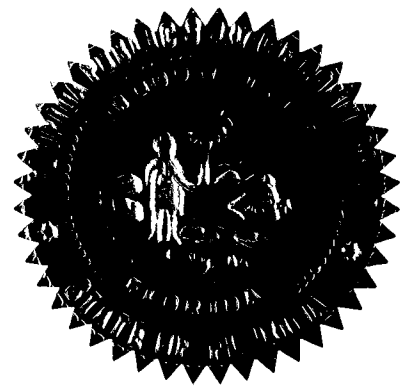


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION BY TDS TELECOM  
D/B/A TDS TELECOM/QUINCY TELEPHONE;  
ALLTEL FLORIDA, INC.; NORTHEAST  
FLORIDA TELEPHONE COMPANY D/B/A  
NEFCOM; GTC, INC. D/B/A GT COM;  
SMART CITY TELECOMMUNICATIONS, LLC  
D/B/A SMART CITY TELECOM; ITS  
TELECOMMUNICATIONS SYSTEMS, INC.; AND  
FRONTIER COMMUNICATIONS OF THE SOUTH,  
LLC ["JOINT PETITIONERS"] OBJECTING  
TO AND REQUESTING SUSPENSION AND  
CANCELLATION OF PROPOSED TRANSIT  
TRAFFIC SERVICE TARIFF FILED BY  
BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 050119-TP



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PETITION AND COMPLAINT FOR SUSPENSION  
AND CANCELLATION OF TRANSIT TRAFFIC  
SERVICE TARIFF NO. FL2004-284 FILED  
BY BELLSOUTH TELECOMMUNICATIONS, INC.,  
BY AT&T COMMUNICATIONS OF THE SOUTHERN  
STATES, LLC.

DOCKET NO. 050125-TP

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VOLUME 1

Pages 1 through 50

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LISA POLAK EDGAR  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER ISILIO ARRIAGA  
COMMISSIONER MATTHEW M. CARTER, II  
COMMISSIONER KATRINA J. TEW

1 DATE: Wednesday, March 29, 2006

2

3 TIME: Commenced at 9:30 a.m.

4

5 PLACE: Betty Easley Conference Center  
Room 148  
6 4075 Esplanade Way  
7 Tallahassee, Florida

8

9 REPORTED BY: JANE FAUROT, RPR  
10 Chief, Hearing Reporters Section  
11 FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732

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## 1 PARTICIPATING:

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3 Southern States, LLC, 101 North Monroe Street, Suite 700,  
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5 Communications of the Southern States, LLC.

6 J. JEFFRY WAHLEN, ESQUIRE, Ausley & McMullen,  
7 P.O. Box 391, Tallahassee, Florida 32302, appearing on behalf  
8 of AllTel Florida, Inc.

9 MANUEL A. GURDIAN, ESQUIRE, ROBERT CULPEPPER, ESQUIRE  
10 and JOHN TYLER, ESQUIRE, JIM MEZA, ESQUIRE, BellSouth  
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17 Competitive Carriers of the South, Inc., NuVox Communications,  
18 Inc., Nextel and MetroPCS Florida, LLC.

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## 1 PARTICIPATING (CONTINUED):

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4 Florida 32303, appearing on behalf of Florida Cable  
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15 NuVox Communications, Inc.

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6 600, Atlanta, Georgia 30328, appearing on behalf of MCI Metro  
7 Access Transmission Services, LLC, doing business as Verizon  
8 Access Transmission Services.

9 FELICIA BANKS, ESQUIRE and KIRA SCOTT, ESQUIRE, FPSC  
10 General Counsel's Office, 2540 Shumard Oak Boulevard,  
11 Tallahassee, Florida 32399-0850, appearing on behalf of the  
12 Florida Public Service Commission Staff.

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## I N D E X

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EXHIBITS

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1 Comprehensive Exhibit List

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CERTIFICATE OF REPORTER

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

1  
2 CHAIRMAN EDGAR: Good morning. The legislature is in  
3 town and we are all multi-tasking, so we'll begin by asking  
4 staff to please read the notice.

5 MS. BANKS: Good morning. Pursuant to the notice  
6 issued February 24, 2006, this time and place has been set for  
7 a hearing in Docket Numbers 050119 and 050125.

8 CHAIRMAN EDGAR: Thank you, Ms. Banks. And then  
9 we'll take appearances. And I am going to ask you to do this  
10 kind of slowly so I can make sure that I get names and faces  
11 and parties together for my benefit and probably for some of  
12 the others of us, as well.

13 MR. GURDIAN: Good morning. Manny Gurdian on behalf  
14 of BellSouth. Also with me are Robert Culpepper and John  
15 Tyler.

16 CHAIRMAN EDGAR: And -- just a moment.

17 MR. GROSS: Okay. Michael Gross, Florida -- oh, I'm  
18 sorry.

19 CHAIRMAN EDGAR: Just a moment. Gurdian, correct?

20 MR. GURDIAN: Gurdian.

21 CHAIRMAN EDGAR: Gurdian. Okay. Thank you.

22 Okay.

23 MR. GROSS: Michael Gross on behalf of the Florida  
24 Cable Telecommunications Association.

25 CHAIRMAN EDGAR: Thank you.



1 MR. HATCH: Tracy Hatch appearing on behalf of AT&T  
2 Communications of the Southern States, LLC.

3 MR. O'ROARK: De O'Roark appearing on behalf of MCI  
4 Metro Access Transmission Services, LLC, doing business as  
5 Verizon Access Transmission Services, which we'll refer to as  
6 Verizon Access for short.

7 CHAIRMAN EDGAR: Thank you.

8 MR. PALMER: My name is Chuck Palmer, and I'm here on  
9 behalf of Verizon Wireless.

10 MS. KAUFMAN: Good morning. Vicki Gordon Kaufman.  
11 I'm with the Moyle Flanigan law firm in Tallahassee, and I'm  
12 appearing in this case on behalf of the Competitive Carriers of  
13 the South, Inc., NuVox Communications, Inc., Sprint Nextel, and  
14 MetroPCS Florida, LLC.

15 MS. BERLIN: Good morning. I'm Susan Berlin. I'm  
16 appearing on behalf of the Competitive Carriers of the South,  
17 Inc. and NuVox Communications, as well.

18 CHAIRMAN EDGAR: Okay.

19 MR. ATKINSON: Good morning, Commissioners. My name  
20 is Bill Atkinson, and I'm appearing on behalf of Sprint Nextel.

21 MR. HOFFMAN: Good morning, Madam Chairman and  
22 Commissioners. My name is Ken Hoffman. With me in this  
23 hearing is Marty McDonnell. We are with the firm of Rutledge,  
24 Ecenia, Purnell & Hoffman. I would also like to enter an  
25 appearance for Benjamin H. Dickens, who is behind me. He is

1 with the firm of Blooston, Mordkofsky, Jackson, and Dickens in  
2 Washington, D.C. The three of us are appearing in this  
3 proceeding on behalf of TDS Telecom, Northeast Florida  
4 Telephone Company, GT Com, Smart City Telecommunications, and  
5 Frontier Communications of the South, all of whom are  
6 collectively referred to throughout the testimony, and I think  
7 through this hearing as the Small LECs.

8 MR. SELF: Good morning, Commissioners. I'm Floyd  
9 Self of the Messer, Caparello and Self Law Firm, and I am  
10 appearing on behalf of T-Mobile.

