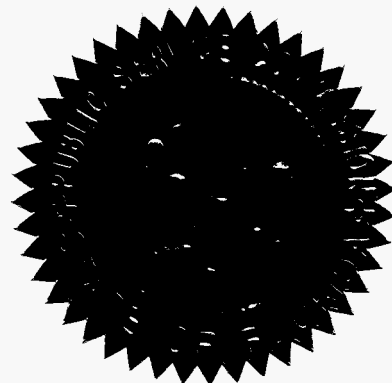


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090430-TP

AMENDED PETITION FOR VERIFIED
EMERGENCY INJUNCTIVE RELIEF AND
REQUEST TO RESTRICT OR PROHIBIT
AT&T FROM IMPLEMENTING ITS CLEC
OSS-RELATED RELEASES, BY SATURN
TELECOMMUNICATION SERVICES, INC.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

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

DATE: Tuesday, April 20, 2010

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

REPORTED BY: JANE FAUROT, RPR
LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6732/(850) 413-6734

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P R O C E E D I N G S

1
2 **CHAIRMAN ARGENZIANO:** Commissioners, we're
3 going to move on to Item 3, Issue 3, and we'll give
4 staff a moment to get in place. (Pause.)

5 Ms. Brooks, you're recognized to introduce
6 the item.

7 **MS. HARVEY:** Lisa Harvey --

8 **CHAIRMAN ARGENZIANO:** Okay.

9 **MS. HARVEY:** -- with the Office of
10 Auditing and Performance Analysis.

11 Section 271 of the 1996 Telecommunications
12 Act requires Incumbent Local Exchange Carriers, or
13 ILECs, such as AT&T, to provide nondiscriminatory
14 access to ordering systems, also known as OSS, or
15 Operational Support Systems, to Competitive Local
16 Exchange Carriers, or CLECs.

17 These OSS systems allow competitors, such
18 as STS, to electronically order products and
19 services from AT&T at wholesale and offer them to
20 their own end-users. This Commission has authority
21 pursuant to 364.01, Paragraphs 3 and 4, under
22 Florida Statute to ensure that there is fair and
23 effective competition in the telecommunications
24 industry and that the providers of
25 telecommunications services are treated fairly by

1 preventing anticompetitive behavior.

2 In 2006, AT&T and BellSouth merged
3 companies. Following this merger, AT&T began plans
4 to consolidate its OSS systems into a single
5 platform across their new 22-state region. As part
6 of the plan, AT&T will be retiring a web-based
7 ordering system used by CLECs in the southeast know
8 as LENS. The new system that they will be replacing
9 it with is a system which has been operational in
10 other states and is known as LEX.

11 In late 2009, STS filed a petition to stop
12 the retirement of LENS stating that the new system,
13 LEX, does not have the same edit checking capability
14 as the LENS system. STS believes that it will be
15 harmed because the new system, LEX, is not as
16 efficient as the old system, LENS.

17 In December 2009, this Commission ordered
18 staff to conduct an audit to look at the two systems
19 and compare them to resolve the issue. Staff has
20 concluded its audit, and is bringing it back to you
21 now for conclusion -- with the conclusion that the
22 systems are similar and that AT&T should be allowed
23 to move forward with their retirement of LENS.

24 Since this recommendation was filed, STS
25 has filed a motion to continue hearing or defer

1 staff's recommendation regarding the retirement of
2 LENS and to lift an abeyance allowing discovery in
3 this proceeding. Subsequently, this past Thursday,
4 AT&T filed a response to the opposition to STS's
5 motion. On Friday, staff provided you with copies
6 of STS's motion and AT&T's response. Also on
7 Friday, AT&T filed notice of its partial completion
8 of staff's audit recommendations.

9 Staff has not had the opportunity to
10 review that filing as of yet. The parties are here
11 to address the Commission on this matter.

12 **CHAIRMAN ARGENZIANO:** Thank you.

13 Mr. Gold.

14 **MR. GOLD:** Yes. Good afternoon. My name
15 is Alan Gold. Sitting beside me is Keith Kramer,
16 Executive Vice President of Saturn
17 Telecommunications Services, STS.

