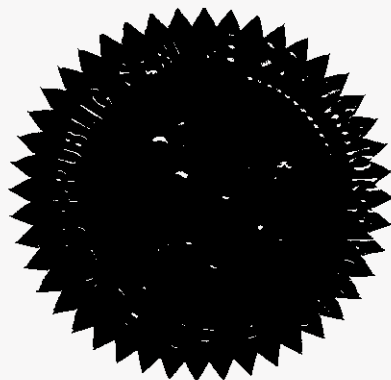


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090461-TL

PETITION FOR MODIFICATION OF
SERVICE GUARANTEE PROGRAM BY
BELLSOUTH TELECOMMUNICATIONS,
INC. D/B/A AT&T FLORIDA.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: COMMISSIONER NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT
COMMISSIONER BEN A. "STEVE" STEVENS III

DATE: Tuesday, January 26, 2010

PLACE: Betty Easley Conference Center
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CHAIRMAN ARGENZIANO: Let's move to Item

3.

MS. TAN: Good morning, Commissioners.

Lee Eng Tan on behalf of Commission staff.

Item 3 is staff's recommendation in Docket Number 090461-TL on AT&T's petition for modification of its Service Guarantee Program referred to as an SGP.

Although AT&T's current SGP applies to all primary residential customers and single-line business customers, the 2009 law and rule revisions make service quality applicable only to basic local service customers. AT&T is requesting that its current SGP be amended to be consistent with those changes.

Issue 1 addresses whether AT&T's customers who prescribe to a long distance carrier should qualify for AT&T's revised SGP. Although the statutory definition of basic service includes access to 911, relay, directory assistance, long distance carriers and operator services, AT&T believes that the use of these services render a customer a nonbasic customer.

For the purposes of its SGP, AT&T has

1 stated that despite its position that these are
2 nonbasic services, customers who use these services
3 will qualify for its SGP with one notable exception.
4 Customers who choose to access long distance
5 services through presubscribed carriers will not
6 qualify for the SGP. Staff believes that because
7 access to a presubscribed carrier is included in the
8 statutory definition of basic service, customers who
9 access long distance services through a
10 presubscribed carrier should qualify for AT&T's SGP.

11 Accordingly, staff is recommending that
12 the approval of AT&T's Service Guarantee Program be
13 contingent on a finding in Issue 1 that customers
14 who access long distance services through
15 presubscribed carriers qualify for AT&T's Service
16 Guarantee Program.

17 Staff is available to answer any
18 questions, and Tracy Hatch and Maryrose Sirianni are
19 available on behalf of AT&T. Thank you.

20 **CHAIRMAN ARGENZIANO:** Thank you.

21 The Company.

22 **MR. HATCH:** Good morning, Commissioners.

23 Tracy Hatch appearing on behalf of AT&T.

24 I guess to start, it's important to note,
25 kind of, the background about how we got here.

1 Essentially, the beginning point is really the
2 legislative changes that took place last legislative
3 session. As you know, and as staff pointed out, the
4 definition of basic was left essentially intact, but
5 the effect of the nonbasic definition was expanded
6 to exclude from basic consideration a whole host of
7 essentially combinations of services that previously
8 at least was an open question and wasn't entirely
9 clear.

10 The Legislature essentially took that step
11 in its on-going activities to further the transition
12 from a monopoly regulatory environment to a fully
13 competitive environment. This is just one more step
14 in that process, and that process has been on-going
15 for at least a decade and longer.

16 The key part to the legislative activities
17 were that in creating or limiting basic, the basic
18 definition was limited to essentially single-line
19 flat rate residential service with no bells and
20 whistles, no features, no combinations of other
21 nonregulated services, or nonbasic services. And
22 the point to all of this was that the Legislature
23 still felt it was essential to maintain a safety
24 link for those that truly needed it. But once you
25 embark into the competitive world and start buying

1 things other than pure basic service, then you have
2 embarked into the competitive world and you no
3 longer need the protections of that safety link.

4 The real focus in the staff's
5 recommendation is on presubscription, and they get
6 to presubscription as part of basic service through
7 the access to language that still resides in the
8 definition of basic. But I think staff
9 fundamentally misconstrues what access to really
10 means. If you go back in time, prior to 1995 when
11 this definition was created, and even further back
12 if you go all the way back to divestiture, if you
13 are old enough to remember that, in a historic
14 monopoly environment, long distance service was
15 essentially a monopoly service. Long distance was
16 the first service that actually became competitive
17 and regulatory entities essentially started to deal
18 with competitive issues in what was a monopoly
19 market.

20 The access to all available local
21 interexchange carriers stems from prior to 1995 when
22 on an intraLATA toll basis the ILEC essentially got
23 all the intraLATA toll carriers. The Commission in
24 1992 went through a proceeding where it actually
25 introduced intraLATA presubscription. That was the

1 first time that a carrier was able to presubscribe
2 to a long distance service. Prior to that, they
3 were required essentially to go to the ILEC serving
4 them at the time.

5 Now, the access to language is very
6 important. Staff sort of hints at this, but they
7 don't really flesh it out. Access to in the
8 language that embodied -- that was put in there in
9 1995 is to preserve the Commission's prior policy
10 that a customer had the ability to reach any long
11 distance carrier. It was not confined to one or a
12 carrier chosen by the company, the ILEC. So that
13 access to preserved the ability of the customer to
14 reach a long distance carrier of its choice.

15 Now, you could do this by a variety of
16 ways. One way is you can dial an 800 number, and
17 these are all currently still available and a lots
18 of people do. You can dial -- I don't think there
19 is much 950 access anymore, but it was old Feature
20 Group B access, but it was a dialing code that got
21 you to your chosen long distance carrier. You can
22 dial what now is probably the most prevalent access
23 code, which is 1010XXX, and each long distance
24 carrier has its own three-digit code. You dial 1010
25 and in AT&T's case it was 288. And that is an

1 access code. None of those involve presubscription.

2 Presubscription is another method of
3 facilitating access, but once you engage in
4 presubscription, you have passed beyond pure access
5 to. Essentially what you have done is selected and
6 subscribed to the long distance service of a
7 carrier, and in so doing you have bought a service
8 that is not regulated, or is a nonbasic service.
9 Pick your poison and I'll get to that in a moment.
10 And so, essentially, staff is misconstruing
11 presubscription as access, and the two are
12 fundamentally different.

13 With your permission, Maryrose will hand
14 out some language that we'll be discussing through
15 various parts of this.

16 **CHAIRMAN ARGENZIANO:** Sorry, can staff
17 grab that from Maryrose? Thank you. And we'll need
18 one for our court reporter, too. Thank you.

19 **MR. HATCH:** Now, the access definition
20 that you see there is taken from Newton's Telecom
21 Dictionary. Newton's is kind of like the Bible for
22 DeltaCom terminology, if you will. That's where
23 everybody goes to figure out what all the acronyms
24 mean. And if you go to access in Newton's it says a
25 series of digits or characters which must be dialed,

1 typed, or entered in some way to get the use of
2 something. That something could be a PBX, TTS
3 telephone, long distance carrier, electronic mail
4 service, lots of ways to get to something. But
5 you'll note that in the definition of access it
6 doesn't include presubscription as access in and of
7 itself.

8 Access is simply the ability, customer's
9 choice, to dial to any carrier it wishes. My point
10 is that going beyond -- once you have -- access is
11 fine, and I don't disagree that access is part of
12 basic. The real point is that presubscription is
13 the next step. Presubscription is the act of
14 actually engaging in an economic relationship to
15 purchase long distance service from a long distance
16 carrier, and thereby you are combining your long
17 distance service with your basic service, which in
18 our view takes you out of the purview of a basic
19 customer for service purposes under the new
20 statutory designations.

21 Now, the staff talks about legislative
22 intent in its recommendation. Essentially, the bulk
23 of their legislative intent analysis rests on a
24 simple statement that says there were no discussions
25 in the legislative process leading to the enactment

1 of the changes to 364 where presubscription was
2 specifically discussed. I would submit to you that
3 simply because something wasn't specifically
4 discussed does not mean that the Legislature didn't
5 understand it, was not aware of it, and agree to it
6 or didn't disagree to it.

7 Lots and lots of bills move through the
8 process with no substantive comment. That does not
9 mean that the Legislature didn't intend the bill's
10 substantive effects. They were aware of it, they
11 just let it go.

12 Now, what the staff didn't mention in
13 their recommendation is the breadth of the
14 definitional change to nonbasic and its effects on
15 nonbasic. The Legislature was aware of that. It's
16 very clear that they were aware of that because that
17 was discussed.

18 Now, in terms of how the legislation moved
19 through the process, and because they were aware of
20 that in the House, there were efforts in the House
21 to limit the scope of the definitional change to
22 nonbasic. Those efforts ended up in the House
23 version of the bill. That bill ultimately was not
24 passed when the House took up the Senate bill with a
25 much broader provision and passed it out. So if you

1 want any gauge of legislative intent, they were
2 clearly aware of the breadth of the definitional
3 changes and they passed out the Senate version,
4 which was the broader more extensive language. And
5 so I don't think that you can make the claim that
6 the Legislature didn't intend that presubscription
7 be still reserved for basic treatment.