11 MR. WAHLEN: Good morning, Commissioners. I'm Jeff  
12 Wahlen of the Ausley & McMullen Law Firm appearing on behalf of  
13 AllTel Florida, Inc.

14 MR. GERKIN: Good morning, Commissioners. My name is  
15 Charlie Gerkin. I am with the law firm of Friend, Hudak &  
16 Harris in Atlanta. I'm here today on behalf of MetroPCS  
17 Florida, LLC.

18 CHAIRMAN EDGAR: Okay. Is that everyone? Then,  
19 staff.

20 MS. BANKS: Good morning, again. This is Felicia  
21 Banks, and I will be also entering an appearance for Kira Scott  
22 on behalf of the Commission.

23 CHAIRMAN EDGAR: Okay. Staff, can you walk us  
24 through the preliminary matters, please.

25 MS. BANKS: Yes, Madam Chair.

1           The first preliminary matter that I would like to  
2 address is BellSouth's motion to strike. On March 9th, 2006,  
3 BellSouth filed a motion to strike certain portions of the  
4 rebuttal testimony of Don Wood filed by FCTA. FCTA filed its  
5 response on March 16th, 2006. By Order Number  
6 PSC-06-0261-PCO-TP issued on yesterday, the prehearing officer  
7 granted in part and denied in part BellSouth's motion to  
8 strike. Specifically, BellSouth's request to strike a portion  
9 of Witness Woods' rebuttal testimony at Page 37, Line 9,  
10 through Page 43, Line 20, was granted. And BellSouth's request  
11 to strike the portions of Witness Woods' rebuttal testimony at  
12 Page 7, Line 9, through Page 11, Line 20, was denied.

13           CHAIRMAN EDGAR: Comments? Okay. Then let's move on  
14 to confidential matters.

15           MS. BANKS: There are a number of pending  
16 confidentiality matters. I think the best way to address them  
17 is by party. I will note, at this time there is no objections  
18 that have been filed to any of the requests that are pending.

19           On February 16th, 2006, MetroPCS filed a request for  
20 confidential classification of Docket Number 01368-06, which is  
21 portions of the rebuttal testimony filed on behalf of Witness  
22 Dena Bishop.

23           On February 17th, AT&T filed a claim for confidential  
24 treatment, claiming confidentiality of its responses to Numbers  
25 7(e) and 7(g) to staff's first set of interrogatories.

1 I have three separate requests that have been filed  
2 by BellSouth. The first was filed on March 6th. BellSouth  
3 filed a request of a specified confidential classification of  
4 Docket Number 01941-6, which is BellSouth's supplemental  
5 response to MetroPCS's first request for Production of  
6 Documents Item Number 3.

7 On March 10th, BellSouth filed its replacement  
8 request for specified confidential classification for Document  
9 Number 02109-6, which is BellSouth's first supplemental  
10 response to MetroPCS's first request for Production of  
11 Documents Number 3. After filing this March 6th request,  
12 BellSouth determined that certain portions of its supplemental  
13 response in MetroPCS's first request for Production of  
14 Documents Item Number 3 were not proprietary; therefore,  
15 BellSouth withdrew its request that was previously filed on  
16 March 26th regarding Attachment B, and its March 10th request  
17 actually replaced that which was previously filed on March 6th.

18 On March 14th, BellSouth filed a request for  
19 specified confidential classification of Document Number  
20 02215-6, which included portions of BellSouth's second  
21 supplemental response to MetroPCS's First Set of  
22 Interrogatories Number 3 and 5, which were dated January 27th,  
23 2006.

24 On March 16th, FCTA filed a request for specified  
25 confidential classification of Document Number 02355-6, which

1 is FCTA's response to Staff's First Set of Interrogatories  
2 Numbered 3(a) and 41.

3 And then I have two notices of intent to file by  
4 Smart City. The first was filed on March 16th, 2006, wherein  
5 Smart City requested -- filed its notice of intent to request  
6 specified confidential classification of Document Number  
7 02336-6, which is Smart City's response to Staff's Document  
8 Request Number 1.

9 And then on March 21st, Smart City filed a notice of  
10 intent to request specified confidential classification of  
11 Document Number 02524-06, excuse me, which is Smart City's  
12 Witness Watkins' Late-Filed Deposition Exhibit Number 2.

13 CHAIRMAN EDGAR: Thank you. And I note that no  
14 objections have been filed to any of the requests for specific  
15 confidential classification.

16 MS. BANKS: That is correct, Madam Chair.

17 CHAIRMAN EDGAR: Thank you. Any other preliminary  
18 matters at this time?

19 MS. BANKS: As I understand, Mr. Wahlen has a  
20 preliminary matter and at this time I will defer to him.

21 CHAIRMAN EDGAR: Mr. Wahlen.

22 MR. WAHLEN: Good morning. On behalf of Alltel, I  
23 would like to be excused from participation in the hearing. I  
24 don't intend to cross-examine any witnesses or object to any  
25 exhibits and would like your permission to leave the hearing

1 and file a brief based on whatever record is created here.

2 CHAIRMAN EDGAR: Are there objections?

3 Mr. Wahlen, you are excused.

4 MR. WAHLEN: Thank you very much.

5 CHAIRMAN EDGAR: Ms. Banks, any other preliminary  
6 matters?

7 MS. BANKS: Not to my knowledge, Madam Chair.

8 CHAIRMAN EDGAR: Okay. Then let's move to the  
9 stipulated staff exhibit list.

10 Ms. Banks.

11 MS. BANKS: Madam Chair, with the intent to proceed  
12 smoothly with staff's exhibit list, we have circulated this  
13 list to parties. As we understand there are no objections, and  
14 so staff would ask that its stipulated exhibit list be moved  
15 into the record.

16 CHAIRMAN EDGAR: Seeing no objection, please show the  
17 Staff's Stipulated Exhibit List moved into the record as  
18 Exhibit 1.

19 (Exhibit 1 marked for identification and admitted  
20 into evidence.)

21 MS. BANKS: And if I could just clarify, Madam Chair,  
22 that Staff's Stipulated Exhibit includes Item Numbers 1 through  
23 33.

24 CHAIRMAN EDGAR: Yes, ma'am. Items 1 through 33 are  
25 entered into the record.

1           Okay. That brings us, I believe, to opening  
2 statements. And as we are all aware from the prehearing order,  
3 opening statements shall not exceed ten minutes for BellSouth  
4 and ten minutes for the Small LECs with five minutes for other  
5 parties. Can I get a feel for how many of the other parties  
6 participating today would like to make opening statements?  
7 Okay. Are you ready to begin?

8           MR. TYLER: Madam Chair, good morning, Commissioners.

9           CHAIRMAN EDGAR: Good morning.

10          MR. TYLER: John Tyler on behalf of BellSouth. We  
11 appreciate the opportunity to come before you this morning and  
12 provide you with a brief opening statement, wherein we will  
13 outline for you what the evidence in this case will show. But,  
14 before I get to that high level overview, let me preface this  
15 by saying that regardless of how complicated and convoluted  
16 some of the parties may attempt to create in this docket or to  
17 make this docket appear, it's very simple and straightforward  
18 for the Commission to resolve because you've resolved it less  
19 than six months ago.

