. I know how you  
2 feel, Commissioner Deason. I want to understand -- I want to  
3 understand how you capture and -- what the most efficient way  
4 and the most appropriate way to capture that sentiment is.  
5 And, you know, we had a little bit of conversation as to what  
6 our responsibilities under 120 were assuming -- and I guess I'm  
7 still trying to fight through whether it is best to accept  
8 the -- you know, issue a PAA, in essence, and what the fallout  
9 of that is, understanding and accepting Ms. Hyer's statement  
10 initially that they will avail themselves of the hearing  
11 process.

12           Two questions to keep in mind. There was some  
13 conversation as to what the breadth of a docket that gets set  
14 for hearing directly, and I'm interested in knowing what the  
15 effect of a PAA, and maybe I missed the answer to that, but  
16 what the effect of actually going ahead and, you know, voting  
17 on a PAA and letting it get protested, what the effect of that  
18 is in terms of controlling the scope of a docket -- of a  
19 hearing, subsequently.

20           MR. MELSON: Commissioner, what I said earlier is  
21 that if you go the PAA route, there is a strong argument that  
22 the scope of the hearing is going to be limited to that which  
23 is in the PAA order and that is which is protested. I'm not  
24 going to sit here and tell that another party can't argue  
25 something else and might not persuade us otherwise. But my

1 take going in is that we could rely on the statute to say we  
2 have limited it to those two issues.

3 CHAIRMAN BAEZ: And, is there any legal -- I have got  
4 to tell you, Ms. Hyer, I'm a little troubled by what Verizon's  
5 suggestion is. Because, essentially, what you are asking --  
6 what you are asking anyone to do, and I can't find a good  
7 analogy in real life, but what you are asking the Commission to  
8 do in essence is, you know, nevermind everything that's  
9 happened from then to now, just go back and correct it to what  
10 it should have been.

11 And the possibilities that the cost of capital might  
12 even be lower today, that enough circumstances have changed  
13 that would merit an updating, as you call it, to something  
14 else, ignore all of that. Get the benefit of what potentially  
15 may be a higher rate or, rather, would otherwise be a lower  
16 rate today. And it is that whole aspect of having to turn a  
17 blind eye to what has happened, what may have happened in the  
18 interim that troubles me. And I don't know how to get past  
19 that.

20 And I guess my question would be, Mr. Melson, are  
21 there any legal impediments to being able to do that? I mean,  
22 would we be setting -- A, would we be setting the depreciation  
23 and cost of capital on a prospective basis? Is this something  
24 that is intended to reach back?

25 MR. MELSON: My understanding of the petition is it



1 is intended to be forward-looking. I'm not sure you could go  
2 back and reset those retroactively. And the way to avoid a  
3 potential limitation on the issues, if you think that in order  
4 to -- that it may not be appropriate to look at depreciation  
5 and cost of capital in isolation, you want to preserve the  
6 flexibility to look at other issues, setting it directly for  
7 hearing and seeing what other issues other parties bring in  
8 would probably give you the maximum flexibility.

9 CHAIRMAN BAEZ: I am not saying -- commenting on that  
10 one way or another. I just want to understand, can we legally  
11 actually reach back and say we will take no actual timely  
12 evidence, but rather reach back and rewrite history and let  
13 that history stand into the future.

14 MR. MELSON: Are you asking can you take the record  
15 that was built originally in the case and go back and  
16 re-examine that record in light of the new clarified TELRIC  
17 standard?

18 CHAIRMAN BAEZ: Right.

19 MR. MELSON: I don't know.

20 CHAIRMAN BAEZ: Well, okay.

21 Well, Commissioners, I can't make a motion, so I have  
22 to rely on you all.

23 COMMISSIONER DEASON: Well, I would certainly like to  
24 hear from Commissioner Edgar and Commissioner Bradley as to  
25 what their views are. I kind of laid it out for -- I don't

1 think it is necessary for this Commission to entertain this  
2 petition and try to reset UNE rates when I think they are just  
3 fine as they are. But, now, I have to admit that is not having  
4 the benefit of Verizon's testimony. I did not look at that.  
5 And if it goes to a hearing, I will have an open mind on it,  
6 and I will certainly evaluate it. The question is when we have  
7 a backup jurisdiction, and let's face it, we are here because  
8 of what the FCC did, it just seems fair to let them deal with  
9 it.

10 And I would -- you know, I would be just fine to say  
11 we are denying the petition. There is an avenue for Verizon to  
12 have its due process rights preserved and to hear its case, and  
13 that's at the FCC. They are the experts there anyway when it  
14 comes to being TELRIC compliant or not. So if that is a  
15 motion, I will make it. You know, if that's legally  
16 permissible. I don't want to move anything that is not --

17 CHAIRMAN BAEZ: And I guess I'm just trying to -- I'm  
18 trying to square what you are saying with, I think, an answer  
19 that Mr. Melson gave you before.