8 The staff goes into essentially the next
9 step, which is whether the combination of basic
10 services either with a nonbasic or a nonregulated
11 service. And they go to great lengths to
12 essentially argue that interLATA is not a nonbasic
13 service and it's not an unregulated service,
14 interLATA toll. One thing that I guess I should --
15 a minor diversion here for a moment. There's three
16 pieces to long distance service. There's intraLATA,
17 which is essentially short-range shorthaul toll,
18 otherwise known as local toll. Local toll is kind
19 of an oxymoron, because it's either toll or it's
20 local, it can't be both.

21 But setting that aside, The second piece
22 is interLATA toll. InterLATA toll itself is divided
23 into two pieces. There's an intrastate component
24 and there is an interstate component. When you
25 prescribe to interLATA service, you get both

1 interstate and intrastate. You can't pick and
2 choose that part. You can pick and choose interLATA
3 carriers versus intraLATA carriers. But in any
4 event, any entity, ILEC or CLEC plus an IXC can
5 provide all three forms. The staff analysis seems
6 to be geared that an IXC can only -- only IXCs
7 provide interLATA, and that's just simply incorrect.

8 InterLATA carrier, or IXCs as the staff
9 points out are subject to limited regulatory
10 oversight. There is no question about that. There
11 are certain things, certain behaviors that they
12 either must do or are prohibited from doing. But
13 simply because an interexchange carrier as an entity
14 is subject to certain limited regulation, that does
15 not mean that the long distance service that it
16 provides is subject to regulation. InterLATA long
17 distance is not regulated by this Commission. The
18 Commission has no authority to set the rates, the
19 terms, or the conditions of service. It can't tell
20 us we must provide service, it can't tell us we
21 can't provide service or tell us the kinds of
22 services we can't provide or must provide.

23 There's simply no authority in 364 to
24 regulate long distance service. And this kind of
25 makes sense, because simply -- for example, the

1 ILECs are subject to much more extensive regulation
2 than IXC. But ILECs, AT&T, for example, provides
3 basic services regulated, nonbasic services
4 regulated to a lesser extent, and unregulated
5 services. Video, our U-Verse product, internet
6 access, our fast access DSL product, and other
7 unregulated or nonregulated services that are
8 outside the jurisdiction. The entity might be
9 regulated, but the service that the IXC provides is
10 not regulated. So when a customer presubscribes to
11 an IXC, it has purchased an unregulated service.

12 Now, the staff then goes to intraLATA
13 service which can be provided by an IXC, or an ILEC,
14 or a CLEC. Actually, the CLEC would have to have an
15 IXC certificate to do intraLATA, but nonetheless.
16 In intraLATA, it's interesting, because the way
17 services for ILECs are structured under 364, it's
18 either basic, it's nonbasic, it's nonregulated, and
19 then there's a couple of other categories called
20 interconnection arrangements which is essentially
21 how we deal with our wholesale CLEC customers in
22 buying and purchasing service from us. And then
23 there is what they call access, which is really
24 switched access which is the interconnection
25 arrangements for long distance carriers.

1 But the way the nonbasic definition is
2 structured, it says anything that isn't basic is
3 nonbasic. Now, there is no logic to the notion that
4 intraLATA long distance service is a basic service.
5 It is not. Staff says that it's not. But to then
6 say it's nonbasic flies absolutely in the face of
7 the definition of nonbasic. It has to be nonbasic
8 or nonregulated, one or the other. But, in our
9 case, as an ILEC it is regulated. In an IXC's case,
10 it's not regulated. Either way, the point is it's
11 not basic. And when you purchase it in combination
12 with basic, you have stepped outside the basic
13 purview.

14 **CHAIRMAN ARGENZIANO:** Are you winding
15 down?

16 **MR. HATCH:** I'm getting there.

17 **CHAIRMAN ARGENZIANO:** Okay.

18 **MR. HATCH:** Lots of pages, but I am
19 zooming through them pretty quickly, actually.

20 **CHAIRMAN ARGENZIANO:** Okay. That's fine.

21 **MR. HATCH:** Now, a couple of things that I
22 would point out to you. The staff makes the
23 distinction in its recommendation that you can treat
24 long distance service differently for pricing
25 purposes because the staff acknowledges and concedes

1 that intraLATA toll is treated as nonbasic for
2 pricing purposes, but then they make the statement
3 that it has never been treated as nonbasic for
4 service purposes. That may well be true. However,
5 if you will recall back in the service rule
6 revisions that started, I think, in 2008 and went
7 through into 2009 and were finally finished, I
8 guess, last summer, if you recall, the ILECs made
9 the argument and urged you to consider that
10 combinations of services that were treated as
11 nonbasic for pricing purposes also be treated as
12 nonbasic for service purposes. And if you recall,
13 the Commission's decision in that case was the
14 statute did not allow you to make that distinction
15 for service purposes.

16 And the observation was you need a
17 legislative change to do that. The Legislature
18 heard, the Legislature answered, and it made that
19 change. It made that change in a couple of ways.
20 The first way it made that change is in the
21 definition of nonbasic and those changes. The
22 second way it made that change is in the substantive
23 statute, which is 364.15. In the last legislative
24 session there was a change to 364.15 which is the
25 Commission's authority for service quality

1 authority, and they limited that authority solely to
2 basic service. And so, yes. And now what staff is
3 arguing is ignore the statutory changes and continue
4 to treat it like you treated it before. And I
5 submit to you that there is simply no authority for
6 you to do that.

7 Now the real question, again, of
8 legislative intent, and if you will look at the
9 sheet that was handed out, if you look at the
10 language of 364.10(3)(d). And let me pull that out.
11 If you look in that language, and this language
12 predates the changes in 2009, it says an eligible
13 telecommunications carrier may not discontinue basic
14 service to a subscriber who received Lifeline
15 service because of nonpayment for nonbasic services
16 billed by the -- including long distance service.
17 If you want a legislative declaration of what they
18 consider long distance service to be, it's a
19 nonbasic service, or at least a nonbasic service.
20 And as I mentioned earlier, it's otherwise a
21 unregulated service, depending on the entity
22 providing it.

23 So I guess, in conclusion, I would tell
24 you that when the customer presubscribes he has gone
25 beyond the purview of basic. He has purchased long

1 distance service. He has purchased it in
2 conjunction with his basic service, and under the
3 statutory changes that clearly takes you outside the
4 purview of basic service.

5 **CHAIRMAN ARGENZIANO:** Commissioners, any
6 questions?

7 Commissioner Stevens.

8 **COMMISSIONER STEVENS:** I just had one
9 quick question, which I believe Mr. Hatch brought
10 up, and this is for our staff. And it's on Page 7
11 in my book, and it's the last sentence of the
12 paragraph above conclusion where it says, "However,
13 intraLATA service is neither a basic service nor a
14 nonbasic service."

15 So if it's not basic, and it's not
16 nonbasic, what is it? And I'm a new guy, so --

17 **CHAIRMAN ARGENZIANO:** Staff.

18 **MR. MOSES:** This is Rick Moses of
19 Commission staff. Essentially, the way the statute
20 is structured it clearly defined basic, it clearly
21 defined nonbasic, and it does not fit either one of
22 those descriptions. So we can't say it's nonbasic
23 just because it doesn't fit the basic description.
24 It really falls into a gray area. It's not
25 unregulated, as Mr. Hatch says, because they pay

1 regulatory assessment fees on those services that
2 they provide.

3 **COMMISSIONER STEVENS:** That was my next
4 question. Okay. So it is regulated?

5 **MR. MOSES:** Yes, sir, it is to some
6 extent. It's not heavily regulated, but there are
7 some regulations.

8 **COMMISSIONER STEVENS:** Okay. Thank you.

9 **MR. MOSES:** You're welcome.

10 **CHAIRMAN ARGENZIANO:** Mr. Hatch, do you
11 want to respond to that?

12 **MR. HATCH:** I would only reiterate what I
13 said before: The entity is regulated and it is very
14 limited in its scope of regulation. There is no
15 regulation of the rates, terms, and conditions of
16 the services, period.

17 Now, the regulation that exists is of an
18 extremely limited fashion. For the ability to have
19 unregulated service, we have to pay regulatory
20 assessment fees to the Commission. Now, if you want
21 to go to the laundry list, I'll walk through it real
22 quickly. It's fairly straightforward, if I can find
23 it again. Where is that list? There it is.

24 If you look at the -- Page 6 is the list
25 of all the things that they are subject to. If you

1 look at 364.025, that section is the universal
2 service section in the Florida Statutes. What that
3 section says -- the only mention of IXCs there is if
4 there is a state universal service fund, IXCs must
5 pay into the fund. There isn't a state universal
6 service fund, so that section basically is of no
7 effect. Now, IXCs are mentioned there, but there is
8 no regulation of long distance service pursuant to
9 that provision.