20                 The salient question before you is whether or not  
21 BellSouth has a duty to provide a transiting function. Well,  
22 you answered that with a resounding no in the joint CLEC  
23 docket. There is no reason for any difference today. You are  
24 going to hear the same arguments. They have already been heard  
25 they have already been resolved. Transiting is not a duty and

1 obligation of BellSouth, and, therefore, it should not be  
2 priced at TELRIC. Perhaps someone wasn't listening when the  
3 Commission gave that answer previously, so here we go again.

4 I want to briefly touch on three things. First, the  
5 definition of transit traffic. Just what is transit traffic?  
6 Second, the purpose of BellSouth's transit traffic tariff. And  
7 then, finally, why BellSouth's transit traffic tariff is  
8 appropriate.

9 So exactly what is transit traffic? Transit traffic  
10 is telecommunications traffic that neither originates nor  
11 terminates on BellSouth's network. It comes from an  
12 originating carrier, it transits BellSouth's network, and then  
13 it terminates on a terminating carrier's network. In order to  
14 further explain, I brought along a chart, and with Madam  
15 Chair's permission I would like to bring that chart before the  
16 Commissioners and provide you with a bit more of an  
17 explanation.

18 CHAIRMAN EDGAR: Yes, sir.

19 MR. TYLER: May we do so? I have also got some  
20 pass-outs, and with Madam Chair's permission we would like to  
21 provide those to the parties and to the Commissioners.

22 (Pause.)

23 Are we ready to proceed?

24 This is a chart depicting transit traffic, and let me  
25 just tell you what some of the acronyms are. EO switch here is



1 end office switch. TSP is telecommunications service provider  
2 one. The same is true here. This is end office switch for  
3 telecommunications service provider two. What you have here is  
4 end user A, who is a land line user, an independent, who is  
5 placing a call. Its end user wants to place a call to end user  
6 B.

7           And you will notice that these purple lines here are  
8 direct trunk groups between telecommunications Service Provider  
9 Number One's network and BellSouth's network. There is also a  
10 direct connection between Service Provider Two's network and  
11 BellSouth's network, but you will notice that there is no  
12 direct interconnection between Provider One and Provider Two.  
13 So, when End User A, who is a customer of Provider One, wants  
14 to place a call to End User B, whether that be a land line or a  
15 mobile phone user, that call has to transit BellSouth's network  
16 for termination on Telecommunications Service Provider Two's  
17 network. There is no direct interconnection. BellSouth isn't  
18 originating the call, BellSouth isn't terminating the call.  
19 BellSouth's is simply allowing its network to be utilized for  
20 that call to go from End User A to End User B.

21           Now, the call flow is in this direction, but transit  
22 traffic could come back in the other direction, as well. The  
23 service that BellSouth is providing when it allows its network  
24 to be utilized is what is known in the industry as transit  
25 service.

1           It is important to note that when BellSouth provides  
2 that transiting service, it also provides a call detail record,  
3 and you will hear more about that. An EMI-110101 provides that  
4 record to the terminating carrier so that they can then settle  
5 up billing issues with the originating carrier.

6           Now, one thing that I think everyone here today will  
7 agree on is that BellSouth's transit service is a very  
8 important service and it is a valuable service. It allows  
9 families, friends, and businesses to complete calls to one  
10 another in instances where the trunk of the originating carrier  
11 is not directly connected to the trunk of the terminating  
12 carrier. And BellSouth doesn't mind providing this valuable  
13 service and allowing other carriers to use its network to  
14 transit calls, but simply not for free.

15           It is important to keep in mind that there are a  
16 number of carriers that have contracts with BellSouth whereby  
17 they have contractually agreed that when BellSouth transits a  
18 call and that call is originating on another party's network,  
19 the originating party, and that's important, the originating  
20 party will compensate BellSouth for BellSouth's service in  
21 transiting that call.

22           Now, the tariff doesn't apply in those instances.  
23 Where BellSouth has a contract in place, the tariff doesn't  
24 apply. The tariff is a default, if you will, because there are  
25 carriers such as many of those that are in this docket that

1 have not entered into contracts with BellSouth and yet they  
2 continue to send transit traffic.

3 Now, in those instances the tariff is the means by  
4 which BellSouth will be properly compensated for this valuable  
5 transiting service that it would otherwise be providing free of  
6 charge. And if the parties don't like the tariff, they do have  
7 options. Some of them are going to act as though the tariff is  
8 the only thing going. No, they have options. They can enter  
9 into this contractual agreement with BellSouth that I  
10 mentioned, they can stop sending traffic over BellSouth's  
11 network, they can enter into direct connection arrangements  
12 with terminating carriers, or they can utilize another transit  
13 service provider. But if they choose to use BellSouth for  
14 transiting traffic, BellSouth ought to be compensated.

15 It is somewhat analogous to a taxi service. I could  
16 have taken a taxi over to the Commission this morning. And if  
17 I called them and I didn't like the rate they were charging,  
18 presumably, I could go with a different taxi service or I could  
19 have driven myself. But if I get in that taxicab and I come  
20 over here, I'm going to have to pay for the ride.

21 Which leads me into my third and final point, and  
22 that is carriers should not be allowed a free ride on  
23 BellSouth's network, and the tariff is appropriate because in  
24 each and every instance where BellSouth transits a call for  
25 other providers it should be compensated for the use of its

1 network.

2           Now, as I mentioned, the evidence is going to show  
3 that there simply is no obligation for a carrier to provide the  
4 transit function, and you will hear evidence regarding the  
5 FCC's Virginia arbitration order and the triennial review order  
6 making that point clear. It is equally important to bear in  
7 mind that because there is no obligation under Section 251 of  
8 the Telecommunications Act of 1996, which you'll recall is the  
9 relevant portion of the act that deals with carriers'  
10 obligations to each other, it quite logically follows that  
11 there could be no mandate that BellSouth provide the transit  
12 service at TELRIC, or the total element long-run  
13 incremental-based cost structure. Said differently, the only  
14 way that it could be properly mandated that BellSouth provide  
15 transiting at TELRIC would be if providing that service was an  
16 obligation under Section 251 of the Act. But the evidence will  
17 show that transiting simply is not a Section 251 obligation,  
18 and there can be no proper mandate that it be priced at TELRIC.

19           And so BellSouth utilizes a tariff with a  
20 market-based rate to receive compensation from providers who  
21 have not entered into contracts for the service. And you'll  
22 hear from BellSouth Witness Mr. McCallen that the rate in the  
23 tariff is quite similar to the rates found in these transit  
24 service contracts. Now, some of those rates are lower, but,  
25 certainly, some of those rates are higher.

1           The fact of the matter is BellSouth is entitled to be  
2 compensated for providing the transit service. And as I  
3 mentioned, this very Commission found as much in an order  
4 issued less than six months ago. In the Joint CLEC arbitration  
5 you found that transiting is not a 251 obligation. As I  
6 mentioned, you heard every argument that was made against that  
7 point, but the Commission agreed with the reasoning in the  
8 Virginia arbitration order and rejected the argument that  
9 transiting is a 251 obligation. The FCC has not found  
10 transiting to be a 251 obligation, and the Florida Commission  
11 should uphold its own precedent.

12           Finally, the tariff is presumptively valid as a  
13 matter of law. And contrary to the strange argument recently  
14 made regarding the burden of proof, it is clear that the  
15 challengers of the tariff have the burden of proof. It's worth  
16 noting that recently the challengers to the very same tariff in  
17 South Carolina were found not to have carried that burden of  
18 proof, and the very same tariff at issue in this case was  
19 upheld in that state. And I think you will find it surprising  
20 when you look at the transit rates that some of the other  
21 providers are charging, and I think you will find that  
22 BellSouth's transit service is quite a bargain.

