

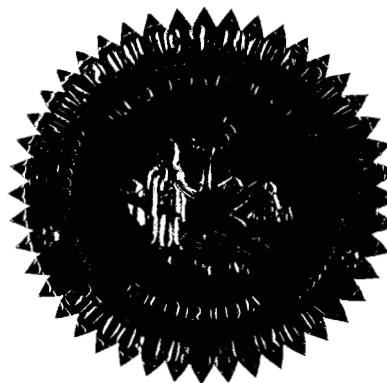
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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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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PROCEEDINGS:                   AGENDA CONFERENCE  
                                  ITEM NO. 4

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BEFORE:

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

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DATE:

Tuesday, August 29, 2006

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PLACE:

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

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REPORTED BY:

JANE FAUROT, RPR  
Official Commission Reporter  
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1 PARTICIPATING:

2                   MICHAEL COOKE, ESQUIRE, KIRA SCOTT, ESQUIRE, PAT  
3 WIGGINS, ESQUIRE, MICHAEL BARRETT, PAT LEE, FRANK TRUEBLOOD,  
4 PAUL VICKERY, and DEVLIN HIGGINS, representing the Florida  
5 Public Service Commission Staff.

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

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CHAIRMAN EDGAR: We will go back on the record.  
We are ready, if you'll kick us off for Item 4.

MR. BARRETT: Good morning, Commissioners. I'm  
Michael Barrett on behalf of the Commission staff.

Item 4 is a post-hearing staff recommendation  
regarding BellSouth's transit traffic tariff. This tariff sets  
forth rates, terms, and conditions that apply when carriers  
receive transit service and they do not have a transit service  
arrangement in place. The tariff became effective February  
11th, 2005.

This proceeding was established in response to  
separate petitions and asked the Commission to suspend or  
cancel the BellSouth tariff. The Commission denied the  
petitions for suspension and found that the tariff should  
remain in effect pending the outcome of this proceeding. That  
decision also set forth that refunds -- excuse me, that rates  
or charges pursuant to the tariff be collected, but held  
subject to refund.

And I would note this is the first time that the  
Commission has addressed many of these issues, and we are  
prepared to proceed at your direction.

CHAIRMAN EDGAR: Thank you. And to, perhaps, restate  
the obvious, this is a post-hearing decision, so participation  
is limited to Commissioners and staff.

1           Commissioners, we have a number of issues on this  
2 item, a few of which are kind of grouped together, but not in  
3 order. So I think that probably the best thing to do to  
4 proceed is to take each issue up in order. However, if there  
5 are not questions or discussions, then I will take a motion on  
6 those issues.

7           And so we'll begin with Issue 1, and I'll ask staff  
8 to give us a brief overview of that issue, please.

9           MS. SCOTT: Good morning, Commissioners. Kira Scott  
10 on behalf of Commission staff.

11           Issue 1 is whether BellSouth's tariff is an  
12 appropriate mechanism to address transit service. Essentially,  
13 the dispute is with BellSouth's use of its tariff as a default  
14 mechanism where a transit arrangement does not already exist.  
15 Staff believes that BellSouth's tariff is not appropriate for  
16 two reasons: First, it's invalid under Florida law because  
17 transit service requires indirect interconnection, which is  
18 more characteristic of a local interconnection arrangement  
19 under Section 364.16, and not a nonbasic service as BellSouth  
20 has asserted. Therefore, tariffing is inappropriate. Second,  
21 use of a tariff to address compensation for nonaccess traffic  
22 does not comport with recent federal policy. In its T-Mobile  
23 decision, the FCC clearly indicated a preference for  
24 contractual arrangements.

25           Staff is recommending in this issue that the tariff

1 be canceled and that the parties be required to establish  
2 transit arrangements if one does not already exist. I'm  
3 available for questions.

4 CHAIRMAN EDGAR: Thank you.

5 Commissioners, any questions for our staff on  
6 Issue 1?

7 COMMISSIONER DEASON: I have a question.

8 CHAIRMAN EDGAR: Commissioner Deason.

9 COMMISSIONER DEASON: So the nature of transit  
10 traffic, it should be addressed through a separate agreement  
11 between the parties involved, is that correct?

12 MS. SCOTT: That's correct, Commissioner.

13 COMMISSIONER DEASON: Does the Commission have the  
14 jurisdiction to require there to be agreements? And if an  
15 agreement cannot be reached, do we find ourselves in a  
16 situation of arbitrating an agreement?

17 MS. SCOTT: Commissioners, staff does believe that  
18 the Commission has stand-alone authority to address these types  
19 of arrangements under 364.16. In fact, that particular  
20 statutory section lays out a timeframe in which the parties are  
21 to negotiate, and if negotiations fail, they are to bring it to  
22 this body for arbitration on local interconnection  
23 arrangements, like the ones we are dealing with here.

24 COMMISSIONER DEASON: So if the parties cannot agree  
25 to the terms, rates, et cetera, then those issues should be

1 brought to the Commission, and we would arbitrate those, is  
2 that correct?

3 MS. SCOTT: That's correct, under state law.

4 CHAIRMAN EDGAR: Commissioners, further questions on  
5 Issue 1?

6 COMMISSIONER CARTER: Madam Chair.

7 CHAIRMAN EDGAR: Commissioner Carter.

8 COMMISSIONER CARTER: If there are no questions from  
9 Commissioners, I'm prepared to move staff on Issue 1.

10 COMMISSIONER DEASON: Second.

11 CHAIRMAN EDGAR: Any further discussion?

12 Commissioners, we have a motion for the staff  
13 recommendation on Issue 1. All in favor say aye.

14 (Unanimous affirmative vote.)

15 CHAIRMAN EDGAR: Opposed? Show the motion carried.  
16 Issue 2.

17 MS. LEE: Commissioners, Pat Lee of staff. Issues 2  
18 and 3 address the responsibilities of the originating carrier,  
19 and specifically which carrier is responsible for compensating  
20 BellSouth for its transit service. Parties generally agree  
21 that BellSouth should be compensated for providing transit  
22 service. The dispute arises between the parties as to who is  
23 the responsible party to compensate BellSouth.

24 Staff recommends that the originating carrier should  
25 compensate BellSouth for its transit service. The

1 originating-carrier-pays concept is a long-standing FCC concept  
2 that is well-grounded in its reciprocal compensation rules.

3 Staff believes that the end user or the originating  
4 carrier places the call, transits BellSouth's network, which  
5 then is terminated at the terminating carrier's end-user's  
6 service. It is the choice of the originating carrier of how to  
7 route that traffic to the end user or the terminating carrier,  
8 it is not the terminating carrier's option or choice, if you  
9 will, of how that traffic is routed.

10 Staff is available for questions.

11 CHAIRMAN EDGAR: Thank you. Commissioners, questions  
12 for our staff?

13 Commissioner Deason.

14 COMMISSIONER DEASON: I have some questions.

15 We have a number of parties in this case, and they  
16 all have slightly different viewpoints. In a situation where  
17 we have a small LEC that is interconnected with BellSouth and  
18 we have a CLEC that is interconnected with BellSouth and  
19 BellSouth is providing transit services, if a call originates  
20 on the CLEC network and transits BellSouth's network and is  
21 terminated on a small LEC network, are there currently  
22 agreements in place which cover that?

23 MS. LEE: BellSouth has transit agreements with some  
24 of the CLECs, correct.

25 COMMISSIONER DEASON: But not with all CLECs?



1 MS. LEE: I'm not sure it's with all CLECs.

2 COMMISSIONER DEASON: But with a majority of the  
3 CLECs?

4 MS. LEE: Correct.

5 COMMISSIONER DEASON: The CLECs participated in this  
6 case not so much that they were concerned about the agreement,  
7 they were concerned about the tariff, there being a default,  
8 correct?

9 MS. LEE: Correct.

10 COMMISSIONER DEASON: So the CLECs are certainly  
11 willing to, or at least it appears that they have already  
12 entered into agreements and are certainly willing to enter into  
13 agreements. Is that a fair statement?

14 MS. LEE: Correct.

15 COMMISSIONER DEASON: Now, a call that originates on  
16 a small LEC network, transits BellSouth's network and  
17 terminates on a CLEC network, first of all, there are not  
18 agreements in place, is that correct, for that situation in  
19 Florida?

20 MS. LEE: BellSouth has some transit agreements with  
21 some of the small LECs, not all of them.

22 COMMISSIONER DEASON: I guess it's kind of the  
23 opposite. There are some, but mainly not. Whereas the CLECs  
24 it's just the opposite, most of those have entered into  
25 agreements.

1 MS. LEE: If I'm correct, and please, someone correct  
2 me, I believe that the only two small LECs that there is no  
3 longer a transit arrangement with BellSouth is Quincy and  
4 Frontier, but I think those are the only two small LECs that  
5 have no transit arrangement with BellSouth and are currently  
6 operating on a tariff.

7 COMMISSIONER DEASON: Now, were those agreements  
8 entered into prior to or during this hearing, or post-hearing,  
9 do you recall?

10 MS. LEE: I'm not really sure.

11 COMMISSIONER DEASON: Okay.

12 MS. LEE: I know some of them were entered into  
13 during the course of the hearing. I'm not sure if all of them  
14 were, though.