10 If you look at 364.04, that section is the
11 old tariff filing statute. Essentially that said
12 that you have to file tariffs, and what a tariff
13 really means is that you have to publish the rates,
14 terms, and conditions of the services that you are
15 providing so the people know what they are being
16 charged for and what services they are subscribing
17 to.

18 Now, as I have mentioned before, that just
19 says we have to publish what we're doing. There is
20 no authority there to either regulate the rates,
21 terms, or conditions of the service. We can do
22 anything with that service we want to. 364.10(3)(a)
23 and (d). (3)(a) is essentially the provision that
24 says that if an IXC chooses to offer some sort of a
25 Lifeline benefit to its customers, it has to tell

1 people that it offers that. It can't do it secretly
2 and then claim credit for it. It just says you have
3 got to file a tariff.

4 The (d) part we have already read. That
5 just says that if a basic customer doesn't pay his
6 long distance bill, you can't cut them off for that.
7 That's all that that means. 364.163 is the switched
8 access section in the Florida Statutes. Basically
9 what that says is that interexchange carriers can't
10 institute an in-state service connection fee, which
11 was a political issue for a good long while. It
12 just says you can't charge an additional fee on top
13 of everything else that you do.

14 **CHAIRMAN ARGENZIANO:** Commissioner
15 Stevens.

16 **COMMISSIONER STEVENS:** And I don't mean to
17 interrupt you. I have one other question.

18 **MR. HATCH:** I'm sorry, Commissioner
19 Stevens, go ahead. The substance of all of that is
20 there is no regulation of long distance service
21 embedded in any of those statutory provisions, none.

22 **COMMISSIONER STEVENS:** Okay. And if we
23 can go to staff and then to back to Mr. Hatch.

24 **CHAIRMAN ARGENZIANO:** Yes.

25 **COMMISSIONER STEVENS:** If on Issue 1, the

1 Service Guarantee Program -- if we accept staff's
2 recommendation on the Service Guarantee Program,
3 does that put -- take AT&T off a level playing field
4 with their competitors?

5 **MS. TAN:** We do not believe so.

6 **COMMISSIONER STEVENS:** Okay.

7 **CHAIRMAN ARGENZIANO:** Mr. Hatch.

8 **MR. HATCH:** It's not entirely clear that
9 the -- the scope of your question could be very
10 broad or very narrow. I can tell you that we are
11 already off a level playing field with our
12 competitors.

13 **COMMISSIONER STEVENS:** Uh-huh.

14 **MR. HATCH:** If you want to look at
15 wireline competitors, you have only to look at the
16 cable industry, and look at, for example, Comcast,
17 now the second or third largest carrier in the
18 United States.

19 There are lots of CLECs out there, some of
20 them facilities-based. They have none of these
21 requirements or obligations. They are not required
22 to provide Lifeline. They don't have to do any of
23 this stuff. The Commission has very -- has
24 carefully historically avoided regulating all of our
25 competitors in the same sense that we are regulated.

1 We are already off a level playing field, this only
2 makes it worse. None of these carriers have SGPs.
3 None of these carriers have Lifeline obligations
4 like we do.

5 **COMMISSIONER STEVENS:** Thank you.

6 Madam Chair, that's my biggest issue with
7 this whole recommendation, and I know staff knows
8 telecommunications, especially a heck of a lot
9 better than I do, but my whole issue with this is
10 that everything that we do regulating AT&T has the
11 potential of putting them at a competitive
12 disadvantage, and I do have issue with that. Thank
13 you.

14 **CHAIRMAN ARGENZIANO:** First, let me ask is
15 OPC or any other interested persons wanting to speak
16 to the issue? Then can I ask staff if you can maybe
17 go into your reason that the new changes or that
18 your reasoning for the new changes to the statute
19 don't apply here? It may be more simple than it is
20 written. If you could give me in a nutshell why you
21 believe that AT&T is wrong in their assessment of
22 what the Legislature did as far as the changes?

23 **MS. TAN:** Basically, it comes down to if
24 you are a basic customer you are entitled to access.
25 But then the minute you go to use any of those

1 things for access -- use any of those services, you
2 are automatically, according to AT&T, rendered a
3 nonbasic customer.

4 One of the things that was concerning to
5 staff is that when we went back and asked for
6 additional responses to our questions, we asked for
7 clarification as to exactly what services would be
8 qualified under the SGP. And if you take a look at
9 their answers, which is in our Attachment B, they
10 say that all of their services are nonbasic
11 services, but they are going to make an exception
12 and they're going to go ahead and make them basic
13 just for the purposes of the service guarantee plan.
14 But that 911 is a nonbasic service, relay for people
15 who have hearing or speech impairments is a nonbasic
16 service, and we disagree with that assessment, and
17 that's the most important thing for us.

18 **CHAIRMAN ARGENZIANO:** I think what I was
19 asking was for you to try to delineate the statutory
20 changes, and I think a little bit more clearly. I'm
21 trying to put it together for myself from summaries
22 and it's not coming together. I don't know where
23 staff's belief or where you're finding in the change
24 that the Legislature made that would not allow --
25 well, I'm not sure how to articulate it.

1 I think what I'm trying to figure out is
2 how come AT&T doesn't fit into that change that the
3 statutes now show that the Legislature granted as
4 far as the nonbasic. Am I -- you know what, let me
5 look for the part in here that --

6 **MS. TAN:** I would say that under our
7 interpretation of how basic should be considered
8 they do -- I mean, they can utilize it. It's just
9 that they have taken -- their interpretation goes
10 farther beyond the expansion of the definition of
11 nonbasic.

12 **CHAIRMAN ARGENZIANO:** Okay. Members, any
13 questions?

14 Commissioner Edgar and then Commissioner
15 Skop.

16 **COMMISSIONER EDGAR:** Thank you, Madam
17 Chair.

18 I'd like to ask the company to respond to
19 the analysis that we have just heard from our staff
20 as to the company's position being that basically --
21 scratch the basically -- that utilization of access
22 to basic service would make that service then
23 nonbasic?

24 **MR. HATCH:** Some of those services in
25 there, for example, 911 you don't pay for. But,

1 more importantly, across the broader scheme of all
2 of the access to items on the list is the
3 onesie-twosie per use instances while technically
4 within the statutory scheme for the instant that you
5 are using that service or buying that service you
6 would be considered nonbasic. But the second you
7 hang up the phone, you don't have that service any
8 more, and so operationally we couldn't accomplish
9 that in any event. We have chosen to essentially
10 gloss over that and say if it's a one-time
11 occurrence, we're going to go ahead and pay you SGP,
12 even though arguably for that narrow moment in time.

13 But what that would mean, technically, is
14 every time you make a long distance call, or every
15 time you dial around, for example, or every time you
16 would call 911, you would be nonbasic for the
17 instant you are on the call, but when you hang up
18 it's over. So mechanically it just doesn't make any
19 sense and it wouldn't work under any circumstance,
20 so we have said we'll just go ahead and consider you
21 basic for all of those purposes.

22 **COMMISSIONER EDGAR:** And if I may just --

23 **MR. HATCH:** Now, I would only point out
24 that presubscription is different, because
25 presubscription you have entered into the agreement

1 with a carrier to go to that carrier, and you have
2 purchased that service from that carrier. Now, you
3 can still dial around to a carrier and it won't
4 disqualify you.

5 **COMMISSIONER EDGAR:** I guess I would ask
6 as a follow-up for staff to respond to the response.

7 **MR. KENNEDY:** Well, from a practical
8 standpoint, there's nothing left to be defined as
9 basic, then. If you can't do 911 for that moment
10 you're nonbasic, so what's left? What did the
11 Legislature mean then for basic service? There's
12 nothing left because they eliminate it all, but for
13 the purposes of an SGP they will give the credit.
14 But there are many companies who don't have an SGP,
15 they have service standards. Now for the purposes
16 of service standards for the other nine LECs or
17 eight LECs, one other has an SPG, will that negate
18 all the service standards? You know, I don't know
19 what they are going to take on their position as a
20 flow-down from your decision here today.

21 **COMMISSIONER EDGAR:** When you say they,
22 who did you mean?

23 **MR. KENNEDY:** The other LECs that are
24 following our actual service standards rules instead
25 of the SGP.

1 **COMMISSIONER EDGAR:** Well, I guess a point
2 that is still not as clear me as I would like it to
3 be is with the description that Mr. Hatch just gave
4 us as to maybe at a -- and I hope I'm saying this
5 correctly, that at a moment in time or at a
6 particular use a basic service could be considered
7 nonbasic or more than basic for that moment in time,
8 but that for the SGP, it would -- that service or
9 that line to that residence would still be
10 considered as part of the SGP program. Am I getting
11 that right?

12 **MR. HATCH:** Yes. Essentially, yes.

13 **COMMISSIONER EDGAR:** Okay. So if that is
14 the case, then what is the concern of staff about
15 there not being anything left to be basic, if,
16 indeed, under the SGP that line would still be
17 considered basic?

18 **MR. KENNEDY:** In this case, none on those
19 because they've agreed to it. I just -- maybe we
20 have to handle each company separately, I don't
21 know. Does this define for the other companies that
22 are coming with their SGPs, or canceling SGPs, or
23 following service standards? I don't know.