23           And BellSouth submits to you today that its tariff is  
24 a just and reasonable means for BellSouth to receive  
25 compensation for the valuable transit service it provides in

1 those instances where parties have not entered into contractual  
2 agreements and yet BellSouth continues providing the valuable  
3 service. And, therefore, BellSouth would ask that the joint  
4 petition be denied.

5 I thank you for your time and attention.

6 CHAIRMAN EDGAR: Thank you.

7 And as noted a few minutes ago, we will go in the  
8 order that was in the prehearing order and, Mr. Hoffman, that  
9 brings us to you.

10 MR. HOFFMAN: Thank you, Madam Chairman. Ken Hoffman  
11 on behalf of the small local exchange companies.

12 Although we have 17 issues that have been identified  
13 for resolution in the case, I want to use my time this morning  
14 to focus on just a few of the most fundamental issues. And I'd  
15 like to begin by talking respectfully, Commissioners, about  
16 what we believe to be the Commission's lack of authority to  
17 approve this tariff.

18 First, through the prefiled testimony and during the  
19 hearing you will hear a number of witnesses refer to the FCC's  
20 February 2005 T-Mobile declaratory ruling, the T-Mobile order.  
21 In T-Mobile, the FCC held that incumbent LECs could not impose  
22 compensation obligations for local traffic upon wireless  
23 carriers pursuant to tariffs. The FCC determined that  
24 incumbent LECs may not, may not lawfully bypass the negotiation  
25 and arbitration process by filing a tariff to impose

1 compensation obligations in connection with local traffic.

2 Now, in the T-Mobile case the FCC dealt with wireless  
3 termination tariffs. But we would submit, Commissioners, that  
4 the same principle applies to a tariff such as BellSouth's that  
5 purports to impose local traffic compensation obligations, not  
6 only on wireless carriers, but on wireline carriers, as well.

7 Secondly, BellSouth's tariff is unlawful as applied  
8 to local calls that terminate to Internet service providers.  
9 The FCC has found in its ISP remand order released April 27th  
10 of 2001, that ISP-bound traffic is interstate in nature, and  
11 that the switching, transport, and termination services that  
12 carriers provide to connect end users to ISPs are also  
13 interstate services. Therefore, we submit that this Commission  
14 does not have the authority to approve a BellSouth transit  
15 tariff which offers an interstate service with respect to these  
16 ISP-bound calls.

17 So we begin with the basic point that from a legal  
18 perspective this tariff is dead on arrival. BellSouth cannot  
19 impose a compensation obligation for switching and transporting  
20 local traffic through a tariff mechanism, and this Commission  
21 cannot approve a transit tariff that encompasses ISP-bound  
22 calls. And that I think you will see is why so many of the  
23 witnesses in this case, including our own, Mr. Watkins,  
24 emphasize that this type of compensation issue must be  
25 addressed through the negotiation and arbitration process.

1           That brings me to the next issue, Commissioners. If  
2 the Commission were to determine that BellSouth can use a  
3 tariff mechanism and, obviously, we believe they cannot, then  
4 there are really two fundamental questions: Who pays and how  
5 much? Now, frankly the witnesses that are appearing on behalf  
6 of the wireless carriers and the CLECs have provided more  
7 comprehensive positions and detailed testimony challenging the  
8 excessive nature of the proposed rate and the tariff, and I'm  
9 going to defer to their opening remarks on that particular  
10 issue.

11           Our witness, Mr. Watkins, has much to say about that  
12 part of the tariff that imposes the transit charge on the  
13 originating carrier. Our position is that any transit charge  
14 approved by this Commission should be imposed on the  
15 cost-causer. And the cost-causers are the CLECs and the  
16 wireless carriers who have made an affirmative decision to  
17 utilize BellSouth's network to indirectly interconnect with the  
18 Small LECs' network. Yet these carriers insist that it is the  
19 Small LECs who should pay for their use of BellSouth's  
20 facilities to reach our networks, by having the Small LECs pay  
21 the transit charge whenever the small LEC customer originates  
22 the call.

23           You will hear from the witnesses for the CLECs and  
24 for the wireless carriers that there is a longstanding  
25 principle at the FCC that the originating carrier is the



1 cost-causer and should pay the transit charge. BellSouth  
2 echoes that position. The rule that they rely on is FCC Rule  
3 51.703B, which, in fact, precludes an originating carrier from  
4 imposing costs on a terminating carrier for calls that  
5 originate on the originating carrier's network. That rule has  
6 always been applied to require the originating carrier to pay  
7 the switching and transport costs of the terminating carrier to  
8 basically pick up and complete that call.

9           This FCC rule has never been applied by the FCC to  
10 require the originating carrier to pay a transiting fee imposed  
11 by an intermediary carrier pursuant to an indirect  
12 interconnection with the incumbent's network. In fact, just  
13 this past March of 2005, the FCC in their further notice of  
14 proposed rulemaking on intercarrier compensation stated that  
15 the reciprocal compensation portions of the federal act do not  
16 explicitly address payments to a transit provider.

17           Now, Madam Chairman, I, as well, have a diagram that  
18 I would like to hand out for the remainder of my opening  
19 statement. I think Mr. McDonnell has copies and would like to  
20 hand those out with your permission.

21           CHAIRMAN EDGAR: Mr. Hoffman.

22           MR. HOFFMAN: Thank you.

23           The diagram that Mr. McDonnell is passing out depicts  
24 an indirect facilities' interconnection. If you look at the  
25 diagram -- and, by the way, that diagram is part of the record.

1 It is attached to the Small LECs' answers to the staff's  
2 interrogatories. What you will see is an illustration of a  
3 typical indirect interconnection between a small LEC and a  
4 CLEC. That is what we are talking about in this case, an  
5 indirect interconnection provided by BellSouth.

6 Now, under the law, specifically Section 251(a)(1) of  
7 the federal act, each incumbent LEC, including a small LEC, has  
8 the obligation to interconnect directly or indirectly with the  
9 facilities and equipment of other telecommunications carriers  
10 for the purpose of exchanging local traffic. That obligation,  
11 as our witness, Mr. Watkins, emphasizes in his testimony, and  
12 as previously and repeatedly determined by this Commission and  
13 the FCC, is an obligation to interconnect at a technically  
14 feasible point designated by the CLEC or wireless carrier that  
15 is on the Small LECs' network. And that is the key part, that  
16 is on the Small LECs' network. That was your decision in your  
17 generic order on reciprocal compensation and that is the  
18 obligation of the incumbent small LEC under the federal act.

19 So if you look at this diagram, what you will see is  
20 you have the small LEC switch and the facilities of the small  
21 LEC on the left. And we have a CLEC in this diagram. Their  
22 network is on the right. The facilities of the intermediary  
23 providers, such as BellSouth, are shown with letter C and D.  
24 And it is at letter D, which I've highlighted in yellow, that  
25 the CLEC in this diagram indirectly interconnects with the

1 small LEC through the use of BellSouth's facilities and switch.

2 Now, if the CLEC did not utilize the BellSouth  
3 network as the intermediary to indirectly interconnect with the  
4 small LEC, then that CLEC would have to make the investments in  
5 the network facilities to directly interconnect onto the small  
6 LECs' network, consistent with the prior orders of this  
7 Commission and the federal act.