15 COMMISSIONER DEASON: Do we have a situation where a  
16 CLEC has chosen to directly interconnect with a small LEC and  
17 the small LEC actually -- and has not interconnected with  
18 BellSouth, and the small LEC is actually doing the transit  
19 service for BellSouth? Is that a factual situation that  
20 exists?

21 MS. LEE: A CLEC --

22 COMMISSIONER DEASON: A CLEC chooses to not  
23 interconnect with BellSouth, they interconnect with a small  
24 LEC, and they look to the small LEC and its agreements with  
25 BellSouth, but basically the small LEC is the transit?

1 MS. LEE: That is certainly a possible situation.

2 COMMISSIONER DEASON: Okay. If that were to apply,  
3 what rates would apply in that situation?

4 MS. LEE: If that situation were to apply, the CLEC  
5 is the originating carrier and would pay the small LEC for the  
6 transiting service.

7 COMMISSIONER DEASON: Now, what about a BellSouth  
8 customer calling a CLEC customer, and the CLEC is connected  
9 only through a small LEC, and the small LEC provides a  
10 transiting service for BellSouth.

11 MS. LEE: BellSouth originates the call.

12 COMMISSIONER DEASON: A BellSouth customer originates  
13 the call.

14 MS. LEE: It is transited over the small LEC's  
15 network, terminating with the CLEC?

16 COMMISSIONER DEASON: Correct.

17 MS. LEE: Then the small LEC is the transiting  
18 provider, BellSouth is the originating carrier, BellSouth would  
19 pay the small LEC for the transiting service.

20 COMMISSIONER DEASON: All right. Under that  
21 situation, could they just enter into an agreement where they  
22 agree to just what I call bill and keep?

23 MS. LEE: Certainly.

24 COMMISSIONER DEASON: There's just no flow of  
25 dollars. They agree because they have interconnected that

1 whatever direction of traffic, they are going to be the  
2 transiting agent for the other, and it's a form of reciprocal  
3 compensation?

4 MS. LEE: Certainly.

5 COMMISSIONER DEASON: Can that be developed in the  
6 arbitration proceeding?

7 MS. LEE: It can be developed in negotiations.

8 COMMISSIONER DEASON: Well, assuming negotiations are  
9 not fruitful.

10 MS. LEE: I hesitate -- well, under state law, yes,  
11 it could with arbitration.

12 COMMISSIONER DEASON: Let me get to my concern, and  
13 maybe now is a good time to address it. I don't fault the  
14 CLECs for choosing to interconnect with BellSouth. Obviously  
15 that's the most efficient way, and we want carriers to do  
16 things efficiently. And one of the underlying themes here is  
17 that we need to put cost on the cost-causer, and that is a good  
18 valid -- it makes legal sense and it makes walking around  
19 sense, as well. But it seems to me that the CLECs choosing to  
20 interconnect the way they do, and trying to configure their  
21 networks in the most efficient way possible, are they not  
22 causing costs to be placed on the small LECs?

23 Because before the advent of competition, before  
24 there were CLECs, the small LECs and BellSouth, they had their  
25 arrangements. They carried traffic back and forth. There may

1 be some settlements in place, but I think it was basically  
2 mainly for long distance services. Mostly the local traffic  
3 was just transported back and forth, and it was basically --  
4 I'll call it bill and keep, maybe there is a better adjective  
5 to describe it, I'm not sure.

6           And now with the advent of competition and the CLECs  
7 connecting to BellSouth, and BellSouth having to carry the  
8 traffic, there is a cost there, you know, I don't deny that  
9 there is a cost on BellSouth for providing the service, it's  
10 just that the traffic seems to be flowing one direction because  
11 of the CLEC's choice of where they interconnect, which is the  
12 efficient thing to do.

13           I'm just concerned that -- I'm just concerned that  
14 the small LECs are having costs incurred, I mean, placed upon  
15 them as a result of this docket and this recommendation. Is  
16 that not a concern of staff's?

17           MS. LEE: It is a concern. You are correct, as a  
18 result of this recommendation small LECs are having a cost  
19 imposed on them. This is not a new cost though. BellSouth has  
20 been incurring these costs since the '96 Act.

21           COMMISSIONER DEASON: BellSouth has been incurring  
22 the cost, but they also have got the benefit of the  
23 interconnections with the CLECs that choose to connect with  
24 them for very valid engineering, economic reasons. I don't  
25 dispute that one bit. But BellSouth, by them being the

1 incumbent provider and the most pervasive provider, the largest  
2 presence, they are having all of the CLECs interconnect with  
3 them. And there are revenues associated with that, is that not  
4 correct?

5 MS. LEE: Yes, correct.

6 COMMISSIONER DEASON: They are getting the benefit of  
7 that revenue, but then in addition to that, they are now  
8 seeking transit revenues from the small LECs when a small LEC  
9 customer originates a call that transits BellSouth and  
10 terminates on a CLEC customer's network, when the CLEC was the  
11 one that chose not to directly interconnect with that small  
12 LEC.

13 MS. LEE: The small LEC has the opportunity and  
14 should have the wherewithal if they are routing a lot of  
15 traffic to a CLEC. I mean, in my opinion, it is the small  
16 LEC's responsibility to determine whether I want to route that  
17 through the BellSouth tandem switch, or whether I want to seek  
18 a direct interconnection with this CLEC. Much of it depends  
19 on the volume of traffic that is exchanged, you are correct.

20 COMMISSIONER DEASON: Well, what is the CLEC's  
21 motivation to entering into another interconnection agreement  
22 with a small LEC, if they can interconnect with BellSouth and  
23 the transiting costs are being picked up by the small LEC when  
24 the direction of the call is in that direction?

25 You say that if the traffic is -- if there is enough

1 traffic that there would be an economic basis for there to be  
2 an agreement reached between the CLEC and the small LEC?

3 MS. LEE: For direct interconnection. Transiting is  
4 a means to establish indirect interconnection. You have  
5 indirect interconnection and you have direct interconnection.  
6 Both of those, under the Act, the two forms of interconnection  
7 were direct and indirect.

8 COMMISSIONER DEASON: Let me ask you this question,  
9 and it's kind of theoretical, but does the Commission have the  
10 authority to basically determine that the reciprocal  
11 compensation between the small LEC and BellSouth, when it comes  
12 to transit traffic, that it's just going to be on a bill and  
13 keep basis, and that if there ever were a situation where a  
14 CLEC decides to interconnect directly with a small LEC and let  
15 that small LEC be the transiting agent to BellSouth, that there  
16 just wouldn't be any flow of dollars, it would just be a bill  
17 and keep arrangement?

18 Is that fair compensation? Is that something this  
19 Commission can do from a policy perspective? First of all, do  
20 you understand the question? I know it's kind of a convoluted  
21 question.

22 MS. LEE: I think what you're asking is if the  
23 compensation for BellSouth's transit service could be through  
24 bill and keep rather than --

25 COMMISSIONER DEASON: Through bill and keep

1 arrangement with the small LECs.

2 MS. LEE: -- rather than assessing a rate.

3 COMMISSIONER DEASON: Instead of assessing a rate.

4 MS. LEE: If I'm correct, some of the transiting  
5 arrangements that currently exist are with the bill and keep.

6 COMMISSIONER DEASON: And if the parties cannot  
7 negotiate an agreement, they can bring it here and we can  
8 develop the merits of bill and keep, is that correct?

9 MS. SCOTT: That's correct, Commissioner.

10 COMMISSIONER DEASON: I'm trying my best to send a  
11 message to the people that are listening out there that it may  
12 not be worth pursuing, but nevertheless --

13 MS. LEE: Under state law --

14 COMMISSIONER DEASON: Under state law that would be  
15 an acceptable arrangement, and we would be meeting our legal  
16 obligations.

17 MS. SCOTT: That's correct.

18 CHAIRMAN EDGAR: Commissioner Tew.

19 COMMISSIONER TEW: I have one follow-up to something,  
20 Commissioner Deason's question about the small LECs and their  
21 ability to pursue options other than paying the transit rate  
22 arranging with BellSouth. And I understood that they did have  
23 options to directly interconnect with the CLECs. But is that  
24 their decision to make, or is it the CLECs? I just wanted to  
25 make sure I understand.



1 MS. LEE: I would believe it's the responsibility of  
2 both parties. But, specifically, the small LEC. The small LEC  
3 is using the service to route the traffic. If we assume for a  
4 minute that BellSouth is compensated from the originating  
5 carrier, on the originating carrier I'm transiting millions of  
6 minutes of use, it's costing me, you know, quite a bit of  
7 money. At that point I would start thinking, maybe it's  
8 cheaper for me to directly interconnect with the CLEC or this  
9 CMRS carrier rather than using a third-party, an intermediary  
10 carrier. Did I answer your question?

11 COMMISSIONER TEW: I think so. But I just wanted to  
12 make sure that they're free to have that choice, that it's  
13 not -- in other words, if a CLEC wanted to continue the  
14 arrangement where they interconnect with BellSouth and pay the  
15 transiting and the small LECs as the originating carrier would  
16 pay the transiting fee, if they wanted it to stay the same,  
17 would there be the ability of the small LECs to say we think it  
18 would be cheaper to directly connect with the CLEC and we are  
19 going to pursue that option?