24 **COMMISSIONER EDGAR:** I guess I would turn
25 that back to you and ask you does it?

1 **MR. KENNEDY:** Well, I think that we'd have
2 to think about it. I don't know that I can answer
3 that off the top of my head. That's a good
4 question.

5 **COMMISSIONER EDGAR:** Thank you.

6 **CHAIRMAN ARGENZIANO:** Commissioner Skop
7 and then Commissioner Stevens.

8 **COMMISSIONER SKOP:** Thank you, Madam
9 Chairman.

10 I just have a few questions for staff and
11 then for Mr. Hatch. On Page 5 of the staff
12 recommendation under the analysis section, staff
13 proceeds to discuss why access is a basic service,
14 and basically under Section 364.021, Florida
15 Statutes, they identified the bullets that basically
16 AT&T Florida must give access for under basic
17 service. Is that correct?

18 **MR. MOSES:** That's correct.

19 **COMMISSIONER SKOP:** Okay. And then
20 further on in that paragraph, I guess, staff
21 believes that access to the above services is
22 included as basic service, and the use of the
23 services once accessed should not fundamentally
24 change a consumer's level of service from basic to
25 nonbasic service. And that's staff's position,

1 also?

2 **MR. MOSES:** That's correct.

3 **COMMISSIONER SKOP:** Okay. Now, I think
4 that -- and to me this appears to be the crux of
5 this issue, so I'm trying to understand staff's
6 position as well as Mr. Hatch's, and that's why I'm
7 taking my time on this one paragraph. But staff
8 believes that AT&T Florida's interpretation of basic
9 service provides for once a customer takes advantage
10 of any access listed above, the customer -- or the
11 consumer is nonbasic, and could staff explain that a
12 little bit.

13 **MR. MOSES:** Well, Commissioners, Mr. Hatch
14 has explained about presubscription being a little
15 bit different, and he has referenced Newton's
16 Telecom Dictionary, which is not adopted by any
17 rules, and it's no law or anything else, and I could
18 find you many other things that conflict with these
19 definitions. But essentially 1+, when you dial that
20 1 that tells the switch that you need to go looking
21 at a long distance carrier, and in the switch it's
22 programmed to go to 288 in order to hit the trunks
23 to go to AT&T. That service is just sitting there,
24 the same as 711 or 911. When you dial those digits,
25 the switch is being told where to place that call.

1 That's all this access is doing. 1+ is no different
2 than dialing 911, or 711, or 1-800, or any of these
3 other numbers.

4 If the legislative intent was to carve the
5 basic out and put these services in there as being a
6 requirement of basic service, why did they carve it
7 out at all if what they are saying is true, that if
8 you use one of these services it's nonbasic.
9 Essentially no access line in the state of Florida
10 is going to be basic service if that's the
11 interpretation.

12 **COMMISSIONER SKOP:** Okay. And that's the
13 point I wanted to get to at the bottom of that
14 paragraph. Basically, staff elaborates on its
15 conclusion that if AT&T's interpretation is correct
16 that the Service Guarantee Program is moot since
17 every access line provided by AT&T Florida would be
18 considered nonbasic if any dial-around long distance
19 call is made, any relay long distance call, or any
20 operator service call is made.

21 **MR. MOSES:** If you use their
22 interpretation and look at the law under that
23 interpretation, that would be true. However, under
24 the SGP they are considering allowing these things
25 to be considered basic, which is outside of the law,

1 I would say.

2 **COMMISSIONER SKOP:** Okay. And just to
3 Mr. Hatch, I think just before you ended your last
4 response you distinguished between presubscribed and
5 dial-around. And I think that you mentioned -- and
6 I want to make sure I get this correct because this
7 is some tension. I think that you characterized
8 presubscribed as nonbasic, whereas if you had basic
9 service and you did a dial around you would still
10 maintain the basic character of your telephone
11 service, is that correct?

12 **MR. HATCH:** I'm not sure that I
13 understand. Let me see if I can do it this way.

14 **COMMISSIONER SKOP:** All right.

15 **MR. HATCH:** When you dial around, that is
16 the access, the ability to dial digits.

17 **COMMISSIONER SKOP:** Right.

18 **MR. HATCH:** Now, we distinguish between a
19 per use occurrence and an ongoing customer
20 relationship, which is what presubscription
21 indicates. You have subscribed to long distance
22 service.

23 **COMMISSIONER SKOP:** Okay. So let me try
24 and frame this in a way I understand. If I'm moving
25 to a different place, and AT&T is my carrier, and I

1 have the ability to choose my long distance carrier,
2 I think, under federal law, that if I presubscribe
3 to a long distance carrier, then I've entered into a
4 contractual obligation for which AT&T will show it
5 on my bill, and that makes, based on my own
6 violation, my service nonbasic at that point,
7 because I have actually subscribed to a service
8 outside of basic.

9 **MR. HATCH:** Yes, that is correct. And in
10 point of fact, you can what they call dePIC. If you
11 are PICed, you can say I don't want to be PICed
12 anymore. And so you can remove yourself from that
13 relationship and go back to basic, if you wish.

14 **COMMISSIONER SKOP:** All right. So in
15 another hypothetical if I were, say, a Lifeline
16 customer and I just wanted pure basic service, which
17 encompassed the access pursuant to Section 364.021,
18 Florida Statutes, then I could still dial around to
19 a -- you know, like dial 1-800, long distance, or
20 whatever these various people are, and still use my
21 access under my basic service to obtain long
22 distance service and it would still be basic
23 service, is that correct?

24 **MR. HATCH:** Absolutely correct. I mean,
25 my mother is a case in point. I told her to dePIC

1 and go to Wal-Mart and get an AT&T calling card
2 because the rates are way cheaper, and that's what
3 she does.

4 **COMMISSIONER SKOP:** Okay. Staff, how
5 would you respond to that? You know, essentially,
6 there's basic and the legislative intent has -- we
7 went through that whole discussion of features and
8 how the addition of features makes basic service
9 nonbasic in an entire case discussion. But I'm
10 trying to understand what Mr. Hatch is saying versus
11 what staff is saying, because staff is saying
12 there's a parade of horrors that's going to
13 happen, and that by using access that basically the
14 Service Guarantee Program is moot because every
15 access line would be considered nonbasic if you used
16 dial around, and that's not what I'm hearing from
17 Mr. Hatch.

18 **MS. TAN:** I think the first thing that I
19 would say is that the distinction that Mr. Hatch is
20 making is one created by AT&T. It's not one
21 that's -- the distinction that if you decide to use
22 a PIC that makes you a nonbasic service. A CLEC can
23 be -- a long distance company can be anybody. I
24 mean, anyone who's registered in the state. So it
25 doesn't necessarily mean that they are going to be

1 using a service that is provided by AT&T. So that
2 is a customer choice that has nothing to do with
3 what AT&T has done.

4 But also in response to another item that
5 Mr. Hatch has said is that if you are a family that
6 is a 711 user because you are deaf or hearing
7 impaired, you are having a constant relationship
8 with 711. All of your calls will come through 711.
9 So technically under the definition or the
10 interpretation that AT&T has created, that is
11 constant use.

12 **COMMISSIONER SKOP:** I'll yield. I may
13 have an additional question for staff. Actually,
14 just one follow-up to staff. Essentially, I'm
15 struggling to understand. You know, AT&T's
16 interpretation and how staff feels it will effect
17 the Service Guarantee Program really has nothing to
18 do with the situation because at the end of the day
19 the choices that the consumers make, which they have
20 the flexibility to do so, lead them in their own --
21 they are provided with choices and those choices
22 themselves dictate whether their service will be
23 basic or nonbasic based on the consumer's choice,
24 not what AT&T does.

25 **MR. MOSES:** Well, AT&T, the way they are

1 defining this is it's going to narrow the number of
2 people that the SGP is going to be applicable to
3 because most people have a presubscription on their
4 long distance service, they don't use dial around.

5 **COMMISSIONER SKOP:** Well, I understand,
6 but, you know, I see the effect. The effect will be
7 to significantly narrow the scope of the Service
8 Guarantee Program. But that's not a result of --
9 well, it could be an unintended result, but AT&T is
10 not really forcing that to happen, it's the choices
11 that consumers have and the fact that they may not
12 be as well informed, or when they are marketed
13 services, they may presubscribe. You know, if you
14 are calling someone on the phone and say, well, do
15 you want this service, yes. Do you want this
16 service, yes. By giving them that ala cart menu to
17 choose from and they pick things, they may not know
18 the ramifications of their decision. But by
19 choosing the services that they have the choices and
20 their own violation to do, they may render their
21 service nonbasic based on the choices they made
22 themselves without anything to do with AT&T.

23 **MR. MOSES:** That could very well happen.

24 **COMMISSIONER SKOP:** Okay. Thank you.

25 **CHAIRMAN ARGENZIANO:** But isn't that what

1 the legislative change was?