18 First, I'd like to address our contention
19 that this matter should be deferred and it's
20 premature for hearing. STS initially filed an
21 objection asking this Commission to keep AT&T from
22 retiring LENS because it did not have on-line edit
23 checking capabilities. We agreed, and this
24 Commission eventually entered an order abating, or
25 holding our proceedings in abeyance, and also

1 proceeding with an audit. We believe, and we
2 commend, we believe staff did an excellent job in
3 doing the audit. In fact, STS has achieved results
4 in the audit such as being able, or at least on
5 paper being able to do commingling that we haven't
6 been able to do since ever, and we have been trying
7 since 2006. Whether it can be done or not, it's too
8 early to tell, but at least staff has gotten STS
9 some place where it has not yet been, and that is
10 greatly appreciated.

11 Staff did an audit with very limited
12 resources. They did an audit without having the
13 technical knowledge and skills to evaluate very
14 complicated systems that people at STS and other
15 companies have been using for a long period of time.

16 Staff's audit found that the edit-checking
17 capabilities still are not there. We have some very
18 serious questions whether or not this audit is -- or
19 this system is appropriate, is comparable to AT&T's
20 retail. And in 1998, this Commission entered some
21 very serious orders. They entered an order
22 compelling that the wholesale system, ordering and
23 preordering system be comparable to retail. We have
24 some very serious questions whether that has been
25 done.

1 We also recognize that AT&T has a very
2 real desire to get this heard expeditiously.
3 Because of the limitations that we just described,
4 starting in December we advised AT&T that we
5 believed it necessary to take some key discovery of
6 some of their key personnel involved in this system
7 because, frankly, we do not believe that given the
8 limited resources, staff had the technical ability
9 to do so.

10 In December, we were told -- first we were
11 ignored. When we were ignored, we interpreted this
12 Commission's order as abeying (phonetic) proceedings
13 before you, but allowing us to proceed with
14 discovery. We noticed up AT&T for deposition in
15 December. Staff told us their interpretation of the
16 order. That discovery was abated. We said fine.
17 We were assured that we would receive an
18 opportunity, which we believe that fairness and due
19 process required.

20 Come March, we understand that there is a
21 proposed recommendation coming up that it would be
22 scheduled for today. Again, we reached out to AT&T.
23 We didn't know what the recommendation is. We
24 believed that discovery would be necessary, and,
25 again, we said, so we don't delay anything, give us

1 some very limited discovery. We were told -- we
2 were, again, told no.

3 When the staff entered its recommendation
4 to you last week, the order of abeyance ceased, as I
5 read it, upon staff's recommendation. We then asked
6 for further opportunity to take discovery so we
7 could be prepared to come to you today with all of
8 the knowledge that we had to be able to argue before
9 you intelligently and to bring to this Commission
10 all of the relevant facts. We again were told that,
11 no, this is a hearing for a proposed agency action,
12 discovery is not appropriate. That if we didn't
13 like your decision, we'll file a protest and take
14 discovery then, which to me seemed absolutely
15 backwards. This Commission should have all the
16 information before it makes a decision, and to be
17 required to waste your time, my client's time and
18 money, and the resources of the state by having to
19 file a protest and having you make decisions without
20 all the information did not make sense.

21 When we looked at the various rulings of
22 this Commission, including In Re: Petition for rate
23 increases by the Florida Public Utilities
24 Commission, which was in Docket Number 080366-GU,
25 which was issued on March 27th, 2009, it clearly

1 states that there is no prohibition of proceeding
2 with discovery prior to the issuance of the order.

3 If we go even further back to August 2004,
4 we see where BellSouth in Docket Number 040353 tried
5 the same type of tactics. And, again, this
6 Commission ruled that it is appropriate to have some
7 discovery prior to this to be able to present the
8 Commission with all relevant information.

9 We have been hampered somewhat in
10 presenting the information. Before the
11 recommendation or the evaluation of staff was
12 completed, AT&T was given an opportunity to review
13 it and make comments, which they did. We only saw
14 their comments last week. When we saw the audit, we
15 also made comments.

16 Hopefully this Commission has seen them;
17 we brought them with us today. We filed those, and
18 yet we are met with objections that we, the person
19 that complained in here, has no right to make those
20 comments. Again, to me it seems if AT&T was allowed
21 to before the recommendation, we should have been,
22 and certainly we had a right to do so after.
23 Together with the comments, we also have a video
24 demonstration which we believe clearly demonstrates
25 the inadequacies in the LEX system as compared to

1 the current system of LENS.