20 MS. LEE: The originating carrier decides for its  
21 originating traffic. It makes the decision on how it's going  
22 to route its originating traffic.

23 CHAIRMAN EDGAR: Commissioner Arriaga.

24 COMMISSIONER ARRIAGA: Madam Chairman, just a  
25 question of procedure. We're in post-hearing. Can I only talk

1 to staff, or am I allowed to talk to the Commissioners?

2 CHAIRMAN EDGAR: We are having a discussion.

3 COMMISSIONER ARRIAGA: So I can talk to  
4 Commissioners.

5 CHAIRMAN EDGAR: We're in the sunshine, and we're all  
6 glad to hear.

7 COMMISSIONER ARRIAGA: I was trying, Commissioner  
8 Deason, to understand the message that was being sent out  
9 there, and honestly I didn't get it.

10 COMMISSIONER DEASON: The message is be careful what  
11 you ask for, you may get it, just maybe in a different form  
12 than what you thought.

13 COMMISSIONER ARRIAGA: Okay. And I was also reading  
14 into the statements about the originating carrier. I think it  
15 is a longstanding policy all over the United States, an FCC  
16 practice, that it is the originating carrier that pays. I  
17 think I understood your comment to say that there is a  
18 possibility that it is not the originating carrier that pays.  
19 Did I misunderstand you?

20 COMMISSIONER DEASON: No, the originating carrier  
21 would pay, it's just that they would enter into an agreement  
22 where they just agree to exchange each other's traffic in a  
23 transiting mode, and it's on a bill and keep basis. What that  
24 means is that if you originate it, the other party transits it  
25 without an actual flow of dollars. The compensation is that

1 the agreement is that in the reverse direction it works the  
2 same way, and there is not a flow of dollars associated with  
3 that.

4 COMMISSIONER ARRIAGA: Is that a way of protecting  
5 the small LEC?

6 COMMISSIONER DEASON: I believe it is. But this is  
7 something that I think would necessitate -- if the parties  
8 cannot reach an agreement, which I would -- well, from day one,  
9 from, I think, before this hearing began and during the hearing  
10 and then, I think, at closing arguments the Commission took, I  
11 think, three opportunities to encourage the parties to just  
12 reach an agreement on this. Something that everyone can live  
13 with and it doesn't cause undue harm and people can get on with  
14 providing quality service and hopefully make a good profit.

15 For whatever reason, agreements were not reached.  
16 And I think that ultimately, and this is, I guess, the basis of  
17 some of my earlier questions, the basis of staff's  
18 recommendation is that the tariff is not the valid way to go.  
19 I agree, and we have already voted that issue out. And absent  
20 the parties agreeing to something, it's going to come back here  
21 for us to actually arbitrate.

22 And one of the things that I want to explore, if we  
23 reach arbitration -- and maybe this is encouragement for the  
24 parties to reach an agreement and not bring it here to us for  
25 arbitration. One of the things I want to explore is the

1 historical nature of the relationships between small LECs and,  
2 in this case, BellSouth. What the flow of dollars were, what  
3 the agreements were, what the imposition of competition has  
4 done, has there been a shifting of cost to the small LECs as a  
5 result, and if a reasonable basis would be to adopt some type  
6 of a bill and keep approach. I'm not saying it's the right  
7 thing to do, I don't know, but it's just an idea I have.

8 COMMISSIONER ARRIAGA: And it's a good idea.

9 COMMISSIONER DEASON: It's something that I want  
10 further exploration of at the hearing, a hearing that I don't  
11 think anybody wants. We want them to reach an agreement,  
12 something that they can live with. But I think that the more  
13 issues we throw out there for arbitration, maybe that's more  
14 incentive for people to go ahead and reach an agreement up  
15 front.

16 COMMISSIONER ARRIAGA: The message is loud and clear.

17 CHAIRMAN EDGAR: I'll note, I do believe we gave  
18 additional time post-hearing as well on this.

19 Commissioners, further questions or discussion?

20 COMMISSIONER DEASON: I have one follow-up question.

21 CHAIRMAN EDGAR: Commissioner Deason.

22 COMMISSIONER DEASON: The recommendation is that the  
23 originating carrier is responsible for delivering its traffic  
24 to BellSouth in such a manner that it can be identified,  
25 routed, and billed. That makes sense. Is that a real issue

1 with folks as to actually how they meet that requirement, or is  
2 that something that is really not at issue here?

3 MS. LEE: It's not really at issue here. Everyone  
4 seemed to agree on that point.

5 COMMISSIONER DEASON: Madam Chairman, I can move  
6 staff's recommendation for Issue 2.

7 COMMISSIONER CARTER: Second.

8 CHAIRMAN EDGAR: Commissioners, we have a motion and  
9 a second on the staff recommendation.

10 MR. COOKE: Chairman Edgar?

11 CHAIRMAN EDGAR: Mr. Cooke, are you going to raise  
12 Issue 3?

13 MR. COOKE: I'm sorry to interrupt.

14 CHAIRMAN EDGAR: That's okay. Always.

15 MR. COOKE: I just wanted to point out, technically  
16 it's also a vote on Issue 3.

17 COMMISSIONER DEASON: This is one of the issues that  
18 was combined for discussion purposes.

19 MR. COOKE: The way that the recommendation is  
20 drafted, essentially 3 is subsumed into 2. So a vote on 2 will  
21 essentially be a vote on 3, as well.

22 CHAIRMAN EDGAR: So, Commissioner Deason, for your  
23 motion, if we can combine the staff recommendations on Issue 2  
24 and 3 which come to us pretty much together.

25 COMMISSIONER DEASON: Yes. The motion is for Issues

1 2 and 3.

2 CHAIRMAN EDGAR: And Commissioner Carter made a  
3 second on that.

4 Further discussion?

5 Okay. All in favor of the motion on Issues 2 and 3  
6 say aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN EDGAR: Opposed?

9 Show the motion carried.

10 We are on Issue 4.

11 MR. TRUEBLOOD: Good morning, Commissioners. I'm  
12 Frank Trueblood of Commission staff.

13 Issue 4 addresses the network arrangement utilized by  
14 BellSouth to transit traffic from an originating carrier to a  
15 third-party carrier for termination. No parties disputed this  
16 issue, and staff recommends that BellSouth's transit  
17 arrangement is appropriate. I'm available for questions.

18 CHAIRMAN EDGAR: Commissioners, any questions? No.  
19 Is there a motion?

20 COMMISSIONER CARTER: Move staff.

21 COMMISSIONER DEASON: Second.

22 CHAIRMAN EDGAR: A motion and a second for the staff  
23 recommendation on Issue 4.

24 All in favor say aye.

25 (Unanimous affirmative vote.)

1 CHAIRMAN EDGAR: Opposed?

2 Show the motion carried.

3 We are on Issue 5. And I will note for discussion  
4 purpose that Issues 5, 8, and 9 go together.

5 MR. VICKERY: Good morning, Commissioners. Paul  
6 Vickery with Commission Staff.

7 Issues 5, 8, and 9, as the Chairman stated, are  
8 combined. It all deals with answering the question of whether  
9 the Commission should establish the terms and conditions for  
10 BellSouth's transit service in relationship to the originating  
11 and terminating carriers and the small LECs.

12 Staff is recommending that the Commission not set  
13 those terms and conditions and allow them to be reached through  
14 agreements and transit service arrangements. Staff is  
15 available for any questions.

16 CHAIRMAN EDGAR: Commissioner Carter.

17 COMMISSIONER CARTER: I think in the litany of  
18 questions that Commissioner Deason was asking is that we are  
19 saying that the Commission has the authority to do this, to  
20 make these decisions when the parties have, for whatever  
21 reason, chosen not to. Is that correct?

22 MR. VICKERY: Yes, sir. If it's brought in an  
23 arbitration, you know, where they're asking us to make the  
24 decision, where they can't reach the terms and conditions.

25 COMMISSIONER CARTER: Madam Chair.

1           And so your recommendation from staff is that we  
2 should not establish any of the terms or conditions regarding  
3 that, so we shouldn't have any parameters, or just -- we  
4 shouldn't have any parameters at all?

5           MR. VICKERY: Sir, there was some parameters proposed  
6 by the small LECs on Page 36. But these things are normally --

7           COMMISSIONER CARTER: I'm reading your  
8 recommendation, though. I'm reading staff's recommendation.

9           MR. VICKERY: Yes, sir. And staff's recommendation  
10 at Page 36. Which, you know, that is a very sound set of  
11 circumstances for transit traffic. But in my experience, they  
12 are normally already addressed within the interconnection  
13 agreements that I have seen that are on file with the  
14 Commission.

15           COMMISSIONER CARTER: Madam Chair.

16           CHAIRMAN EDGAR: Commissioner Carter.

17           COMMISSIONER CARTER: So, basically, what you're  
18 saying is we should just go, you know, go through the files and  
19 see what we have done before and then come up with some  
20 recommendations from that. Is that what you're suggesting?