2 **MR. MOSES:** The legislative change -- I
3 went back and listened to every one of the tapes
4 that was in committee. Most of the discussion was
5 about video and Internet as being bundled with local
6 service, and that was considered nonbasic, and they
7 took it completely out from underneath any of these
8 SGPs or the determination of basic service. Nothing
9 was discussed about long distance in those committee
10 meetings whatsoever.

11 **CHAIRMAN ARGENZIANO:** Commissioner
12 Stevens.

13 **COMMISSIONER STEVENS:** I'm fine. Thank
14 you.

15 **CHAIRMAN ARGENZIANO:** Any other
16 discussion? Commissioner Skop.

17 **COMMISSIONER SKOP:** Thank you. Just a
18 comment on staff.

19 I appreciate staff's position. I
20 understand, you know, the fact that the
21 interpretations and the operation of how consumer
22 choices work may serve to significantly diminish the
23 scope of the Service Guarantee Program. But, again,
24 I don't know how you can hold AT&T accountable to a
25 higher level of services when consumers are provided

1 the choices and the choices they make determine what
2 type of guarantees they get.

3 **MR. MOSES:** The consumers have no way of
4 knowing that they are not getting basic service just
5 because they choose a long distance carrier. And
6 let me put one other point out before you before you
7 make your decision is there is also a statutory
8 provision that we do not have the authority to
9 handle service complaints for anything other than
10 basic service. So your determination today of
11 whether or not this is going to be basic or nonbasic
12 is going to have a far-reaching effect on the
13 ability of this Commission to handle any service
14 complaints whatsoever.

15 **CHAIRMAN ARGENZIANO:** See, what I have a
16 problem with is I seem to recall the
17 Legislature's -- I understand you have listened to
18 the committees, but I thought that their goal -- I
19 remember that there were people opposed to certain
20 parts of the legislation regarding the quality of
21 service, and it seems to me it was a policy call
22 that they chose, and that was brought up as a
23 possible effect that people would not know that they
24 would then be -- you know, not subject to that
25 quality of service anymore. And I think the way I

1 reviewed it, and this is what I'm asking for because
2 I don't really see it, is that the Legislature made
3 that policy call.

4 And if they made that policy call, whether
5 we liked the ramifications of it or not, that's what
6 I'm trying to get at. You know, if that is what
7 they wanted then that is what they got, and I want
8 to make sure I'm following it. And that's why I'm
9 asking you to zone in on the statute where you don't
10 think that is exactly what the language says or
11 does.

12 **MR. MOSES:** Well, the language is what the
13 language is, but the policy call from my
14 understanding of listening to the committee tapes
15 and everything is they were discussing when a person
16 consciously combines their services with other
17 services such as video and internet they're going to
18 be aware that they are taking it as a package deal
19 and that terms and conditions go along with that
20 package deal, that they are not going to be
21 protected. Our concern is for those customers out
22 there that are choosing not to have those types of
23 services combined with their local services, that
24 they will still have the protections under the
25 Service Guarantee Program or underneath the statutes

1 for us to be able to handle complaints.

2 I mean, a simple thing as adding a line
3 guard to your service is going to take you out from
4 being basic. But that is a service that's provided
5 by the LEC. What they are discussing is a contract
6 that you may have entered into with a company that
7 is not them, it has nothing to do with them. All
8 they are doing is providing a code and a switch to
9 get to them, just like they are on all these other
10 provisions in here that are a part of basic service.
11 We just think it's an interpretation
12 misunderstanding, that's all.

13 **CHAIRMAN ARGENZIANO:** And you think the
14 ramifications of that will be that many people or
15 some people will have not known that that will
16 affect the quality of service.

17 **MR. MOSES:** I think if you took a poll
18 right now of the citizens that had just basic
19 service as we have been calling it all along and
20 presubscribed to a long distance carrier, they have
21 would have no idea that they are out from underneath
22 any service quality protections.

23 **CHAIRMAN ARGENZIANO:** And can I ask
24 Mr. Hatch regarding that, is that what you see that
25 the Legislature has --

1 **MR. HATCH:** I think the Legislature has
2 made the policy call as you have noticed. And I
3 would also, again, remind you that the breadth of
4 the Legislature's policy call was embodied in the
5 Senate bill. Representative Kriseman particularly
6 took the lead on trying to narrow that definition,
7 and Representative Kriseman's concerns were
8 essentially at the core of what Mr. Moses said are
9 the concerns.

10 **CHAIRMAN ARGENZIANO:** Can I ask you, to
11 you that point, that language you are referring to
12 in the Senate, do we have that anywhere that I could
13 make a call on whether that that is saying what they
14 were looking for, because I don't see it anywhere.
15 And I think you're referring to the Senate version
16 as basically saying this is our policy, this is what
17 we are saying.

18 **MR. HATCH:** There are various iterations
19 of Representative Kriseman's language that flowed
20 through the process at different points in time.
21 Essentially, his concern was that if you combine all
22 of these different things that people are unaware,
23 that all of a sudden they are no longer basic. That
24 was his concern. And we worked at various points
25 with language that would work for that. I don't

1 have the actual House language handy with me to tell
2 you. It's different from the Senate bill. But his
3 concerns were announced all the way up to and
4 including on the floor of the House, but ultimately
5 the House bill was not taken up and the Senate bill
6 was.

7 **CHAIRMAN ARGENZIANO:** That's the one I'm
8 interested in. What did the Senate language say?
9 If that's the one that passed through, and that's --
10 because what I'm hearing is this is what the statute
11 is saying. I understand what staff is saying as far
12 as the ramifications, but I seem to recall during
13 that debate that there was -- there was discussion
14 that this would affect the quality of service to
15 some people who wouldn't know that simply because
16 they asked or bought into something else that they
17 would no longer have any PSC regulation of their
18 quality of service.

19 **MR. HATCH:** Maryrose just handed me the
20 last version of the House bill, the final version of
21 the House bill. And the language that's in the
22 House bill says basic service, when combined with a
23 nonbasic service or an unregulated service provided
24 by the local exchange telecommunications company, or
25 any of its affiliates, or provided in conjunction

1 with nonbasic or unregulated services is nonbasic.
2 That was the final ultimate limitation is that he
3 tried to confine it to things that we offered as an
4 entity or within our family of entities as compared
5 to third parties. Which Mr. Moses pointed out
6 earlier, long distance presubscription could be to a
7 third-party carrier not part of us. And that would
8 have been taken out, but ultimately that failed, so
9 now it's back in.

10 **CHAIRMAN ARGENZIANO:** Staff, to that
11 language, did you read that language and what does
12 that mean to you?

13 **MR. KENNEDY:** If that was in the statutes
14 before me, I wouldn't be here arguing against them
15 today is how I interpret that language, but I'm not
16 an attorney. So, I mean, if I read that, and if it
17 was AT&T Long Distance PIC, it is nonbasic. I mean,
18 you know, that is how I would interpret what he just
19 read.

20 **CHAIRMAN ARGENZIANO:** Boy.

21 **MR. KENNEDY:** But I'm not an attorney,
22 so --

23 **CHAIRMAN ARGENZIANO:** Commissioner.

24 **COMMISSIONER KLEMENT:** Thank you.

25 A clarifying question for staff. It has

1 to do with the consumer's awareness. Would they be
2 aware that they would be falling out of the basic as
3 this occurred?

4 **MR. MOSES:** Commissioner, I don't think
5 that a consumer would have any idea. There's no
6 notification requirements. They are not being told.
7 Even when they sign up for service, there is no
8 discussion with the service representative that you
9 are going to be a basic customer versus nonbasic.
10 Customers don't even know what that means.

11 **COMMISSIONER KLEMENT:** And nobody has
12 mentioned this, the cost of the service then is that
13 there is a great deal of difference, correct?

14 **MR. MOSES:** The cost of the service as far
15 as basic versus nonbasic?

16 **COMMISSIONER KLEMENT:** Yes.

17 **MR. MOSES:** The costs are the same as far
18 as whether you subscribe to a carrier or not. Your
19 basic service is going to be the same. I mean,
20 that's a local component of the bill. Your long
21 distance is a separate bill, and it's on a usage
22 basis, whereas your local is on just a monthly
23 basis.

24 **COMMISSIONER KLEMENT:** Okay.

25 **CHAIRMAN ARGENZIANO:** What I understood

1 the bill to do was change the quality of service
2 component as far as regulation is concerned.

3 **MR. MOSES:** That's correct.

4 **CHAIRMAN ARGENZIANO:** But my quandary is
5 that if the Legislature made that decision, and they
6 need to be responsible for that decision, that in
7 this case we are saying that if you do this, it will
8 eliminate the PSC's regulation regarding the quality
9 of service. Now, if that's the law, we have to
10 follow the law whether we agree with it or not. And
11 I understand staff's concern because I believe that
12 will occur, but my dilemma is if that is what the
13 statute said, and that's what it comes down to me
14 very clearly right now is that is what the statute
15 says. I understand you are saying it doesn't really
16 say that, but you're not getting through to me as to
17 where it doesn't that.