8 Now, the CLEC has every right to indirectly  
9 interconnect through BellSouth's facilities, but we submit it  
10 is inequitable and unlawful to require the small LEC to pay for  
11 that network decision. The small LEC should not be required to  
12 pay for investments that the CLEC decided to forego because the  
13 CLEC found it more efficient to utilize the existing BellSouth  
14 network instead. That is a cost to the CLEC or the wireless  
15 carrier who utilizes this network arrangement, and that is why  
16 it is the CLEC or the wireless carrier that is the cost-causer  
17 of the transit traffic charge and should be responsible for any  
18 charge that this Commission may approve.

19 And that concludes my opening remarks. Thank you,  
20 Madam Chairman.

21 CHAIRMAN EDGAR: Thank you, Mr. Hoffman.

22 Okay. That brings us to, again, going from the order  
23 listed in the prehearing order to Alltel. Mr. Wahlen was  
24 excused, and so I believe that brings us to Mr. Hatch.

25 MR. HATCH: Thank you, Madam Chair.

1           We find ourselves in the real interesting crossfire  
2 between BellSouth on one side and the small LECs on the other.  
3 And I think probably what you will see throughout this  
4 proceeding is everybody agrees on a little bit, but nobody  
5 agrees on everything. I'm going to be very brief, and I would  
6 leave you, basically, with two points.

7           The first one is that it should be imperative that  
8 the originating carrier pays the cost. In a sense, he is the  
9 cost-causer. It is his company causing the cost to be  
10 incurred; it is not the terminating carrier.

11           And the second point that I would leave with you is  
12 that particularly in AT&T's case, as you will see from our  
13 witnesses' testimony, AT&T has its own interconnection  
14 agreements with BellSouth and with other carriers. And those  
15 interconnection agreements essentially provide for the terms,  
16 conditions, rates, under which transit service, or we buy  
17 transit service in this case from BellSouth. So BellSouth's  
18 tariff doesn't apply to us, and so we are not overly concerned  
19 about the tariff because we have our own agreement that  
20 provides. And I think that in general that is and should be  
21 the Commission's preferred mechanism for going forward to  
22 address all the transit issues that needed to be done.

23           We think that it's probably inappropriate for the  
24 Commission to adopt, at least at this point, any kind of  
25 comprehensive set of standards, or mechanisms, or requirements

1 for engaging in transit service, whichever way it goes.

2 Thank you.

3 CHAIRMAN EDGAR: Thank you, Mr. Hatch.

4 Ms. Kaufman.

5 MS. KAUFMAN: Thank you, Madam Chairman. I'm Vicki  
6 Gordon Kaufman, and I'm going to present the opening statement  
7 on behalf of the Competitive Carriers of the South, called  
8 CompSouth, of which NuVox Communications is a member. And we  
9 have four main points that we want to make in this case, and  
10 they will be made in much more detail through the testimony of  
11 Mr. Timothy Gates, who has both rebuttal -- he has both direct  
12 and rebuttal testimony.

13 I agree with Mr. Hatch that I think the little bit  
14 that all the parties can agree on is probably the fact that  
15 transit is a critically important service. It allows carriers,  
16 as you have seen through some of the diagrams, to connect  
17 indirectly with other carriers so that customers can complete  
18 their calls without wastefully and inefficiently duplicating  
19 network that is already in place. It's a service that has been  
20 historically provided in Florida and elsewhere, and it is one  
21 that needs to continue so as to avoid disruption to customers.  
22 And because of its role as an incumbent local exchange carrier,  
23 BellSouth is the only carrier that has a ubiquitous network in  
24 its territory through which the service can be provided.

25 The second point that CompSouth would like to make to

1 you, and that Mr. Gates will discuss in more detail, is that  
2 the tariff that has been filed here is not the appropriate  
3 mechanism for establishing terms, conditions, and rates  
4 relating to transiting. Terms, conditions, and prices between  
5 carriers for this transit service should be arrived at through  
6 negotiation, if that is possible, or through arbitration if  
7 it's not. They should not be mandated in a tariff, which I  
8 think you heard Mr. Tyler describe as a default for this type  
9 of service, especially when that default or floor has been  
10 established unilaterally and arbitrarily by BellSouth and can  
11 be revised at will.

12 Third, Mr. Gates will explain that BellSouth is  
13 obligated to provide transit service pursuant to Section 251 of  
14 the Act, and that transit should be priced at TELRIC.  
15 Mr. Tyler referred to a prior decision of the Commission, and I  
16 would point out to you with all due respect that was an  
17 arbitration, a bilateral arbitration between two parties. It  
18 was not a generic docket like you have before you today at  
19 which you have much greater participation, and I think a fuller  
20 exploration of the issue. And I would also point out that as I  
21 understand it, your policy and practice is not to permit  
22 carriers not directly involved in the interconnection agreement  
23 to intervene in arbitration proceedings.

24 BellSouth's witness will tell you, and I thought  
25 Mr. Tyler said this, that they don't have any duty to offer

1 transit service, but they have decided to do it voluntarily.  
2 And BellSouth's witness, Mr. McCallen, told us that they will  
3 do it at, quote, the price the market will bear, close quote.  
4 We would suggest to you that considering BellSouth's  
5 obligations, the advantages it enjoys due to its historical  
6 position as an incumbent monopoly and the lack of any real  
7 market to establish a market price for this service, that  
8 BellSouth's .003 per minute of use rate is inappropriate.

9 I was interested in Mr. Tyler's analogy that he could  
10 have taken a taxi here, and if he didn't like that taxi's rate,  
11 he could have taken a different taxi. I think more aptly the  
12 analogy here is that Mr. Tyler could have purchased a car to  
13 come here if he didn't like the rate that the one taxi offered.

14 As I mentioned, we believe that this service should  
15 be priced at TELRIC. But even if the Commission were to  
16 determine that transit is not an obligation under 251 of the  
17 Act, certainly the just and reasonable standard should apply.  
18 And I heard Mr. Tyler say that BellSouth believes that the rate  
19 it has suggested is just and reasonable. Well, we suggest to  
20 you, Commissioners, that BellSouth has provided no information  
21 to you on which you could make a finding that the rate is just  
22 and reasonable.

23 Mr. Gates has calculated that the .003 per minute of  
24 use rate is a dramatic increase over what it costs Bell to  
25 provide the transit service. Mr. Gates has calculated that

1 increase to be in the neighborhood of 275 percent higher than  
2 what the cost of providing the service is.

3 Now, what BellSouth has given you in this case to  
4 support its market rate is an exhibit that Mr. McCallen  
5 sponsors that it has revised three times so far which purports  
6 to show what parties have agreed to pay for transit service.  
7 After taking Mr. McCallen's deposition, we know that that is  
8 Bell's sole support for the rate it suggests, and we would say  
9 to you that it is no support at all. The exhibit provides you  
10 with no basis for approving the rate. Mr. McCallen told us in  
11 his deposition that he doesn't work with CLECs, he doesn't work  
12 with CMRS providers, he has no idea whether any of the carriers  
13 listed on his exhibit even use transit service at all, nor does  
14 he have any idea whether any of those carriers negotiated at  
15 all over that transit rate.