21           MR. VICKERY: Well, sir, I'm worried about that if we  
22 set up a set of things like this we are going to end up trying  
23 to make this one size fits all, and we don't want that to occur  
24 because it's individual carrier-to-carrier considerations and  
25 something that they need to negotiate, which is what we are



1 after. Because the economies or the economics of each  
2 situation is carrier-specific, and we don't think we need to  
3 be -- staff doesn't think that we need to be that way.

4 COMMISSIONER CARTER: Great. That is what I was  
5 searching for, your basis for the perspective. And I think  
6 that makes good sense to say we don't have one size that fits  
7 all, because one company is not the same as another, so I do  
8 appreciate that.

9 Thank you, Madam Chair.

10 CHAIRMAN EDGAR: Thank you.

11 Commissioners, further questions?

12 COMMISSIONER DEASON: I can move staff, Madam  
13 Chairman, for Issues 5, 8 and 9.

14 CHAIRMAN EDGAR: Thank you, Commissioner Deason.  
15 There is a motion for Issues 5, 8, and 9.

16 COMMISSIONER CARTER: Second.

17 CHAIRMAN EDGAR: And we have a second. Any  
18 discussion? Seeing none, all in favor of the motion say aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN EDGAR: Opposed? Show the motion carried.

21 That will bring us to Issue 6.

22 MR. TRUEBLOOD: Commissioners, Issue 6 addresses the  
23 setting of a traffic threshold level at which an originating  
24 carrier would be required to switch from an indirect  
25 interconnection arrangement to a direct trunking arrangement

1 with the terminating carrier. Other than the small LECs, all  
2 of the parties oppose the Commission's exception in traffic  
3 threshold level, which would require a carrier to forgo the use  
4 of the transit service provided by BellSouth.

5 Staff recommends that the Commission not establish a  
6 traffic threshold. I'm available for questions.

7 CHAIRMAN EDGAR: Thank you.

8 Commissioners, any questions for our staff on Issue  
9 6?

10 Seeing none, is there a motion?

11 COMMISSIONER CARTER: Move staff.

12 COMMISSIONER DEASON: Second.

13 CHAIRMAN EDGAR: A motion and a second on Issue 6.  
14 All in favor of the motion say aye.

15 (Unanimous affirmative vote.)

16 CHAIRMAN EDGAR: Opposed? Show the motion carried.

17 We are on Issue 7.

18 MR. VICKERY: Again, Commissioners, Paul Vickery with  
19 Commission staff. Issue 7 deals with how should the transit  
20 traffic be delivered to the small LECs's network. Obviously  
21 this issue was mainly addressed by the small LECs and  
22 BellSouth. The small LECs are recommending that we set  
23 required direct trunking for CLECs and CMRS providers, and  
24 staff is recommending that we do not, that the traffic should  
25 be delivered in the most efficient engineering that's available

1 for the parties, and it should be reached between agreement of  
2 the parties. Staff is available for any questions.

3 CHAIRMAN EDGAR: Thank you.

4 Commissioners, any questions on Issue 7?

5 COMMISSIONER CARTER: Move staff.

6 COMMISSIONER DEASON: Second.

7 CHAIRMAN EDGAR: A motion and a second for the staff  
8 recommendation on Issue 7. All in favor of the motion say aye.

9 (Unanimous affirmative vote.)

10 CHAIRMAN EDGAR: Opposed?

11 Show Issue 7 carried. And that will bring us to  
12 Issue 10.

13 MS. LEE: Commissioners, Pat Lee of staff, again.

14 Issue 10 addresses what effect transit service has on  
15 ISP-bound traffic. The staff is recommending that transiting  
16 ISP-bound traffic is no different than transiting voice  
17 traffic. In both cases the intermediary carrier's network is  
18 being used to route or transit the traffic to a third-party  
19 terminating carrier, therefore it has no effect. Staff is  
20 available for questions.

21 CHAIRMAN EDGAR: Thank you, Ms. Lee.

22 Commissioners, any questions on this issue?

23 COMMISSIONER CARTER: Move staff.

24 COMMISSIONER DEASON: Second.

25 CHAIRMAN EDGAR: A motion and a second on Issue 10.

1 All in favor say aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN EDGAR: Opposed?

4 Show the motion carried.

5 And we are on Issue 11.

6 MS. LEE: Commissioners, Pat Lee again.

7 Issue 11 addresses the rate to be paid to BellSouth  
8 when it transits traffic. Staff believes that transit  
9 arrangements are best established through negotiations. For  
10 this reason, staff believes that the Commission should not  
11 mandate a specific transit rate but, instead, conclude that  
12 based on this record before you that an upper bound of  
13 reasonableness of 0.0023 per minute of use is appropriate to  
14 provide the parties a point of reference when negotiating.  
15 Staff is available for questions.

16 CHAIRMAN EDGAR: Commissioner Arriaga.

17 COMMISSIONER ARRIAGA: I want to bring to all of our  
18 attention two experiences that I had the last two years as I  
19 was opting for this position through the nominating process,  
20 and then through -- you know, the whole thing, two years in a  
21 row. The same question came up twice, and nobody, none of the  
22 candidates, including myself, could answer properly. And the  
23 question was what is the appropriate rate of return. We don't  
24 know. I mean, it is a question of studying the costs, its a  
25 question of reviewing the operation, the maintenance, the

1 management. It is a very difficult question.

2 So I now ask myself what is the appropriate rate.

3 And I know you just stated that you are not setting a rate, but  
4 there is a number floating out there, and a number that you  
5 call just and reasonable, which troubles me, because anything  
6 beyond or below that number may not be just and reasonable.

7 So what prompted you to establish a number if you  
8 know that the record states that BellSouth has not provided  
9 costs, and that the FCC is not completely clear as to how this  
10 should be costed or tariffed or rated? That's my concern. A  
11 number, that number that you called just and reasonable.

12 MS. LEE: The .0023 per minute of use was derived  
13 from the interstate access charges, the elemental rates that  
14 comprise transit service from the interstate access. The  
15 reason I chose to use the interstate access was because the FCC  
16 has already deemed these to be just and reasonable. So I felt  
17 safe with developing a composite rate based on these elements  
18 of interstate access rates for this case as being an  
19 appropriate rate to use simply, again, as a point of reference  
20 for the parties to use when negotiating a transit arrangement.

21 COMMISSIONER ARRIAGA: But if we are encouraging  
22 negotiation, we have stated in your arguments here and all  
23 the -- on Issue 11, your analysis, you have been very clear. I  
24 mean, you are telling these parties here, this is what it is.  
25 This is transit, you have to interconnect using the

1 interconnection agreements, this is what the FCC has stated.  
2 Why in case to a negotiation that may be just for me, it may  
3 not be reasonable for Chairman Edgar, so if we are encouraging  
4 negotiations, why put an adjective of just and reasonable to  
5 something that may or may not be?

6 I may have a lot of traffic, and that rate will be  
7 great. But I may not, and I may be willing to say I'm going to  
8 pay .005 so I can leverage that so I can get another goody out  
9 from BellSouth. You see, we are sort of like intervening in  
10 the process of negotiation.

11 MS. LEE: I see your point. Because during --  
12 through negotiations there are give and takes on both sides,  
13 and a party that perhaps does not transit much traffic or  
14 doesn't transit traffic at all might agree to a .006 rate or a  
15 much higher rate in return for getting something else over here  
16 that is more near and dear to their heart, so to speak.  
17 Whereas a party that transits a large volume of traffic may be  
18 negotiating perhaps even a lower rate than the .0023, but at  
19 least that amount.

20 I understand your point, Commissioner, and I think  
21 from my perspective I was compelled to answer the issue. I  
22 mean, this was an issue that BellSouth brought forward.  
23 BellSouth wanted the Commission to establish a rate. And I  
24 don't want to get ahead of ourselves here, but later on in this  
25 recommendation there is a layout of encouraging the parties to

1 go forth and continue negotiating.

2           Hopefully, some of the decisions that you are making  
3 on these policy issues will nudge them in the right direction  
4 and they will be able to negotiate a rate. And as Commissioner  
5 Deason has already pointed out a couple of times, if  
6 negotiations fail, they will come back here under state law and  
7 arbitrate.

8           So as much as it pains me, Issue 11, you could, you  
9 could say, well, we don't want to set a rate at this time. We  
10 don't want to do anything that might stifle negotiations by  
11 throwing some type of even an upper-bound, even a lower-bound  
12 rate out there. So you could -- it's totally within your  
13 discretion, but, yes, you could say we don't want to address  
14 this right now.

15           COMMISSIONER ARRIAGA: I certainly appreciate your  
16 answer. Because what I'm understanding is that this, to staff,  
17 and to the analysis is not a drop-dead issue. It is an issue  
18 that can be discussed, it can be tweaked, or even dropped  
19 completely, and that will not affect what we are trying to do  
20 here.

21           MS. LEE: Correct. It is just that rate was based on  
22 the record that is before you as an appropriate rate based on  
23 the evidence that we have here.