18 **MR. MOSES:** We are just saying it does not
19 fit the definitions that are in the statute and they
20 clearly define the two services. So it doesn't
21 follow the law, according to our interpretation.

22 **CHAIRMAN ARGENZIANO:** Then what do you
23 think they were doing, I mean, the language was
24 really doing? Forgive me, it's me. I'm really not
25 grasping it.

1 **MR. MOSES:** Well, what we think they were
2 doing is they were talking about bundling services
3 with the Internet and video and services of that
4 nature. They weren't discussing telecommunications
5 services. Even the IXCs are now exempted from the
6 definition of being a telecommunications service,
7 and the statute clearly talks about
8 telecommunications services provided by a
9 telecommunications company. So it doesn't fit those
10 descriptions or the definitions that they put in the
11 statutes. So we think it falls into a gray area, I
12 guess, is what you would call it.

13 **CHAIRMAN ARGENZIANO:** Okay. So you're
14 saying that gray area -- you don't feel that the
15 statute really does say what AT&T has --

16 **MR. MOSES:** We don't believe the
17 legislative people that were making the decisions
18 were aware of the ramifications of the decision or
19 the interpretation that AT&T would have had for it,
20 based on the discussions in the committee meeting.

21 **CHAIRMAN ARGENZIANO:** And to your best
22 ability looking at the statutes, you just don't see
23 where that was really included in there?

24 **MR. MOSES:** No, we don't.

25 **CHAIRMAN ARGENZIANO:** Okay. Commissioner

1 Skop.

2 **COMMISSIONER SKOP:** Thank you, Madam
3 Chair.

4 I just wanted to go over some points
5 again. I'm struggling with this one. I see the
6 clear Legislative intent, which seems to, you know,
7 address the issues. I think, you know, staff has
8 discussed their interpretation that some of these
9 things fall in a gray area.

10 But at least from my perspective it seems
11 to me that the competitive landscape has changed so
12 much that absent strictly controlling what script a
13 company can use to market its services to consumers
14 and giving a cause and effect discussion on each a
15 la carte option a consumer chooses, that you'll
16 never control whether a service is basic or nonbasic
17 because the consumers' own actions influence that.
18 And more likely than not the consumers' own choices
19 under the current statutory provisions as well as
20 what staff is saying here will cause their service
21 to be nonbasic, thereby, you know, not making them
22 eligible for the service guarantee program based on
23 their own choices. Is that a concern? Yes. But, I
24 mean, that's, that's the reality of today's
25 competitive landscape is that I don't know how you,

1 as Commissioner Klement mentioned, you know, do the
2 public outreach to make consumers aware of the
3 choices that they have and the ramifications
4 resulting from those decisions. Because even if you
5 were to try and explain it to them, I don't believe
6 the consumers would understand the difference
7 between basic and nonbasic.

8 **CHAIRMAN ARGENZIANO:** I don't think
9 that's --

10 **COMMISSIONER SKOP:** -- because there's so
11 many choices out there right now.

12 **CHAIRMAN ARGENZIANO:** Forgive me, and I
13 know Commissioner Edgar has a question, but I don't
14 know that that's -- I'm not finding that the
15 problem. I understand that consumers may not know
16 that. What I'm looking at is if there's really no
17 specific language, you know, and for -- I'm going
18 back and forth with it. I'm looking at the intent
19 but I'm not sure as the way now staff has described
20 that that intent was for the telecommunications
21 also. I'm just --

22 **COMMISSIONER SKOP:** Just three, three
23 quick clarifications, clarifying points.

24 **CHAIRMAN ARGENZIANO:** And then
25 Commissioner Edgar. Okay.

1 **COMMISSIONER SKOP:** All right. So from
2 staff's perspective, staff is saying that access to
3 long distance service including both interLATA and
4 intraLATA services is basic service under the new
5 law; is that correct?

6 **MR. MOSES:** We're saying that that's a
7 provision in the statute that they have to provide
8 access to those services as part of basic service.

9 **COMMISSIONER SKOP:** Okay. And, Mr. Hatch,
10 your, AT&T's argument is that basically access to
11 interLATA and intraLATA services is nonbasic because
12 the law says any combination of basic and nonbasic
13 service or unregulated service is nonbasic service.

14 **MR. HATCH:** That's correct. And the key
15 point is pre-subscription. You've crossed over the
16 simple access to and gone beyond that and formed a
17 commercial economic relationship with the carrier.

18 **COMMISSIONER SKOP:** Okay. All right.
19 Thank you.

20 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

21 **COMMISSIONER EDGAR:** Thank you, Madam
22 Chair.

23 Just to try to boil it down for my sake to
24 what I hope is its kind of simple essence, is it the
25 position of AT&T that the staff analysis has

1 misinterpreted the statute?

2 **MR. HATCH:** Yes.

3 **COMMISSIONER EDGAR:** And can you concisely
4 point me to exactly where in the statute you think
5 the staff analysis is incorrect or the
6 interpretation is incorrect?

7 **MR. HATCH:** There are several. The key,
8 the most important one is that they have equated
9 access to pre-subscription and called them one and
10 the same, and they are different things. You can
11 get to a carrier through access without
12 pre-subscription. Pre-subscription is the next step
13 where you have chosen a carrier, formed a
14 relationship with that carrier and subscribed to
15 that carrier's service.

16 Now the next misinterpretation is the
17 characterization of either intraLATA or interLATA as
18 somehow not part of nonbasic or not not regulated,
19 to use the double negative. IntraLATA toll provided
20 by an ILEC, albeit regulated, clearly is a nonbasic
21 service under the statutory definition of nonbasic
22 independent of the new definition that was -- it is
23 nonbasic, period.

24 For an IXC, inter or intraLATA is not
25 regulated by this Commission. And if you look at

1 interLATA, there are two components. There's the
2 intrastate component and the interstate component.
3 You clearly have no jurisdiction over the interstate
4 component anyway regardless of what you feel about
5 the intrastate component.

6 I mean, clearly the FCC would have
7 something to say about your attempts to assert
8 jurisdiction or regulation over interstate long
9 distance service. And, in fact, the FCC doesn't
10 regulate interstate long distance either. They
11 deregulated that some time ago.

12 And so however you cut it, all of these
13 things are not part of basic service. And when you
14 buy them in conjunction with basic service, under
15 the statutory definition you fall outside the basic
16 definition.

17 **COMMISSIONER EDGAR:** And just two more.
18 Thank you.

19 Mr. Hendrix, I think you wanted to make a
20 point earlier. Have we gone past that or would --

21 **MR. HENDRIX:** Well, I -- thank you. I'm
22 Jerry Hendrix, Vice President with AT&T.

23 I wanted to speak to the landscape.
24 Commissioner Stevens, you asked about that. It is a
25 very competitive landscape. We're losing

1 approximately 40,000 lines a month, residential
2 lines a month, and the Legislature saw that. They
3 understood that the marketplace was changing.

4 As to the question as to what the cost of
5 basic service, whether it's more than -- whether
6 nonbasic is more than basic, what I understood your
7 question to be is those customers that choose to go
8 nonbasic, do they pay more? And the answer is yes
9 because they're buying more services. They make a
10 conscious decision to buy services that a basic
11 customer, just a regular basic line, may not choose
12 to make. So I just wanted to ensure that I was
13 clear on those two points. Thank you.

14 **CHAIRMAN ARGENZIANO:** And then a question
15 to staff, and this is a different question than as
16 to statutory interpretation. Okay?

17 If the position of the company were to
18 prevail, can you tell me, and I don't know if it's
19 confidential or not, so can you tell me
20 approximately how many lines would be impacted and
21 what would be the protections that would be either
22 lost or decreased to those customers?

23 **MR. MOSES:** The number was filed
24 confidentially.

25 **COMMISSIONER EDGAR:** Okay.

1 **MR. MOSES:** So I can't really divulge that
2 to you. As far as the implication, it's just going
3 to reduce significantly the number of people that
4 will, excuse me, qualify under the SGP program.

5 **COMMISSIONER EDGAR:** And, again, more
6 specifically what protections would those specific
7 customers no longer have?

8 **MR. MOSES:** They wouldn't have any quality
9 of service rules as far as -- because this SGP is in
10 lieu of the service rules, so there's no protections
11 for them if they don't fall under the SGP because
12 it's essentially an exemption of the service rules
13 that are remaining. So there wouldn't be any
14 installation requirements, no repair requirements.
15 I mean, that's really what you're losing.

16 **COMMISSIONER EDGAR:** Okay. And I would
17 just ask if the company has a response to that, and
18 then that does me for now, Madam Chair.

19 **MR. HENDRIX:** Mr. Hatch, I'm sure, is
20 going to add. There was an article in the paper
21 just last week that talked about AT&T investing more
22 in wireline than the wireless, and we do that
23 because we want to be close to our customers. The
24 marketplace is competitive to the, to the point
25 we're doing whatever we have to do to stem the tide

1 of the loss of these customers.

2 So while they may not be under the service
3 guarantee plan, we do provide excellent service to
4 these customers. We want these customers, we need
5 these customers to be able to promote other service
6 offerings in this market, marketplace. So it is not
7 that we push these customers to the side. We're
8 going to do whatever we have to do to try to keep
9 those customers and to win others.