2 I'm prepared to address some of the
3 inadequacies in the system now, or we can deal with
4 the instant motion which is my request to take very
5 limited discovery, which is a deposition of three
6 individuals which we would believe would establish
7 several things, including that the demonstrations
8 before the staff on which they based their
9 recommendation were not true demonstrations.

10 We will demonstrate, we believe, the
11 inadequacies in LENS by demonstrating, as staff had
12 acknowledged, that the realtime online edits in LENS
13 is absolutely critical to make orders. In fact, if
14 you look at the recommendations that there was a
15 survey of some 13 CLECs, one of the CLECs made a
16 comment that it took two minutes to process an order
17 in LENS, and ten to fifteen minutes to process an
18 order in LEX. When a customer is on the phone and
19 you are putting in an order or when you're having to
20 pay for representatives, that great variance in time
21 is certainly critical.

22 As I said, I'd be happy to continue with our
23 objections in more detail, or address whether we're
24 entitled to -- for this Commission to defer it at this
25 time.

1 **CHAIRMAN ARGENZIANO:** I'm going to move to
2 AT&T, and then we'll go to staff and take it from
3 there.

4 Mr. Hatch.

5 **MR. HATCH:** Commissioners, Tracy Hatch
6 appearing on behalf of AT&T Florida. Also appearing
7 with me is Kipp Edenfield.

8 To be real clear, we support the staff
9 recommendation. There are things in there we don't
10 like, there are things in there we obviously like,
11 but in general we support the staff recommendation.
12 As we noted in our initial response to the staff's
13 audit, we have committed to moving forward with
14 staff's recommendations in the audit and as embodied
15 here in the staff's recommendation.

16 I guess the best place to start really is
17 what STS's initial complaint is that they filed
18 initially in September and an amended complaint in
19 October. The complaints are approximately 11 pages
20 long. It deals exclusively with online
21 edit-checking capability of the LENS system, which
22 is in place now, versus the online edit-checking
23 capability of LEX, which is the system that we
24 rolled out in November that we're seeking to replace
25 LENS with.

1 We think that the staff audit very clearly
2 answered the question of what the edit capable,
3 edit-checking capabilities of LEX versus LENS are.
4 The staff's conclusion is very clear. Now they have
5 had some concerns and questions, but we think those
6 questions have been answered with the staff. The
7 staff came to the conclusion that the edit-checking
8 capability in LEX has the same functional capability
9 as in LENS. And when you approved of LENS in your
10 recommendation to the FCC for 271, the same
11 conclusion was reached there.

12 Our obligation under 271 is to provide the
13 same functional equivalency. That's what LEX does.
14 It does not do it in identically the same way, it
15 doesn't do it at exactly the same time, but you
16 reach the same functional result with either system.

17 Now with respect to -- just a quick detour
18 into why it takes so long with one versus the other.
19 We don't believe that that is in fact correct. That
20 observation was done with a CLEC who is brand new
21 looking at LEX and getting used to the runup of LEX,
22 they're learning how to use it just like everybody
23 else, against LENS that they've been using for the
24 better part of, oh, five to seven to eight years.
25 There's clearly going to be a learning curve and a

1 ramp-up to this stuff.

2 But I can tell you that, as you can see
3 from the data that we provided and updated data that
4 I will share with you, is that the CLECs are
5 migrating from LENS to LEX. The volumes are
6 increasing dramatically, exponentially. STS appears
7 to be the only CLEC that has issues with LEX. No
8 other CLEC in any other state that LEX is present is
9 complaining about LEX the way STS is. It is -- to
10 us it's unknown.

11 Now going back to where I started is that
12 when you go through the complaint, the bulk of what
13 STS is complaining about really relates ultimately
14 to commingling. It is important to note, and they
15 will tell you, as they did say a moment ago,
16 commingling could not be electronically ordered in
17 the way they wanted it in LENS. That is a
18 substantial enhancement to LEX. We have now done
19 something for them that they never had before.

20 Now to the extent they want to keep LENS
21 and give up LEX to -- and give up what they really
22 want, which is part of what their business is all
23 about, I'm not sure why and I clearly don't
24 understand that.

25 As I mentioned, really we have committed

1 to moving forward with this. We think the
2 edit-checking capability ultimately now is a
3 nonissue with the staff's audit.

4 With respect to deferring the agenda and
5 doing discovery, it's very clear from the
6 Commission's order that order was a PAA. If STS
7 wanted to pursue discovery, they could have
8 protested that order and done discovery.