24           COMMISSIONER ARRIAGA: Thank you.

25           CHAIRMAN EDGAR: Commissioner Tew.

1           COMMISSIONER TEW: I have or at least had some of the  
2 same concerns as Commissioner Arriaga, and we talked about this  
3 a good bit in our meeting, and I think at the very least the  
4 recommendation statement or at least the motion should reflect  
5 the true intent of what we're doing here. I think as stated  
6 now it causes some confusion. It does to me read as a ceiling  
7 of .0023. But, you know, I'm open to discussing whether or not  
8 we should put a rate in at all. I think there has been some  
9 benefit that the parties have seen where staff is on the issue  
10 and that that may move negotiations along one way or another.  
11 And I do think they are open to negotiate a rate higher or  
12 lower, depending on how important the transit rate is to them  
13 in comparison to other things that may be more or less  
14 important to them.

15           But I do think at the very minimum that we need to  
16 discuss something that is more consistent with, I think, the  
17 way Ms. Lee described the recommendation on the issue, which is  
18 also consistent with the language on Page 63 near the bottom  
19 right before the Number 4, when it says that staff agrees with  
20 the parties that transit arrangements are best established  
21 through negotiations. For this reason and because of  
22 uncertainty in the record, staff believes the Commission should  
23 not mandate a transit rate but, rather, designate an upper  
24 bound of reasonableness to provide a point of reference for  
25 parties when establishing a transit service arrangement.



1           Again, I don't have a strong feeling for whether  
2 there has to be a rate in the recommendation at all. I think  
3 that staff's analysis here has at least given the parties some  
4 guidance one way or the other.

5           CHAIRMAN EDGAR: Commissioner Carter.

6           COMMISSIONER CARTER: Thank you, Madam Chair. I  
7 think I heard you earlier say that that rate is based upon the  
8 FCC's recommendation, is that what --

9           MS. LEE: It's based on the FCC's interstate access  
10 rates. It's the elements that would comprise transit service  
11 under the interstate access.

12           COMMISSIONER CARTER: Madam Chair. I think that, you  
13 know, we may not say this is a drop-dead number, but I do think  
14 that it gives the parties a basis. We didn't just pull a  
15 number out of the air. They can go above and below and say  
16 this is a number that is used by the FCC in this context, and  
17 they could go higher or lower, but at least it puts the onus on  
18 them that they have got to do something. And if the process is  
19 to drive parties to resolve this rather than bring it to the  
20 Commission, then maybe we should leave a number in there. I'm  
21 just thinking that that number is a good solid number based  
22 upon where you got it from. So it wasn't like staff said,  
23 well, let's see, I'm thinking of a number between zero and  
24 1,000.

25           And I think that we may need to wordsmith it a little

1 bit in terms of whether or not it is appropriate or reasonable,  
2 but certainly I think that gives the parties notice that there  
3 is a number there. And the basis for that number is a number  
4 that all parties involved know that exists.

5 MS. LEE: Well, staff views that the 0.0023 rate is a  
6 just and reasonable rate based on the record evidence you have  
7 before you as viewed on a standalone basis. In other words, if  
8 you were just looking at transit service and a negotiation just  
9 the rate for this alone, then the 0.0023 per minute of use is  
10 an appropriate rate based on the evidence before you. That is  
11 not to say that in the context of a negotiation where you are  
12 negotiating other items, other issues, that there would not be  
13 a give and take and the rate could be higher or lower.

14 CHAIRMAN EDGAR: Commissioner Deason.

15 COMMISSIONER DEASON: Was there not evidence that the  
16 true cost of providing this service is much lower than .0023?  
17 Was there not evidence to that effect?

18 MS. LEE: I can't say there was evidence of the true  
19 cost, because staff and many of the parties asked BellSouth for  
20 the cost information --

21 COMMISSIONER DEASON: We don't have the cost  
22 information, do we?

23 MS. LEE: We do not have the cost information.

24 COMMISSIONER DEASON: And it was asserted by some  
25 that if we had cost information, it would be much lower than

1 .0023.

2 MS. LEE: That is exactly correct. And that was  
3 based on taking the TELRIC element rates the Commission had  
4 already approved back in the last UNE proceeding. If you take  
5 these elements, I believe the rate is .0009. But then if you  
6 add a TIC charge, the transit intermediary charge, then, of  
7 course, that would bump that charge up, and it could be as high  
8 as .0024.

9 COMMISSIONER DEASON: And while we're not obligated  
10 to, if we were to arbitrate this, we are not obligated to  
11 impose TELRIC rates, it is within our discretion to do so, is  
12 it not?

13 MS. SCOTT: That's correct.

14 CHAIRMAN EDGAR: Commissioner Tew.

15 COMMISSIONER TEW: I can try to form a motion, but it  
16 may be helpful to know whether or not we want to include the  
17 rate, if we want to mention the rate or not. I think either  
18 way I can explain it in such a manner to be clear that it's not  
19 a mandatory rate, nor is it a mandatory ceiling, and we can  
20 even term it staff's suggested rate. But I do want some  
21 feedback from you all.

22 CHAIRMAN EDGAR: Commissioner Arriaga.

23 COMMISSIONER ARRIAGA: I think Commissioner Carter  
24 has raised an important point guiding the process. My  
25 heartache here is calling it just and reasonable. Because what

1 is reasonable for me may not be reason for you. And  
2 Commissioner Tew just pointed out we can call it something like  
3 staff's suggested rate for them to negotiate above and beyond,  
4 and we need to include a phrase that says you can go above and  
5 beyond, and don't feel that you are being unjust and  
6 unreasonable, in either case.

7 So, to me, having a number in there, I really don't  
8 like it, but if that is what the majority wants, fine, as long  
9 as we don't call it just and reasonable. That is the problem  
10 that I have with that.

11 MS. LEE: I understand your concern, and certainly  
12 you can say an appropriate rate, or an appropriate rate based  
13 on the evidence before you, or any other adjective you would  
14 like to put with it.

15 CHAIRMAN EDGAR: Commissioner Deason.

16 COMMISSIONER DEASON: If people are kind of looking  
17 for some guidance as to where different Commissioners are, my  
18 preference would be to have no rate. And, once again, I think  
19 it would be educational to have the costs. And if we get to an  
20 arbitration, maybe we are going to have a cost proceeding,  
21 which is another incentive not to bring an arbitration, but to  
22 negotiate it, what is fair and reasonable. I hope I'm sending  
23 another message.

24 CHAIRMAN EDGAR: Commissioner Carter.

25 COMMISSIONER CARTER: Madam Chairman, I think that

1 that is the perspective, what Commissioner Deason has said,  
2 that is the perspective that we have all voiced. And if that  
3 gets us where we need to be then maybe the rate is not so  
4 significant. Because the goal is to have these matters  
5 resolved by the parties that are directly affected. And I  
6 think that he said it very eloquently. I mean, it doesn't give  
7 me heartburn to leave the number out, but we certainly want to  
8 have these matters resolved. But if they resolve, he is  
9 correct, we will come up with a number. So I could defer to  
10 Commissioner Tew with her eloquence in forming a motion.

11 CHAIRMAN EDGAR: Commissioners, I think we have -- I  
12 think there's actually some precedent both ways, in individual  
13 circumstances where we have, in some orders, have put a number  
14 out there based upon evidence and facts that were before us and  
15 said this may be a good starting point or a range, recognizing  
16 individual circumstances and the give and take, as our staff  
17 has pointed out of negotiations. And, you know, as we have  
18 discussed there certainly have been items where this Commission  
19 has said the parties should negotiate it. And as long as we  
20 are recognizing the jurisdiction of this Commission in steps  
21 down the road, should this come book to us in one form or  
22 another, I don't truly feel strongly one way or the other.

23 COMMISSIONER DEASON: Madam Chairman.

24 CHAIRMAN EDGAR: Commissioner Deason.

25 COMMISSIONER DEASON: Another reason I'm

1 uncomfortable with actually stating a rate is I wouldn't want  
2 it -- and I think this kind of alludes to what Commissioner  
3 Arriaga said, that somehow we are putting our stamp of approval  
4 on this and that we are telling people to go reach an  
5 agreement, but that it, in essence, becomes a default rate.  
6 And when they actually negotiate, that is going to be the rate.

7           And I'm not saying that that is a bad rate. That may  
8 be -- if we were to go through a full arbitration, maybe that's  
9 the rate we would come out with, I don't know. But it just  
10 strikes me that it would not be beneficial to the negotiation  
11 process in this situation to put that number out there.

12           And I'm quite serious. To some extent tongue in  
13 cheek, but to another extent quite serious about if we find  
14 ourselves in arbitration, it probably would be helpful to know  
15 what it costs to provide transit service. And I know that that  
16 is a difficult process to go through and ascertain, but if we  
17 are pushed in that direction, maybe that's information we are  
18 going to need. And I would -- based upon information that is  
19 in the record, and it could be proven either right or wrong in  
20 a full hearing, but based upon the information, it has been  
21 asserted that costs are much lower than this number. And if we  
22 were to arbitrate a rate that at least recovers costs, that's  
23 just and reasonable, too. And that may be where we are. So I  
24 just think it is preferable not to include a rate.

25           CHAIRMAN EDGAR: I sense a few rounds of discovery,

1 perhaps, in the future.

2 Commissioner Tew.

3 COMMISSIONER TEW: I think since I've heard from you  
4 all and, for the most part, I think it sounds like everyone is  
5 somewhat indifferent or feels that there shouldn't be a rate, I  
6 think that makes the motion a good bit simpler. On Issue 11, I  
7 would modify staff's recommendation to simply state, or I guess  
8 I would deny staff's recommendation as stated, and make a  
9 motion that our -- the motion should be that parties should  
10 negotiate a rate for transit service and leave it at that.