16 And I know that you are all aware that these  
17 interconnection agreements run hundreds and hundreds of pages,  
18 and that often BellSouth starts negotiations or discussions  
19 with what it calls its template agreement. If a carrier  
20 doesn't use a service, such as a reseller, for example, it's  
21 highly unlikely it is going to spend any time negotiating over  
22 a service it's never going to use. Further, I think you will  
23 hear on cross-examination that Mr. McCallen doesn't even know  
24 how the rates in that exhibit were calculated. So we don't  
25 think any support has been provided to you for the rates



1 suggested in the tariff.

2           Finally, the last point that Mr. Gates will discuss  
3 with you, and that Mr. Hoffman has discussed with you at some  
4 length, is the Small LEC position that they don't want to be  
5 responsible for the cost of transit traffic they originate when  
6 it is terminated to another carrier. So, even though it's the  
7 Small LEC customer who has placed the call to be transited by  
8 Bell and terminated to another carrier, the small LEC position  
9 is that it should bear none of the cost; thereby, obviously,  
10 attempting to push those costs to another carrier. I think  
11 Mr. Hoffman referenced the well-established principle that the  
12 originating carrier pays. And so we would ask that you reject  
13 the very novel and inappropriate suggestion that would turn  
14 this principle on its head.

15           So, at the end of the day after you hear the  
16 testimony, what CompSouth would ask you to do is to reject the  
17 tariff, direct those parties that don't have an agreement to  
18 negotiate or arbitrate if necessary, and to reaffirm the  
19 principle that the originating carrier pays for the costs.

20           Thank you.

21           CHAIRMAN EDGAR: Thank you, Ms. Kaufman.

22           Mr. Gerkin.

23           MR. GERKIN: Madam Chairman, Commissioners -- can you  
24 hear me?

25           CHAIRMAN EDGAR: I can. But I think it probably

1 would be better for all if you come forward either there or you  
2 could sit there to the right, whichever you're most comfortable  
3 with.

4 MR. GERKIN: Madam Chairman, Commissioners, good  
5 morning. My name is Charlie Gerkin. I'm here today on behalf  
6 of MetroPCS Florida, LLC.

7 MetroPCS is a CMRS wireless carrier. They are not  
8 one of the big national carriers that most of you have heard  
9 of. MetroPCS provides service in targeted markets in various  
10 areas of the country. MetroPCS is one of the largest CMRS  
11 carriers in the Miami market. One of the reasons that MetroPCS  
12 is one of the largest carriers in the market, they are one of  
13 the few if not the only CMRS carriers in Florida who offer  
14 service on a flat rate unlimited usage basis, just like a  
15 traditional local telephone service.

16 MetroPCS is here today because MetroPCS could not  
17 negotiate what it believed to be a reasonable transit rate with  
18 BellSouth. We went through negotiations. We filed for  
19 arbitration. We agreed that we would argue about it in this  
20 docket instead of the arbitration docket since this docket was  
21 already available.

22 But MetroPCS could not negotiate a rate with  
23 BellSouth because BellSouth would not agree to any rate other  
24 than the rate in its filed tariff. Even subject to true-up,  
25 BellSouth would not agree to any rate other than the rate in

1 its filed tariff. Now, the evidence in this docket will show  
2 that there may be a transit provider that is able to provide  
3 some transit services to some carriers that have incurred the  
4 investment to connect directly to its tandem in some parts of  
5 the market. The evidence is going to show that for some  
6 transit traffic -- for some traffic, it is economically  
7 efficient to establish direct connections between carriers and  
8 deliver the traffic directly without using BellSouth's transit  
9 service or any other transit service.

10 The evidence is going to show, however, that most  
11 carriers have no practical alternative for a significant amount  
12 of traffic but to send it through BellSouth's transit service,  
13 because it's not economically efficient to establish direct  
14 connections between individual carriers for relatively small  
15 volumes of traffic between those individual carriers, and  
16 because there are no transit alternatives to BellSouth's  
17 transit service in many areas, in much of the market where  
18 BellSouth is the incumbent LEC.

19 The evidence is going to show that the elemental  
20 rates that this Commission has established for BellSouth's  
21 tandem switching function, its common transport function, and  
22 the other functions that it performs in providing transit  
23 service, that these elemental TELRIC rates fully compensate  
24 BellSouth for the functions that it performs in transiting  
25 traffic from an originating carrier to a terminating carrier.

1 But despite all of this, the evidence is also going to show  
2 that BellSouth set out to establish a rate that was equal to as  
3 much as BellSouth believed the market would bear.

4           Commissioners, it's arguable that the principal  
5 purpose of regulation, of economic regulation of firms with  
6 market power, is to prevent firms that have market power from  
7 pricing their services at whatever the market will bear. As  
8 long as we have been regulating the rates for services -- and,  
9 Commissioners, this goes back to the Code of Hammurabi, the  
10 oldest known code of law in human history. The purpose of  
11 economic regulation has been to require people who have market  
12 power to provide just and reasonable rates for their services.  
13 And just and reasonable has never been equated to whatever the  
14 market will bear.

15           BellSouth has no incentive to negotiate as long as it  
16 has a tariff in place that sets a rate that BellSouth believes  
17 is what the market will bear. As long as BellSouth believes it  
18 can charge whatever the market will bear, then BellSouth can  
19 dictate the cost of using its transit service for other  
20 carriers.

21           The Commission must rule that BellSouth is providing  
22 an essential interconnection service, and that that essential  
23 interconnection service must be priced at TELRIC, just like all  
24 other local interconnection services must be priced at TELRIC.  
25 If the Commission doesn't do that, it's allowing BellSouth to

1 use its market power to maintain its market position and to  
2 extract for itself the value that its service could be  
3 providing to other carriers.

4 CHAIRMAN EDGAR: Thank you, Mr. Gerkin.

5 Mr. Palmer.

6 MR. PALMER: Good morning, Madam Chairman, members of  
7 the Commission. My name is Chuck Palmer. I represent Verizon  
8 Wireless, and Verizon Wireless holds licenses issued by the FCC  
9 to provide wireless service throughout the state of Florida.

10 We appreciate the opportunity to appear before you  
11 today in these consolidated dockets that represent several  
12 important issues to the various carriers that offer services to  
13 the consumers throughout the state of Florida. And these  
14 issues involving transit traffic are fairly technical as you  
15 will glean through the day, and it would be wonderful for all  
16 of us if the FCC were to decide these issues once and for all.  
17 But to date they have not, and, therefore, it has been left to  
18 the various state commissions to wrestle with these issues.

19 You should know that you are not the first and you  
20 probably won't be the last to have to wade through these  
21 transit traffic waters, and they can, indeed, be murky. And so  
22 what I would like to have you know as you step into these  
23 waters is that some other states have looked at this subject.  
24 In particular, two other states in the nine-state BellSouth  
25 region have looked at these issues in the last couple of years.

1 One of those is Tennessee, the Tennessee Regulatory Authority,  
2 and in Georgia, the Georgia Public Service Commission. They  
3 have concluded that the carrier whose customer originates the  
4 call is the carrier who is responsible for paying the transit  
5 traffic charge. That is, if a Verizon wireless customer places  
6 a call to a small LEC customer, and that call is routed through  
7 BellSouth's tandem -- or, rather, through BellSouth, then  
8 Verizon Wireless is responsible for paying Verizon -- excuse  
9 me, BellSouth's transit charge. Similarly, if a small LEC  
10 customer places a call that is routed through BellSouth to a  
11 Verizon Wireless customer, then the small LEC is responsible  
12 for paying BellSouth's transit charge.