20 COMMISSIONER DEASON: Was that it's not permissible?

21 CHAIRMAN BAEZ: I don't want to say that's what I  
22 heard, but I think --

23 MR. MELSON: That's probably what you heard.

24 COMMISSIONER DEASON: You also read that provision in  
25 the law that says that we can do anything -- adopt any

1 procedures or whatever that's -- and it is certainly consistent  
2 with federal law that this matter can be heard by the FCC  
3 realizing that it is not an arbitration. So is that the  
4 distinction?

5 MR. MELSON: And, Commissioner, at this point I'm  
6 going to confess ignorance of the details of that piece of  
7 federal law. I don't know if Ms. Keating can help me out at  
8 all. Can you simply deny the petition without a hearing and do  
9 nothing else? I think the answer to that is no. Can you deny  
10 the petition on the grounds that you are not going to hear it,  
11 but are going to leave it to the FCC, I think so, if it is one  
12 of the types of things that the FCC can hear. And that is  
13 where I don't know the answer.

14 MS. KEATING: If I understand the question correctly,  
15 it was a question about whether we could just -- whether you  
16 could just decline and let the FCC take action. I guess it  
17 does get back to the question of how you interpret Section 252  
18 of the Act. And there is a provision in there that says that  
19 if a state commission fails to act to carry out its  
20 responsibility under this section in any proceeding or other  
21 matter under this section, then the Commission shall issue an  
22 order -- the Commission in this case being the FCC --  
23 preempting the state commission's jurisdiction of that  
24 proceeding or matter within 90 days after being notified of  
25 such failure and shall assume the responsibility of the state

1 commission.

2 COMMISSIONER BRADLEY: You said fails to carry out  
3 its responsibility. That gives me a little concern.

4 MS. KEATING: And the responsibility that is referred  
5 to there is the responsibilities under Section 252. And that  
6 goes to whether your interpretation is whether 252 provides any  
7 responsibilities to this Commission beyond conducting of  
8 arbitrations and resolutions of complaints regarding  
9 interconnection agreements. We have --

10 CHAIRMAN BAEZ: Commissioners, I have to take a point  
11 of personal order, and if you will forgive me, can we take a  
12 five-minute break? Thank you.

13 (Recess.)

14 CHAIRMAN BAEZ: Go back on the record.

15 COMMISSIONER DEASON: Mr. Chairman, I'm prepared to  
16 make a motion unless there is further discussion. And if there  
17 is, so be it.

18 CHAIRMAN BAEZ: I just want to make sure that the  
19 Commissioners, the other Commissioners have no further  
20 questions or --

21 COMMISSIONER EDGAR: I have a comment.

22 CHAIRMAN BAEZ: You have a comment?

23 COMMISSIONER EDGAR: A comment.

24 CHAIRMAN BAEZ: All right. Let's hear it before a  
25 motion.

1           COMMISSIONER EDGAR: You know, of course, I wasn't a  
2 participant in the past hearing on these issues, and so I did  
3 not have the benefit of all of the discussion and evidence that  
4 was presented at that point in time. And I'm probably going to  
5 regret this.

6           CHAIRMAN BAEZ: Probably? I can guarantee you.

7           COMMISSIONER EDGAR: I see long hours in my future.  
8 But I would put out there perhaps for just a little bit more  
9 discussion the possibility that we reject the staff  
10 recommendation that is before us and consider going to hearing  
11 under the normal practices of the Commission and full  
12 cognizance of the prehearing officer assigned.

13           CHAIRMAN BAEZ: I'm not sure how the prehearing  
14 officer would take that. But, Commissioner Deason --

15           COMMISSIONER DEASON: Let me say that -- let me ask a  
16 clarification. Is that a motion?

17           CHAIRMAN BAEZ: Are you moving?

18           COMMISSIONER EDGAR: Yes, I am.

19           CHAIRMAN BAEZ: Okay.

20           COMMISSIONER DEASON: Let me ask a clarification on  
21 the motion. Do you envision that if we set this for hearing,  
22 that the Commission would be free to entertain other issues in  
23 addition to cost of capital and depreciation, or are we  
24 limiting it just to those two issues?

25           COMMISSIONER EDGAR: My motion would be that we leave

1 that to the prehearing officer to work out with the parties.

2 COMMISSIONER DEASON: Okay.

3 CHAIRMAN BAEZ: It doesn't get any better than that.

4 COMMISSIONER DEASON: I can second the motion.

5 CHAIRMAN BAEZ: There is a motion and a second to set  
6 it directly for hearing. All those in favor say aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN BAEZ: Thank you. Thank you to the parties  
9 and thank you to staff for your input and comments.

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

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

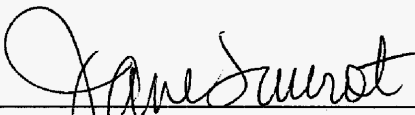
9 IT IS FURTHER CERTIFIED that I stenographically  
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14 I FURTHER CERTIFY that I am not a relative, employee,  
15 attorney or counsel of any of the parties, nor am I a relative  
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17 connected with the action, nor am I financially interested in  
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19 DATED THIS 27th day of June, 2005.

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