11 And perhaps I should ask staff if there is something  
12 that we are leaving out by stating that so simply and not going  
13 into Parts A or B, but I believe that consistent with the other  
14 recommendations that that is what we are suggesting here is  
15 that the parties should get together and negotiate a rate for  
16 transit service. If not, there's other avenues available to  
17 them to perhaps bring it back and suffer rounds of discovery.

18 MS. LEE: That is correct, Commissioner. And I think  
19 with the other issues that you are addressing, plus the  
20 implementation issue, which is Issue 18, your suggested  
21 language here for your motion is concise, to the point, and  
22 that's fine.

23 COMMISSIONER CARTER: I will second it.

24 CHAIRMAN EDGAR: Okay. Commissioners, we have a  
25 motion to deny the staff recommendation, and to find in the

1 alternative that the parties should negotiate a rate for  
2 transit service. We have a motion and we have a second.

3 Is there further discussion? Seeing none, all in  
4 favor of the motion say aye.

5 (Unanimous affirmative vote.)

6 CHAIRMAN EDGAR: Opposed? Show the mention carried.

7 And that brings us to Issue 12.

8 MR. HIGGINS: Good morning, Commissioners. Devlin  
9 Higgins with Commission staff. Issues 12 and 13 both deal with  
10 whether any party owes BellSouth for its provision of transit  
11 service. Issue 12 deals with whether any amounts are owed for  
12 the period after the tariff's effective date of February 11th,  
13 2005, and Issue 13 deals with whether any amounts are owed for  
14 the period before the tariff became effective.

15 Staff notes that the testimony on these two issues is  
16 very limited and that all parties appear to be in agreement on  
17 the substance of both issues. Staff recommends that no monies  
18 are owed to BellSouth for its provision of transit service by  
19 the parties both before and after the tariff became effective  
20 February 11th, 2005. Staff is available for any questions.

21 CHAIRMAN EDGAR: Thank you. Commissioners, you have  
22 heard the explanation on Issues 12 and 13. Are there questions  
23 for our staff?

24 COMMISSIONER CARTER: Move staff.

25 COMMISSIONER DEASON: Second.



1 CHAIRMAN EDGAR: We have a motion for the staff  
2 recommendation on Issues 12 and 13 together. Seeing no  
3 question or discussion. All in favor of the motion say aye.

4 (Unanimous affirmative vote).

5 CHAIRMAN EDGAR: Opposed? Show the motion carried.  
6 We are on Issue 14.

7 MS. SCOTT: Commissioners, Kira Scott again on behalf  
8 of Commission staff. Issue 14 is whether the Commission should  
9 take any action to allow the small LECs to recover costs  
10 associated or incurred as a result of BellSouth's transit  
11 service. Staff recommends that the Commission not take any  
12 action in this proceeding because the issue is not ripe for  
13 determination based on the requirements as set forth in  
14 Section 364.051(4). Staff believes that a determination in  
15 this proceeding will be difficult considering that the  
16 Commission does not know what transit rate will be established  
17 between the small LECs and BellSouth. I'm available for your  
18 questions.

19 CHAIRMAN EDGAR: Thank you, Ms. Scott.

20 Commissioners, any question?

21 Commissioner Arriaga.

22 COMMISSIONER ARRIAGA: Ms. Scott, I just wanted to  
23 make sure that we are not contesting that the small LECs have  
24 the right to establish some kind of damage if it was caused?

25 MS. SCOTT: That is correct, Commissioner. We are

1 not precluding them from coming back before this Commission and  
2 making a claim that a substantial change in circumstances has  
3 occurred under the statutory section that I mentioned.

4 COMMISSIONER ARRIAGA: All right, thank you.

5 CHAIRMAN EDGAR: Commissioners, is there a motion on  
6 Issue 14?

7 COMMISSIONER CARTER: Move staff.

8 COMMISSIONER DEASON: Second.

9 CHAIRMAN EDGAR: All in favor of the motion say aye.

10 (Unanimous affirmative vote.)

11 CHAIRMAN EDGAR: Opposed? Show the motion carried.

12 We are on Issue 15.

13 MR. BARRETT: Commissioner, Michael Barrett of  
14 Commission staff.

15 Issue 15 addresses whether BellSouth should be  
16 required to issue an invoice for transit services. BellSouth's  
17 current practice incorporates charges for transit service into  
18 existing carrier settlements, and staff recommends that this  
19 practice is appropriate.

20 CHAIRMAN EDGAR: Commissioners, any questions for our  
21 staff on Issue 15?

22 COMMISSIONER CARTER: Move staff.

23 COMMISSIONER DEASON: Second.

24 CHAIRMAN EDGAR: All in favor of the motion say aye.

25 (Unanimous affirmative vote.)

1 CHAIRMAN EDGAR: Opposed? Show the motion carried.

2 We are on Issue 16.

3 MR. BARRETT: Michael Barrett again. Issue 16  
4 addresses carrier call records, and when Bell transits a call  
5 it delivers to the terminating carrier, the call record that  
6 originated with the first carrier, the originating carrier,  
7 although the terminating carriers are advocating that some call  
8 records should be more detailed, the critical piece in this  
9 issue is that there is some variability in the records that  
10 originate from the originating carrier. Staff recommends that  
11 BellSouth should continue to provide to terminating carriers as  
12 much information as it has available to it.

13 CHAIRMAN EDGAR: Thank you.

14 Commissioners, any questions? Seeing none, is there  
15 a motion?

16 COMMISSIONER CARTER: Move staff.

17 COMMISSIONER DEASON: Second.

18 CHAIRMAN EDGAR: All in favor of the motion for Issue  
19 16 say aye.

20 (Unanimous affirmative vote.)

21 CHAIRMAN EDGAR: Opposed?

22 Show the motion carried.

23 CHAIRMAN EDGAR: We are on Issue 17.

24 MR. BARRETT: Commissioners, Issue 17 addresses  
25 billing disputes for transit services. And staff's

1 recommendation looks at how the service is provided, whether it  
2 is pursuant to the tariff or pursuant to an interconnection  
3 agreement. And staff believes that if it's pursuant to the  
4 tariff there are terms in the tariff and the term are not  
5 unreasonable. And if the dispute was pursuant to the  
6 interconnection agreement, presumably the interconnection  
7 agreement would have terms, as well.

8 CHAIRMAN EDGAR: Commissioner Deason.

9 COMMISSIONER DEASON: I have a question. If we are  
10 invalidating the tariff, does that mean that we still can  
11 utilize the dispute resolution provisions within the tariff as  
12 being valid during the period of time, or is the invalidation  
13 of the tariff just prospectively, so therefore we can go to the  
14 tariff to utilize it in resolving billing disputes?

15 MS. SCOTT: The invalidity of the tariff is on a  
16 prospective basis. However, staff looks at if a dispute arose  
17 during the time frame in which the tariff was in effect, staff  
18 looked at the dispute language and found it to be reasonable,  
19 so it could apply in a case where a dispute arose during that  
20 time frame.

21 Does that answer your question, Commissioner?

22 COMMISSIONER DEASON: So you did make an independent  
23 review of the dispute resolution language? In this case, I  
24 guess it is pertaining billing disputes and that it is a  
25 reasonable process?

1 MS. SCOTT: That's correct.

2 CHAIRMAN EDGAR: Commissioners, any further  
3 questions? Seeing none, is there --

4 COMMISSIONER CARTER: Move staff.

5 COMMISSIONER DEASON: Second.

6 CHAIRMAN EDGAR: Okay. We have a motion and a second  
7 on Issue 17. All in favor say aye.

8 (Unanimous affirmative vote.)

9 CHAIRMAN EDGAR: Opposed? Show the motion carried.  
10 We are on Issue 18.

11 Ms. Scott.

12 MS. SCOTT: Commissioners, Kira Scott again.

13 Issue 18 is the close docket issue, and staff is  
14 recommending that based on your vote in Issue 1, that the  
15 dockets remain open to address about three implementation  
16 matters. The first one being cancellation of the tariff.  
17 Since the Commission voted in Issue 1 that the tariff is  
18 invalid, staff is recommending that the tariff be canceled on  
19 the 71st day after the final order is issued.

20 Also, because of the tariff being canceled, there  
21 needs to be some time for the parties to establish some sort of  
22 transit arrangement, so staff is recommending that the parties  
23 do that within 70 days of the issuance of the final order.

24 There is also the matter of refunds. Staff is  
25 recommending that BellSouth be required to issue partial

1 refunds, including interest, to those parties that paid under  
2 the tariff beginning February 11th, 2005, which is the  
3 effective date of the tariff and ending on the date that the  
4 tariff is canceled.

5 The Commission, though, I will note, has wide  
6 discretion in deciding which refund approach is fair in this  
7 instance. I'm available for your questions.

8 CHAIRMAN EDGAR: Thank you, Ms. Scott.

9 Commissioner Arriaga.

10 COMMISSIONER ARRIAGA: Let's place ourselves in the  
11 71st day. And you have heard as to these proceedings  
12 encouraging, recommending, sending messages, very strong and  
13 clear messages to get together, come to an agreement. But we  
14 are here on day 71st, no agreement has arrived. The question  
15 is, first, can BellSouth then go ahead and terminate the  
16 transit traffic?