10 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

11 **COMMISSIONER SKOP:** Thank you, Madam
12 Chair.

13 I just -- I've been listening to the
14 discussion. I think what it boils down to me, I
15 think Mr. Hatch made an excellent point, and I've
16 yet to hear staff address it. I do think that
17 there's a substantial difference that can be
18 distinguished between pre-subscribing to a
19 contractual service, like I want MCI or whoever the
20 carrier is now or Sprint for my long distance
21 carrier, and having access to dial through to, you
22 know, a provider.

23 So at least for me the pre-subscription
24 argument that AT&T makes seems to be a consumer
25 choice that takes their service from basic to

1 nonbasic based on the own choice they make. And at
2 least to me is where I'm leaning on Issue 1 is that,
3 that in lieu of the staff recommendation, that the
4 pre-subscription to an interLATA or an intraLATA
5 service, at least to me should probably be exempt
6 from the service guarantee program under the, you
7 know, under -- looking at the statute, the statute
8 says you have to provide access. But if you
9 pre-subscribe, that's different because you still
10 have the access. Pre-subscribing to something is
11 making a conscious contractual choice to go do
12 something. So if staff could briefly elaborate on
13 that.

14 **CHAIRMAN ARGENZIANO:** Please.

15 **MR. TEITZMAN:** Adam Teitzman on behalf of
16 Commission staff.

17 Commissioner, one of the problems that I'm
18 hearing with Mr. Hatch's distinction is that when
19 discussing 911 service where there is no commercial
20 relationship, they are still saying here today that
21 it is nonbasic service. And so when he's talking
22 about pre-subscription and the commercial
23 relationship, okay, I hear what he's saying. But
24 they're still saying also that access to 911 where
25 there is no commercial relationship is a nonbasic

1 service. They're going to treat it under the SGP as
2 a basic service, but their interpretation as they've
3 responded to staff's data request is that it's a
4 nonbasic service as well, regardless of a commercial
5 relationship.

6 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

7 **COMMISSIONER SKOP:** And I don't
8 necessarily agree with AT&T's position on that. I
9 mean, it seems to me like 911 is an essential public
10 service function and that in itself should not
11 compromise somebody's basic, you know, being able to
12 access 911 shouldn't make that switch. But, again,
13 a conscious consumer choice to pre-subscribe to a
14 different long distance carrier, again I think that
15 may change the character of the customer service,
16 thereby providing the exemption that AT&T seeks for
17 pre-subscription to the service guarantee program.

18 **CHAIRMAN ARGENZIANO:** Did you want to add
19 to that?

20 **MR. TEITZMAN:** I, I could definitely see
21 the point that you're making, Commissioner. I
22 just -- they're adding -- well, certainly if you
23 say, well, you're disagreeing with their other
24 positions and you're looking at the commercial
25 relationship, that would be slightly different than

1 what AT&T has said today.

2 **COMMISSIONER SKOP:** And, again, I'm just
3 looking at it. Again, I don't want it to be a bait
4 and switch. I'm not going to give them a blanket
5 approval to, to go say everything is nonbasic. But,
6 again, I do think that they've met their burden with
7 respect to pre-subscription to the extent that there
8 to me is a substantial legal difference between the
9 statutory requirement of access and actually making
10 a conscious consumer election to pre-subscribe to a
11 long distance service that would change their
12 character of service from basic to nonbasic.

13 **MR. TEITZMAN:** Just to reiterate staff's
14 position, we look at pre-subscription as just
15 another method of access. I mean, technically it is
16 just another method of access. And in fact it's no
17 different than the dial around, as Mr. Moses
18 discussed earlier.

19 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

20 **COMMISSIONER SKOP:** Okay. Then how can
21 they reconcile that with, I guess, Mr. Hatch's
22 handout? Again, because nonbasic is an elusive,
23 elusive term. But under Chapter 364.10(3)(d), you
24 know, it states that the ETC carrier may not
25 discontinue basic local service to a subscriber who

1 receives Lifeline services because of nonpayment by
2 the subscriber for charges of nonbasic service
3 billed by the telecommunications company including
4 long distance service.

5 So it seems to me that you can't shut off
6 their basic service for nonpayment of long distance,
7 but the Legislature clearly indicated that long
8 distance service is nonbasic service.

9 **MR. MOSES:** But I think -- Commissioner,
10 not to interrupt you, but why did they have to list
11 long distance service separately if they meant for
12 it to be nonbasic to begin with because they already
13 said nonbasic?

14 **COMMISSIONER SKOP:** Well, I'm not the
15 Legislature. I just follow the law.

16 **MR. MOSES:** Well, I mean that's, that's
17 been the distinction that we've been seeing all
18 along is they have carved it out separately all the
19 way down the road, so we didn't think it was
20 included in there. So sorry for the interruption.

21 **CHAIRMAN ARGENZIANO:** No. It's a point
22 well-taken. It's just very, very confusing to me,
23 it really is. Unfortunately I think the
24 Legislature, I think that's what they intended
25 unfortunately for staff's position because -- and I

1 certainly understand the company's disadvantaged
2 position. And I think that -- I would think -- and
3 let me ask Mr. Hatch this. If a customer should
4 decide that they want to have their quality of
5 service regulated, do they just switch then back
6 to -- how would that work, I mean, if they knew?

7 **MR. HATCH:** If they wanted to have basic
8 service, quality of service protections, then they
9 would cease subscribing to other ancillary nonbasic,
10 nonregulated services. It's that simple.

11 **CHAIRMAN ARGENZIANO:** But don't most
12 people today want either call waiting or something
13 else?

14 **MR. HATCH:** No question about it. They
15 absolutely do, and that's part of the services that
16 we offer. But that is the fundamental choice that
17 the customer makes in moving into a competitive
18 world and out of a protected one.

19 **CHAIRMAN ARGENZIANO:** Is there any kind of
20 notice to them that they will no longer have quality
21 of service by this PSC, you know, it's regulated?

22 **MR. HATCH:** The kind of notice that you're
23 suggesting is virtually impossible to do in the
24 sense that first I could, I could send the book, I
25 could send them a pamphlet. They're not

1 fundamentally going to understand without looking
2 and reading and understanding the statutory
3 structure to start with. Not saying that a notice
4 isn't appropriate, we could do that. But I'm
5 suggesting --

6 **CHAIRMAN ARGENZIANO:** No. I mean like if
7 I were a customer and I called you on the phone and
8 said, okay, I want to add some services.

9 **MR. HATCH:** Sure. Yeah.

10 **CHAIRMAN ARGENZIANO:** And an operator told
11 me, well, in doing so just know that the Public
12 Service Commission then no longer has regulatory
13 control over the quality of service, I think I can
14 understand that. But -- and I didn't know if that
15 was being offered by the company.

16 **MR. HATCH:** I don't think so.

17 **CHAIRMAN ARGENZIANO:** Okay.

18 **MR. HATCH:** There are lots of operational
19 issues related to that because you have multi --

20 **CHAIRMAN ARGENZIANO:** I understand. The
21 problem I'm having, staff, again, and I, understand
22 I'm trying to grasp what the staff looked at and I,
23 and I somewhat understand, but I really do, do think
24 that that was the Legislature's policy call. And,
25 and it may have some ramifications down the line

1 that may prompt them to do something else. I don't
2 know. But unless, you know, anybody else has
3 anything to say or add, the parties or the members,
4 I think we've discussed it to its fullest.

5 Commissioner Skop.

6 **COMMISSIONER SKOP:** Thank you.

7 Just a question to staff. If the
8 Commission were to deny the staff recommendation on
9 Issue 1 or modify the staff recommendation as to
10 Issue 1 and basically exempt interLATA and intraLATA
11 services from the AT&T service guarantee program,
12 what would staff recommend to reframe that motion
13 based on the staff recommendation? Because it seems
14 like the recommendation speaks just to those
15 pre-subscription services and not the E911 and the
16 other services that staff mentioned. So I'm looking
17 for some guidance in helping to frame a motion.

18 **CHAIRMAN ARGENZIANO:** And then while staff
19 is discussing that, I have a question, and it may
20 sound very simple and whatever. I don't know if the
21 PSC has ever been in this position before, and,
22 Commissioner Edgar, you may, may know being here
23 longer.

24 Is there ever a time that you were not
25 sure what the statutory intent was? I mean I know

1 there is. As I said, that, that's, that's really a
2 double -- I won't even say what that is.

3 But I mean is there a way that this
4 Commission can ask the committee "Was your intent
5 really to, to -- did you know that this policy call
6 would have this effect and is that what you
7 intended?" Is there a way to do that since it seems
8 so --

9 **MS. KISER:** There's certainly ways to ask
10 the Legislature questions. Perhaps one, one way to
11 do it would be to simply take action on this, on
12 this issue as you see fit and then simply send it to
13 the legislative committees and say this decision
14 involved certain interpretations of the legislation
15 and cite it and there was some confusion over the
16 issue. And is this an issue that the Legislature
17 might revisit and offer some additional
18 clarification or, or perhaps change it? But you
19 certainly can do that, and that's, that would be
20 totally appropriate.