13 Both Tennessee and Georgia, as I've said, have ruled  
14 that the originating carrier pays. That is not, of course,  
15 what the Small LECs believe. But that is, in fact, what has  
16 been ruled in those two other state commissions.

17 In addition, you should also know that the Tenth  
18 Circuit Court of Appeals ruled in a case involving the Oklahoma  
19 Corporation Commission that the originating carrier is  
20 responsible for paying the transit traffic charges. The Tenth  
21 Circuit rejected the arguments that have been made -- that were  
22 made by the small LECs in that case. Those same arguments were  
23 also made in Georgia and Tennessee, and they will be made here  
24 today before you, and also tomorrow, if we go into tomorrow.  
25 So all of this has been argued before in many other forums. We

1 certainly hope that you would reach the same conclusions as  
2 those other forums have reached. With that I will close, and  
3 thank you for your time and attention.

4 Thank you.

5 CHAIRMAN EDGAR: Thank you.

6 Mr. Atkinson.

7 MR. ATKINSON: Thank you, Madam Chair. Good morning,  
8 Commissioners. Bill Atkinson on behalf of Sprint Nextel. We  
9 very much appreciate the opportunity to present our brief  
10 opening remarks to you this morning. And my intent is to  
11 stress three or four key points that we will show this week  
12 through the testimony of our joint witness with T-Mobile,  
13 Mr. Bill Pruitt.

14 The first and perhaps the most fundamental point that  
15 Mr. Pruitt makes in his prefiled testimony is the idea that the  
16 ability to indirectly interconnect to use the ubiquitous  
17 ILEC's, in this case BellSouth's, network to reach a  
18 third-party's network, or what we will refer to as transiting  
19 during the hearings this week, is one of the ILEC's  
20 interconnection obligations. As Mr. Pruitt will demonstrate  
21 through his testimony, state commission's have found that ample  
22 authority exists to support the conclusion that transiting is,  
23 in fact, an interconnection obligation under the Act. We  
24 assert and we are confident that the Commission will follow the  
25 legal analysis as articulated by these other state commissions.

1           The second point that I wanted to bring before your  
2 attention this morning is that for interconnection services of  
3 which we assert that transiting is one, the FCC's T-Mobile  
4 order issued last year makes it clear that the negotiation and  
5 arbitration process under Section 252 of the '96 Act is the  
6 appropriate vehicle for establishing compensation for  
7 interconnection services.

8           Now, the converse of that is also true and is  
9 important to your determinations, your deliberations in this  
10 docket. Namely, that if the negotiations/arbitration process  
11 under Section 252 of the Act is the appropriate method for  
12 setting compensation for interconnection services, including  
13 transiting services, then a tariff, such as the BellSouth  
14 transit tariff that is the focus of these proceedings, is an  
15 inappropriate, an inappropriate way of attempting to establish  
16 compensation for interconnection services. And, again, as  
17 discussed by Mr. Pruitt in his testimony, T-Mobile points the  
18 way here.

19           Third, Mr. Pruitt discusses in his testimony the key  
20 idea that rates for interconnection services, again, including  
21 transiting services, must be based on 252(d), TELRIC pricing  
22 standards, and not some arbitrarily set commercial rate based  
23 on alleged market pricing principles.

24           Fourth, and finally, on the matter of who pays for  
25 transit, our witness, Mr. Pruitt, discusses that under federal



1 law the originating carrier is responsible for paying any  
2 transit charges assessed by the tandem provider for delivering  
3 the originating carrier's traffic to a third-party's network.  
4 This calling party network pays, or CPNP concept, is grounded  
5 upon Rule 703(b). And the heart of 703(b), which has already  
6 been discussed here this morning in opening statements, is that  
7 one carrier is not allowed to pass off the transfer of his  
8 costs of traffic, of having traffic originating on his network  
9 to another carrier. That is really the heart of 703(b), and it  
10 will be discussed in detail this week and in detail in Mr.  
11 Pruitt's testimony.

12 We urge this Commission to follow the analysis  
13 offered by the federal and state bodies that have looked at  
14 this issue of who pays for the transit. These four core ideas  
15 are really at the heart of Mr. Pruitt's testimony that you will  
16 hear this week.

17 One final thought that I would leave for you, the  
18 issues that you will consider in this docket are critical to  
19 competitive wireless and wireline providers operating in  
20 Florida and also critical in no small means to Florida  
21 consumers who may lose some of the seamless nature and the  
22 cost-effectiveness of the telecommunications network that they  
23 depend upon today if these issues are not appropriately  
24 resolved by this Commission.

25 We thank you for your time and your consideration,

1 and that concludes my remarks.

2 CHAIRMAN EDGAR: Thank you, Mr. Atkinson.

3 MR. ATKINSON: Thank you.

4 CHAIRMAN EDGAR: Mr. Self.

5 MR. SELF: Thank you, Madam Chairman. I generally  
6 agree with everything that the CLEC and CMRS carriers have  
7 stated here, so I don't want to repeat all of that for you  
8 again. What I would like to offer you, though, is a little bit  
9 of the big picture. Why is this tariff such a big deal? After  
10 all, T-Mobile has its own interconnection agreement with  
11 BellSouth. T-Mobile has an interconnection agreement with many  
12 of the Small LECs that are parties to this case. Indeed, I  
13 think the one thing that everyone agrees with is that  
14 negotiated interconnection agreements are really the best and  
15 ideal way to go.

16 So why has this tariff brought all of these companies  
17 to you today in opposition? As Mr. Atkinson indicated just a  
18 moment ago, the real bottom line in this case is consumers, and  
19 there are two fundamental problems here.

20 First, in the changing competitive marketplace, the  
21 availability and cost of direct connections is not always  
22 efficient or cost-effective. Adoption of policies or other  
23 requirements by this Commission will increase the cost of  
24 business and adversely impact the rates and services that are  
25 available to consumers.

1           Second, and most importantly, a successful  
2 interconnection agreement negotiation process requires a level  
3 playing field. But you can't negotiate with this tariff in  
4 effect, because it creates a floor that is going to control the  
5 negotiation process. Indeed, it was that kind of inequality  
6 that led the FCC in the T-Mobile order that you've heard about  
7 to amend its rules to prohibit the LECs from imposing  
8 compensation obligations for nonaccess traffic pursuant to  
9 tariff.

10           When the mobile wireless revolution started 20 years  
11 ago, your predecessors were amused when the wireless carriers  
12 said that if you adopt the right policies, that the services of  
13 those wireless carriers obtained from the ILECs were priced  
14 based upon their cost, everyone would have a cell phone and the  
15 services and prices available to consumers would be ubiquitous,  
16 affordable, and innovative. I think it's fair to say that  
17 probably everyone in this room today has one of these little  
18 devices, and I think everyone would agree that consumers have  
19 benefitted tremendously from the decisions that have led to  
20 what these phones and other devices represent today.

21           As you will hear from Mr. Pruitt and the other CMRS  
22 and CLEC witnesses, the ultimate consequence of allowing this  
23 tariff to remain in effect is, indeed, going to adversely  
24 impact the carriers' ability to provide services to consumers.  
25 This is especially true for an independent wireless carrier,

1 like T-Mobile, that can provide national service only through  
2 the use of incumbent local exchange company networks. So I  
3 would urge you to make a proconsumer choice in this case and  
4 deny the tariff. Thank you.