17 MS. SCOTT: Yes, that is an option available to them.

18 COMMISSIONER ARRIAGA: And wouldn't it be the  
19 preference, because we don't want to have all kinds of  
20 customers being cut off, if you do not reach an agreement by  
21 day 71st to be consistent with the messages we are sending  
22 here, come back here and arbitrate. Can we mandate  
23 arbitration? That's the question.

24 MS. SCOTT: Well, first of all, I do want to make it  
25 clear that the parties, if they find themselves on that 71st

1 day not having an arrangement in place, they do have the option  
2 of asking for an extension if they need more time to negotiate.  
3 That is an option available to them, as well.

4 COMMISSIONER ARRIAGA: Can we mandate arbitration?  
5 Is that legally possible, is it within our purview?

6 MS. SCOTT: It is not a mandate of arbitration. They  
7 would have to -- it would trigger them to act to bring it back  
8 before us so that we can arbitrate their individual agreements.  
9 So if they failed to negotiate, they can bring it before this  
10 body again.

11 COMMISSIONER ARRIAGA: But in the meantime, BellSouth  
12 has the potential of cutting off transit traffic. I don't want  
13 to put the consumers in jeopardy. I don't think they will do  
14 that. I don't think they will do that, but there is a  
15 potential.

16 MS. SCOTT: It is a valid concern, Commissioner. And  
17 in the transcript BellSouth Witness McCallen even states that  
18 they don't want to do that. It's just there's nothing  
19 precluding them from doing it. That's the issue. It is an  
20 option available to them, but staff feels strongly that based  
21 on your vote here today, the parties know where they stand.  
22 And, therefore, they have much more incentive to come up with  
23 some sort of arrangement so that we don't have to go down that  
24 road hopefully of dealing with the blocking issue.

25 COMMISSIONER ARRIAGA: And I understand, and I

1 repeat, I don't think BellSouth will do something. I don't  
2 think any company would do something like that, but that is not  
3 the point. The point is that it is our obligation to make sure  
4 that nobody is precluded from doing -- you know, nobody has the  
5 potential possibility of doing something like that.

6 We should not leave the door open. That's what I'm  
7 trying to say. Is there a way we can close the loop so we have  
8 assumed our responsibility of protecting a potential harm to  
9 the consumer?

10 MS. SCOTT: The other options besides going down the  
11 road of blocking would be for the parties that don't have a  
12 transit arrangement with BellSouth to either directly  
13 interconnect or find another intermediary provider or transit  
14 provider. Those are other options available to them, as well.  
15 But I understand your concern regarding blocking. And what I  
16 would anticipate is that if that were to occur, let's say it  
17 would occur, I would see that whatever company was blocked  
18 would be coming up before this Commission with some sort of  
19 emergency petition of some sort.

20 COMMISSIONER ARRIAGA: I'm going to continue, please.  
21 But you know that an emergency petition in this Commission will  
22 take 45, 30 days, and meanwhile the customers are cut off.

23 MS. SCOTT: I think this body would act quickly in an  
24 instance where they would be blocked.

25 COMMISSIONER ARRIAGA: Even if you cut them off for



1 two days, three days, we would be swamped by consumer  
2 complaints, and we will not have done our job of making sure  
3 that that did not happen. I don't know if there is a way of  
4 doing it, I am just trying to -- this is the worst-case  
5 scenario, day 71st. It could happen, I don't know.

6 CHAIRMAN EDGAR: Commissioner Deason.

7 COMMISSIONER DEASON: Do we have the ability to order  
8 BellSouth not to block transit traffic until after the case --  
9 if there is an arbitration filed, not until afterwards the  
10 arbitration, during this period of time, the 70 days, and then  
11 during the time if there is an arbitration that we can actually  
12 order them not -- and I agree with the Commissioner, I think  
13 that it is not in BellSouth's interest to block this traffic.  
14 And I don't think that they would, but do we have the ability  
15 just to make sure, put it in our order to prevent the blocking  
16 of transit traffic during this period of time?

17 MS. SCOTT: I certainly think that you could do that.  
18 I do want to make clear, though, based on what Commissioner  
19 Arriaga was asking me, we actually -- staff is saying that the  
20 Commission has the ability or the authority to mandate  
21 arbitration and require them come back. So that could be a way  
22 of dealing with it, by stating that rather than going down that  
23 road, rather than blocking being an option, that the parties  
24 would be required to come back here and arbitrate. That way we  
25 could avoid that situation.

1           COMMISSIONER DEASON: I think we're saying the same  
2 thing. I think so.

3           MS. SCOTT: I think we are, as well.

4           CHAIRMAN EDGAR: Commissioner Carter.

5           COMMISSIONER CARTER: Along the same lines as that,  
6 on the 71st day, based upon what we have done so far, they  
7 would have no way to charge them if they didn't use the transit  
8 traffic, right, because there is no tariff anymore, correct?

9           MS. SCOTT: Right. After the 71st day, there's no  
10 mechanism in place for BellSouth --

11          COMMISSIONER CARTER: So there is no basis. I mean,  
12 they couldn't even charge them because there is no basis to  
13 charge them for anything because we have done away with the  
14 tariff. So the only way they could charge them would be  
15 through the transit, so it would not make -- I mean, there is  
16 no way they could charge them, correct?

17          MS. SCOTT: That's correct.

18          COMMISSIONER CARTER: Do you see what I'm saying  
19 here?

20          MS. SCOTT: That's correct. If they don't have an  
21 arrangement and there is no tariff in place, we are  
22 invalidating the tariff.

23          COMMISSIONER CARTER: If they want to give away free  
24 service, then that would be fine, but they won't have a basis,  
25 based upon what we have done today, to charge.

1 MS. SCOTT: That's right. That's correct.

2 COMMISSIONER CARTER: And like you said, Commissioner  
3 Deason, and like we have all said, all five of us have said  
4 since the beginning of this deliberation here is that we're  
5 sending a message, and the message is that the only way you are  
6 going to collect is through the transit, there is no tariff  
7 anymore. So in order to be able to stay in business and to  
8 charge for this process you can only do it through the transit.  
9 And, I mean, however more specific we need to get, please let  
10 us know so we can do that.

11 But I'm saying the way I understand it is by virtue  
12 of what we have done earlier since there is no tariff anymore.  
13 Now the only way you can do it is go through the transit charge  
14 so they are going to have to charge for the transit, otherwise  
15 they can't collect at all, is that correct?

16 MS. SCOTT: That's correct.

17 COMMISSIONER CARTER: Thank you, Madam Chairman.

18 CHAIRMAN EDGAR: Commissioner Tew.

19 COMMISSIONER DEASON: I'm trying to be creative here,  
20 and I am thinking of the process in which we deal with customer  
21 billing disputes. And once they file a complaint or talk to  
22 someone here at the Commission, automatically we don't allow  
23 the companies to cut off service once that's started until the  
24 dispute is resolved one way or another. Is there a way that  
25 once a complaint would be filed, if BellSouth were to engage in

1 blocking, and once an emergency petition or whatever you would  
2 want to call it would be filed by the interpreted carrier, that  
3 we could say that there would be no blocking at that point.  
4 That as soon as they came in that that would be automatic, that  
5 they would have to continue service, but then the dispute would  
6 be based on the period they came in until it was resolved.

7 MS. SCOTT: That's certainly a possibility.

8 COMMISSIONER ARRIAGA: Commissioner Tew, what your  
9 stating right now still offers the possibility of blocking.  
10 What I'm trying to say is let's not even think about a  
11 possibility of blocking. It doesn't exist. The companies are  
12 not going to do it. But we have the obligation to clearly  
13 state that it is not allowed by this Commission to do blocking.  
14 We don't have to wait for a consumer to complain, we need to  
15 prevent that possibility. It's BellSouth today, it's XYZ  
16 tomorrow. We don't know. What I'm trying to say is let's tell  
17 them if on day 71st, if they did not come to an agreement, do  
18 not block, but come back right here immediately for an  
19 arbitration process right away. And then we will go into all  
20 the things that Commissioner Deason has mentioned. I want to  
21 see your cost, and I want to see this, and blah, blah, blah,  
22 and we really go through the whole process. That's basically  
23 what I'm trying to say.

24 CHAIRMAN EDGAR: Commissioner Tew.

25 COMMISSIONER TEW: I just thought of something. Does

1 BellSouth have the ability to file for an arbitration? If we  
2 reach the 71st day and they are faced with whether or not to  
3 block, and I think we have all agreed they probably do not want  
4 to do that and put us in that position, but do they have the  
5 ability to file an arbitration to bring that matter to us and  
6 us decide?

7 MS. SCOTT: Yes, they do.

8 CHAIRMAN EDGAR: Commissioners, further questions?  
9 Commissioner Carter.

10 COMMISSIONER CARTER: I don't know how to wordsmith  
11 it to what we are saying, maybe legal can help us out, but I  
12 think that we are all saying pretty much the same thing. And I  
13 think we want to send that message loud and clear that we are  
14 not going to tolerate unfair practices against consumers. And  
15 based upon what we have already decided in this case, this  
16 docket so far. I mean, I don't know the language, maybe legal  
17 can help us out with that, but that is really what we are  
18 really -- I mean, the sense of the Commission.