21 **CHAIRMAN ARGENZIANO:** Well, if you made a
22 decision today and asked them what good does it do
23 --

24 **MS. KISER:** Well, you can certainly defer.
25 I mean, if you wanted to --

1 **CHAIRMAN ARGENZIANO:** Well, I mean could
2 JAPC possibly give us a quick understanding of the
3 intent in that regard specifically to that language?
4 Because what we're hearing is staff saying, "We
5 don't interpret it that way." And I'm looking
6 desperately -- I think the company said this is what
7 the, the Legislature said, and I seem to remember a
8 discussion around that issue of quality of service.
9 So they ultimately kept the language in, which must
10 have meant that was their policy call. And I'm just
11 hearing that we're not sure. I don't see anything
12 certain in the statute that -- I'm actually very
13 confused with what it does say.

14 **MS. KISER:** Yeah. I, I don't know that
15 you want to deliver this issue to JAPC and ask them
16 to weigh in on it because, first of all, they're
17 not, obviously they're not legislative members. And
18 in terms of what they really meant by that, it
19 really needs to go back to the Legislature for, for
20 clarification.

21 **CHAIRMAN ARGENZIANO:** JAPC, JAPC -- well,
22 yes. But they have legislative members serving on
23 there that usually give you the intent of
24 legislation. But the committee would be fine, but
25 at this point, I mean, here we are with an issue

1 before us and I'm just wondering if -- Commissioner
2 Stevens.

3 **COMMISSIONER STEVENS:** Commissioners, I,
4 like you, have had to read this several times and
5 I'm still probably not 110 percent into it. But the
6 statute states, 364.02(10), "Any combination of
7 basic service along with a nonbasic service or an
8 unregulated service is nonbasic service."

9 I believe, and this goes back to intent
10 again, so if we're going to look at intent, I
11 believe the legislative intent there was to take
12 away the competitive disadvantage AT&T had. And as
13 we go through this and the recommendation, I don't
14 think we have to do Issue 1 because the statute
15 says, "Any combination of basic service along with a
16 nonbasic service or an unregulated service is
17 nonbasic service." It's that last line in 364.02.
18 I don't think we have to do Issue 1. I think we
19 deny the recommendation and move on to 2.

20 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

21 **COMMISSIONER SKOP:** I tend to agree. I
22 think that -- I think we have to consider Issue 1
23 but just basically deny the staff recommendation on
24 Issue 1, thereby allowing AT&T to exempt
25 pre-subscription from the service guarantee program.

1 So I think that that's probably the way to do it.

2 And, you know, to address Chairman
3 Argenziano's concern, I think that if, you know, if
4 our statutory interpretation is incorrect, then
5 certainly the Legislature has the prerogative to
6 change the law or to do such things as it deems
7 necessary to redress any perceived problems that may
8 arise from, from our decision. But I think that
9 from the Commission's standpoint is we're tasked
10 with interpreting the statutes normally as a court
11 would and making a judgment call, and I think the
12 legislative intent is pretty clear.

13 So if there are no further questions, I
14 would basically on this issue --

15 **CHAIRMAN ARGENZIANO:** Any further
16 questions or discussion? Okay. Could I have a
17 motion?

18 **COMMISSIONER SKOP:** Yes, Madam Chair.

19 I'd move to deny the staff recommendation
20 on Issue 1 and approve the staff recommendations as
21 to Issue 2 and 3.

22 **COMMISSIONER STEVENS:** Second.

23 **CHAIRMAN ARGENZIANO:** All those in favor,
24 say aye.

25 (Simultaneous vote.)

1 Opposed, same sign.

2 Show that motion adopted.

3 **MR. HATCH:** Madam Chair.

4 **CHAIRMAN ARGENZIANO:** Mr. Hatch.

5 **MR. HATCH:** For clarification, Issue 2
6 says approve the SGP contingent on the staff's
7 recommendation in Issue 1. I take it that your
8 approval of the SGP is as filed with our
9 interpretation of pre-subscription being a
10 disqualifier from basic service.

11 **CHAIRMAN ARGENZIANO:** Okay.

12 **COMMISSIONER STEVENS:** We can take them
13 separate, if you want. We can take them separate.
14 We can move one and -- deny one and then go to two.

15 **CHAIRMAN ARGENZIANO:** I think we should.

16 **COMMISSIONER SKOP:** Yeah. I'll withdraw
17 my motion.

18 **COMMISSIONER STEVENS:** Okay.

19 **COMMISSIONER SKOP:** And then if we can --

20 **COMMISSIONER STEVENS:** Second.

21 **CHAIRMAN ARGENZIANO:** Okay. Wait a
22 minute.

23 Commissioner Edgar.

24 **COMMISSIONER EDGAR:** Then can I -- because
25 what Mr. Hatch just described was my understanding

1 of what was contained in the motion. So is that not
2 the case?

3 **COMMISSIONER SKOP:** That's what I thought
4 it was. I thought the motion embodied that. But --

5 **MR. HATCH:** Just trying to be real clear
6 here.

7 **COMMISSIONER SKOP:** But my concern is
8 that, Mr. Hatch, is it your, your intention that
9 that's strictly limited to the pre-subscription
10 services and not a blanket across the board that
11 anything makes service nonexempt and --

12 **MR. HATCH:** I think that's absolutely
13 correct. I mean, I do take issue with
14 Mr. Teitzman's characterization that if you make a
15 911 call, you're therefore not basic. And his
16 implication is not basic forevermore, and I disagree
17 with that. It would only be for the duration of the
18 911 call. You're back to basic as soon as you hang
19 up.

20 **COMMISSIONER SKOP:** Okay. So therefore
21 the consumer is not going to have their, their
22 service guarantee program evaporate if they make a
23 911 call.

24 **MR. HATCH:** Correct.

25 **COMMISSIONER SKOP:** Okay. Then I have no

1 problem. The motion remains the same as seconded
2 and voted by the Commission, I would believe.

3 **CHAIRMAN ARGENZIANO:** Okay. Then we're on
4 Issue 2.

5 **COMMISSIONER EDGAR:** We just --

6 **CHAIRMAN ARGENZIANO:** We just did --

7 **COMMISSIONER SKOP:** Yeah. I think we did
8 all of them.

9 **CHAIRMAN ARGENZIANO:** No. Wait a minute.
10 We did -- okay. We denied 1. I'm sorry.

11 **COMMISSIONER SKOP:** Yeah. We denied 1 and
12 approved Issue 2 and 3.

13 **COMMISSIONER EDGAR:** Within Commissioner
14 Skop's clarification as to the intent of the motion
15 on 2.

16 **CHAIRMAN ARGENZIANO:** Okay. Then we're
17 all happy?

18 **COMMISSIONER STEVENS:** Yes, ma'am.

19 **CHAIRMAN ARGENZIANO:** Okay. Thank you.

20 **COMMISSIONER EDGAR:** Would it be possible
21 to take a coffee break?

22 **CHAIRMAN ARGENZIANO:** Sure can. Let's
23 take a ten-minute break.

24 **COMMISSIONER EDGAR:** Thank you.

25 **CHAIRMAN ARGENZIANO:** Thank you.

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(Recess taken.)

(Agenda Item 3 concluded.)

1 STATE OF FLORIDA)
 2 :
 3 CERTIFICATE OF REPORTER
 4 COUNTY OF LEON)


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

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

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

19 DATED THIS 3rd day of February, 2010.

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 JANE FAUROT, RPR
 Official FPSC Hearings Reporter
 (850) 413-6732

1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
2 COUNTY OF LEON)

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 3rd day of February, 2010.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734

Definitions from Newton's Telecom Dictionary:

1. **Access:** A series of digits or characters which must be dialed, typed or entered in some way to get use of something. That "something" might be a PBX or KTS telephone system, a long distance carrier, an electronic mail service, a private corporate network, a mainframe computer, or a local area network.
2. **Presubscription:** A local Bell or local independent operating telephone company service that encourages each subscriber to select one long distance carrier he may use without having to dial a multiple digit access code.

Chapter 364.10(3)

(d) An eligible telecommunications carrier may not discontinue basic local exchange telephone service to a subscriber who receives Lifeline service because of nonpayment by the subscriber of charges for nonbasic services billed by the telecommunications company, including long-distance service. A subscriber who receives Lifeline service shall pay all applicable basic local exchange service fees, including the subscriber line charge, E-911, telephone relay system charges, and applicable state and federal taxes.

(g) An eligible telecommunications carrier may block a Lifeline service subscriber's access to all long-distance service, except for toll-free numbers, and may block the ability to accept collect calls when the subscriber owes an outstanding amount for long-distance service or amounts resulting from collect calls. However, the eligible telecommunications carrier may not impose a charge for blocking long-distance service. The eligible telecommunications carrier shall remove the block at the request of the subscriber without additional cost to the subscriber upon payment of the outstanding amount. An eligible telecommunications carrier may charge a service deposit before removing the block.