5 CHAIRMAN EDGAR: Thank you, Mr. Self.

6 Mr. Gross.

7 MR. GROSS: Good morning, Madam Chair, Commissioners.  
8 Thank you for giving me an opportunity to speak this morning.  
9 I'm here on behalf of the FCTA, the Florida Cable  
10 Telecommunications Association.

11 The FCTA concurs with the CLEC and CMRS providers  
12 that BellSouth has an obligation to provider transit service at  
13 TELRIC rates. But in order to more effectively address the  
14 issues that have been raised in this docket, we feel it is  
15 important that the Commission understand the context in which  
16 this dispute arose.

17 It arose as a dispute initially between BellSouth and  
18 the Small LECs. BellSouth sought compensation from the Small  
19 LECs for transiting traffic originated by the Small LECs, and  
20 the Small LECs took the position that they have no such  
21 obligation to compensate BellSouth when BellSouth provides  
22 transit for their originated traffic. In an apparent attempt  
23 to gain some negotiating leverage, BellSouth filed the tariff  
24 in controversy that includes a rate that is well above cost and  
25 without any meaningful justification, although the FCTA agrees

1 that the originating party should pay, and that goes for Small  
2 LECs, as well. So we disagree with the Small LECs' position  
3 that they do not have to compensate BellSouth for originating  
4 transit traffic.

5 But a tariff is not the appropriate solution to  
6 resolve the dispute between BellSouth and the Small LECs.  
7 Either party, either BellSouth or the small LEC, has a right  
8 under the '96 Act to seek an interconnection agreement to  
9 resolve their dispute, as well as an obligation under the '96  
10 Act to negotiate in good faith. Failing an agreement, either  
11 party may request arbitration before this Commission.

12 Now, the evidence produced in this docket shows that  
13 this process is working very well for CLECs and CMRS carriers  
14 who have almost uniformly negotiated interconnection agreements  
15 with BellSouth that provide for the rates, terms, and  
16 conditions for transit service. Now, with one exception that I  
17 just heard from Mr. Gerkin, that MetroPCS has reached an  
18 impasse with BellSouth in their attempt to negotiate a transit  
19 rate, and even though they were pursuing the  
20 negotiation/arbitration process, they made a decision to defer  
21 the arbitration process and try to resolve their dispute in the  
22 present docket. But there were several witnesses in this  
23 docket that testified that they were unaware of any CLEC or  
24 CMRS carrier that has failed to pay BellSouth for transit  
25 service pursuant to a negotiated rate.

1           Although the CLECs and CMRS carriers are not the  
2 source of this problem, they have been caught in the crossfire  
3 between BellSouth and the Small LECs in that the tariff applies  
4 equally to them. Consequently, this tariff has great potential  
5 to disrupt how numerous carriers are successfully  
6 interconnecting, exchanging traffic, and compensating each  
7 other for doing so.

8           Although the tariff on its face doesn't apply to  
9 carriers who have interconnection agreements with BellSouth  
10 covering transit service, we agree with some of the previous  
11 comments that this tariff, if allowed to stand, will provide a  
12 baseline for any negotiations upon renewal of existing  
13 interconnection agreements or new interconnection agreements  
14 and eliminate any incentive that BellSouth might have to  
15 negotiate a lower rate.

16           This dispute should be resolved through the  
17 negotiation, and if necessary, arbitration of interconnection  
18 agreements under the '96 Act. Any dispute about whether the  
19 rate should be TELRIC based or utilizing some other cost-based  
20 formula should more appropriately be resolved in a '96 Act  
21 arbitration process before this Commission. And for this  
22 reason, the FCTA feels that this tariff should not be  
23 sustained.

24           Thank you.

25           CHAIRMAN EDGAR: Thank you, Mr. Gross.

1           Mr. O'Roark, I believe that brings us to you as our  
2 last speaker for opening statements.

3           Before you begin, let me just say for planning  
4 purposes my intent at this moment is to conclude the opening  
5 statements, swear in the witnesses, and then take about a  
6 15-minute break before we call the first witness.

7           Mr. O'Roark.

8           MR. O'ROARK: Thank you, Madam Chair. Good morning,  
9 Commissioners. My name is De O'Roark. I represent Verizon  
10 Access, which is a CLEC here in Florida.

11           Verizon Access intervened just recently in this case,  
12 and our exclusive focus in this docket is on Issue 5, which  
13 concerns whether this Commission should establish terms and  
14 conditions between the originating and terminating carrier in a  
15 transit situation.

16           Our position is that the Commission should not do so.  
17 And, specifically, the Commission should not prevent a CLEC  
18 like Verizon Access from having a tariff that establishes terms  
19 and conditions for the termination of local traffic when there  
20 is no agreement between the parties.

21           The practical problem that Verizon Access faces is  
22 that we often terminate more traffic between us and another  
23 CLEC than we originate. A CLEC may not, however, require  
24 another CLEC to enter into an interconnection agreement.  
25 Section 252 of the Act deals with interconnection agreements

1 with ILECs. So a CLEC tariff is sometimes necessary, and that  
2 is why we have brought this concern to your attention.

3 Thank you.

4 CHAIRMAN EDGAR: Thank you.

5 Ms. Banks, any further preliminary or opening matters  
6 that we need to address before we move on?

7 MS. BANKS: Not that I am aware of, Madam Chair.

8 CHAIRMAN EDGAR: Thank you. Okay. Then we will go  
9 ahead and swear in the witnesses. If the witnesses will please  
10 stand, we will do this as a group.

11 Okay. Please raise your right hand.

12 (Witnesses sworn collectively.)

13 CHAIRMAN EDGAR: Okay. Just a couple of comments and  
14 then we will take a short break. Again, pursuant to the  
15 prehearing order, let me please remind the parties and counsel  
16 that witness summaries shall be limited to five minutes or  
17 less. That staff counsel has noted that we have a number of  
18 requests for specified confidential classification and notices  
19 of intent to request confidential classification, and the  
20 parties are reminded that this information is afforded  
21 protection under Section 364.13, Florida Statutes, pending a  
22 ruling on the request for confidential classification. As  
23 such, counsel and witnesses are cautioned to avoid verbalizing  
24 confidential information in any way that could compromise that  
25 confidentiality. And when confidential information is used,



1 the information should be clearly marked with the nature of its  
2 contents inside the red folders that we all use at these  
3 proceedings.

4 And with that, I believe we will take a 15-minute  
5 recess, come back at approximately ten after, and then we will  
6 call the first witness. Thank you.

7 (Transcript continues in sequence in Volume 2.)  
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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

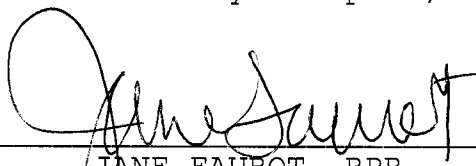
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5 I, JANE FAUROT, RPR, Chief, Office of Hearing  
6 Reporter Services, FPSC Division of Commission Clerk and  
7 Administrative Services, do hereby certify that the foregoing  
8 proceeding was heard at the time and place herein stated.

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

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  
16 or employee of any of the parties' attorney or counsel  
17 connected with the action, nor am I financially interested in  
18 the action.

19 DATED THIS 13th day of April, 2006.

20 

21 JANE FAUROT, RPR

22 Official FPSC Hearings Reporter  
23 FPSC Division of Commission Clerk and  
24 Administrative Services  
25 (850) 413-6732