19 MS. SCOTT: Staff could make it clear in the order  
20 that on the 71st day if there is no transit arrangement that  
21 the parties come back before this Commission for arbitration.

22 COMMISSIONER CARTER: Before termination of any  
23 service.

24 MR. COOKE: Commissioners, one thing we did, I think,  
25 previously was ask for a status report, and I think it might be

1 appropriate to do so in this case, as well, earlier than the  
2 71st day so that we, as a staff, can have an idea of where  
3 things stand. It sounds like the Commission is seeking to have  
4 assurance that there would not be blocking. And to that  
5 extent, it may be necessary to try to craft the order either to  
6 require the parties to come back and arbitrate, or to go so far  
7 as to say blocking can't occur on that 71st day. I mean, our  
8 authority -- I just want to be clear, I'm not sure our  
9 authority necessarily allows us to go that far, but I wouldn't  
10 be uncomfortable with doing that.

11 MR. WIGGINS: Madam Chairman.

12 CHAIRMAN EDGAR: Mr. Wiggins.

13 MR. WIGGINS: I agree with what the General Counsel  
14 said, and also Ms. Scott's presentation. There is something  
15 she has been clear about, but I would like to make sure that it  
16 doesn't get smudged over with the word arbitration. We're so  
17 used to using arbitration under the federal act that when we  
18 say they can come in and arbitrate, there may be a tendency to  
19 think that that means they can bring a petition to arbitrate  
20 under the federal act. What we are talking about is proceeding  
21 under 364.16(1), Florida Statutes, and that is what it would  
22 be. And we have the ability on our own to bring them in by the  
23 scruff of the neck and make them do it, or they can come and  
24 file a petition. And we may be in arbitration, but it's not a  
25 federal arbitration. Of course, it would have to be

1 consistent, the results would have to be consistent with 252  
2 and 251, but it's under our authority, not under federal  
3 authority.

4 CHAIRMAN EDGAR: Thank you.

5 Commissioners, further discussion?

6 Commissioner Deason.

7 COMMISSIONER DEASON: We do or do not have the  
8 authority to just put words in the order saying thou shalt not  
9 block transit traffic during the 71 days or during an  
10 arbitration?

11 MS. SCOTT: That's a very good question.

12 COMMISSIONER DEASON: Why don't we do it. And if we  
13 can't do it, let them take it to the Supreme Court. That would  
14 be really good for BellSouth to take us to the Supreme Court  
15 saying that we don't have the authority to tell them not to  
16 block traffic during this period of time. Let's just assert  
17 our authority.

18 CHAIRMAN EDGAR: Was that a motion?

19 COMMISSIONER DEASON: Can't we just assert our  
20 authority?

21 MR. COOKE: I think essentially under 364.16 we can  
22 make an argument that they are required to interconnect. And  
23 whether that goes so far as to tell them under any circumstance  
24 they can't block may be open to question. But I'm not  
25 uncomfortable with issuing an order that has that in it, and it

1 is obviously subject to whatever appeal rights exist.

2 COMMISSIONER DEASON: I'm at the point, Madam  
3 Chairman, we just need to go for it.

4 COMMISSIONER CARTER: Let's do it.

5 CHAIRMAN EDGAR: Commissioner Deason, how about  
6 you --

7 MS. SCOTT: I do want to throw one thing out there.  
8 There is also a way to get around this by saying that if the  
9 parties aren't able to reach an arrangement, for the tariff to  
10 actually stay in place until they figure out a way to come up  
11 with some arrangement or bring it back to the Commission.

12 COMMISSIONER CARTER: That is inconsistent with what  
13 we have done.

14 CHAIRMAN EDGAR: We are all trying to be creative,  
15 and so we always take ideas at any point, but I think we are a  
16 little further down the road than that.

17 COMMISSIONER ARRIAGA: Madam Chair.

18 CHAIRMAN EDGAR: Commissioner Arriaga.

19 COMMISSIONER ARRIAGA: No, no. I was just going to  
20 say I love the Eleventh Commandment, thou shalt not block.

21 CHAIRMAN EDGAR: You did lose me there for just a  
22 second. Okay. I thought we were all being nice to each other.

23 Commissioner Deason, why don't you state the motion  
24 that you may have already stated, but for clarification, and  
25 let's see if we can all wrap it into one.



1           COMMISSIONER DEASON: Issue 18 encompasses much more  
2 than just the question of blocking.

3           CHAIRMAN EDGAR: And we do need to perhaps discuss  
4 the --

5           COMMISSIONER DEASON: Would you like a more  
6 comprehensive motion?

7           CHAIRMAN EDGAR: Thank you. Would we like to have  
8 some discussion about the refund issue that is contained within  
9 Issue 18?

10          COMMISSIONER DEASON: Yes, and the question of the 70  
11 days.

12          CHAIRMAN EDGAR: Lets start with the refund.

13          COMMISSIONER DEASON: Partial refund. When you say  
14 partial, it is the difference between what was billed under the  
15 tariff and what was actually -- be determined on a going  
16 forward basis to be the rate if we go to an arbitration, or if  
17 they just negotiate a settlement? That is what you mean by  
18 partial, correct?

19          MS. SCOTT: That's correct.

20          COMMISSIONER DEASON: And it would apply to both  
21 periods of time that you have indicated in your recommendation,  
22 that being the time that the tariff was in effect and then the  
23 time that from that point forward that the Commission decided  
24 not to reject the tariff, but to let it go into effect?

25          MS. SCOTT: That's correct.

1           COMMISSIONER DEASON: That answers my question on the  
2 partial refund. And then the 70 days, I don't have any basis  
3 to say that's not a reasonable period of time. What was  
4 staff's basis for selecting 70 days?

5           MS. SCOTT: It's actually 90 days. We were factoring  
6 in the 20 days, the full 20 days that it would take for the  
7 final order to be issued, and then 70 days thereafter. So it  
8 is actually 90 days. And we are also taking into consideration  
9 times for motion for reconsideration, motions for  
10 reconsideration possibly, or motions for clarification.

11           COMMISSIONER DEASON: So the 70 days would begin at  
12 what point?

13           MS. SCOTT: The date that the order is issued. And I  
14 was thinking that the order might not be issued until the 20th  
15 day from this vote.

16           CHAIRMAN EDGAR: I'm sorry, Commissioner Deason, I  
17 didn't mean to -- so basically we are saying 90 days from  
18 today?

19           MS. SCOTT: It is basically 90 days. We just wanted  
20 to give the parties a point of reference, and the issuance of  
21 the order would that be point of reference. Does that make  
22 sense?

23           CHAIRMAN EDGAR: Commissioner Deason, did you have  
24 further?

25           COMMISSIONER DEASON: No. That's fine.

1 CHAIRMAN EDGAR: Okay. We have had some discussion  
2 about the time period, we have had some discussion about the  
3 potential for blocking, and we have had some discussion about  
4 the refund. Are there further questions or discussion on any  
5 of the items that are contained within Issue 18?

6 Commissioner Deason.

7 COMMISSIONER DEASON: I will attempt a motion, and I  
8 would certainly welcome any clarification from fellow  
9 Commissioners. I believe we're in agreement with staff's  
10 recommendation on Issue 18 with the inclusion of language in  
11 the order which would prohibit the blocking of transit traffic  
12 during the 70 days or 90 days, whatever period of time it is,  
13 and during the processing of any arbitration which may be filed  
14 if a negotiated settlement could not be reached.

15 COMMISSIONER CARTER: Second.

16 CHAIRMAN EDGAR: Commissioners, we have a motion and  
17 a second that encompasses the different pieces that are before  
18 us within Issue 18. Is there further discussion?

19 Commissioner Arriaga.

20 COMMISSIONER ARRIAGA: A question of the issue that  
21 was raised by Mr. Wiggins. Is this state-mandated --

22 COMMISSIONER DEASON: When I used the term  
23 arbitration, it is consistent with the clarification by Mr.  
24 Wiggins. It's under Florida Statute, but it has to be  
25 consistent with the federal arbitration requirements, but we

1 would be acting under specific authority within Florida  
2 Statutes.

3 CHAIRMAN EDGAR: Commissioner Tew.

4 COMMISSIONER TEW: And one more. And that allows  
5 BellSouth also the opportunity to file an arbitration, as we're  
6 calling it here.

7 MS. SCOTT: That's correct.

8 CHAIRMAN EDGAR: Okay. Commissioners, we have had a  
9 motion and we have had a second. We have had the opportunity  
10 for discussion. All in favor of the motion say aye.

11 (Unanimous affirmative vote.)

12 CHAIRMAN EDGAR: Opposed?

13 Show the motion carried.

14 And that concludes our discussion on Item 4. Thank  
15 you all. Thank you to staff for all of your work on this item.  
16 And, Commissioners, I would as I said before we began this one,  
17 like to go ahead and take up Item 6, and then we will plan to  
18 break for lunch after that.

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

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

7

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

10

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

13

DATED THIS 5th day of September, 2006.

14



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JANE FAUROT, RPR

16

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