9 Now the Commission abated discovery until
10 the staff audit was complete, got to the Commission
11 for review. We are here today. The staff
12 recommendation today is a PAA. If STS feels that it
13 must, to protect its interests, proceed with this
14 case further after today, then they can protest the
15 PAA. They have full discovery rights. All due
16 process rights are retained and maintained. I think
17 there's a fundamental misconception about what an
18 agenda conference is versus what a hearing is under
19 the APA. An agenda conference is not a hearing
20 under the APA. We're not here for that.

21 And, frankly, the PAA process is hopefully
22 an effort so that we can avoid the entire APA
23 hearing process with issues and testimony and
24 discovery and all that stuff. But if somebody feels
25 that it doesn't adequately protect their interests,

1 they protest, we're off to the races.

2 **CHAIRMAN ARGENZIANO:** Before we take it,
3 could I just have staff address some of the comments
4 that were made?

5 **MS. HARVEY:** I'd be glad to. Thank you,
6 Commissioner.

7 One of STS's comments was that edit
8 checking wasn't there, wasn't there in the new
9 system, and that's not true. Edit checking is in
10 the new system LEX, it is just in a different place.
11 As opposed to being what's known as upfront edits,
12 it's editing that is done on the back end. Once you
13 push the send button to submit the order, the
14 editing is done at that point rather than as you
15 type in a field. So it's a, it's an order check
16 rather than a field check. So the edit checking is,
17 is there.

18 I'd also like to clarify that staff was
19 asked in its order by this Commission to do a
20 comparison of the LENS and the LEX interface, and
21 that is what we did. Now STS is, is more desirous
22 of a comparison between LEX and the retail system.
23 We did not do a third party test. We were not asked
24 to do a third party test between the LEX and the
25 retail similar system.

1 Third party testing was done on the LENS
2 system during 271 approval in the late 1990s and in
3 the early 2000s. Additionally, LEX was tested in
4 the other states where it was used. It was tested,
5 and we specifically talked about that in the audit
6 report. LEX was tested extensively in California
7 and in Texas and in Michigan, and it was deemed to
8 be at parity with the retail systems.

9 STS also seemed to be concerned by the
10 fact that they did not see the audit report until
11 after it was published. That is staff's standard
12 operating procedure is the auditee has the
13 opportunity to review the report prior to its
14 publication to ensure that there is no confidential
15 information in that report, and that's precisely
16 what we have done. Thank you.

17 **CHAIRMAN ARGENZIANO:** Thank you.

18 Commissioners? Commissioner Skop and then
19 Commissioner Stevens.

20 **COMMISSIONER SKOP:** Thank you, Madam
21 Chair. I just have a few questions that I'd like to
22 get staff to speak to.

23 I guess on the first concern, a
24 housekeeping issue, Page 4, the paragraph where the
25 copy of the staff audit report was filed. Is that

1 -- I would assume that would be April 5th instead of
2 May 5th, 2010. It's just right above the word
3 "jurisdiction."

4 **MS. HARVEY:** I'm sorry. You're on the,
5 the recommendation, Commissioner?

6 **COMMISSIONER SKOP:** Yes, ma'am. Page 4.
7 It seems to be a scrivener's error.

8 **MS. HARVEY:** It was April. Thank you.

9 **COMMISSIONER SKOP:** All right. Thank you.

10 And then moving to Page 9 or, excuse me, 9
11 of the staff recommendation, the second paragraph on
12 that page, "AT&T indicated to staff that all open
13 defects will be resolved by April 17th, 2010." Has
14 this been done?

15 **MS. HARVEY:** Commissioner, we have not had
16 an opportunity to check that yet.

17 **COMMISSIONER SKOP:** Okay. All right. I
18 guess getting to my central point, this is a little
19 bit different than the OSS release issue that the
20 Commission previously addressed. This deals with
21 the retirement of the LENS system and the adoption
22 of the LEX system, which staff, at least on Page 5
23 of the staff recommendation, has predicated that the
24 Commission move forward with allowing the retirement
25 of the LENS subject to the four conditions

1 precedent; is that correct?

2 **MS. HARVEY:** That's correct.

3 **COMMISSIONER SKOP:** Okay. I think that's
4 all I have, Madam Chair. I'm pretty much -- one
5 follow-up to that. What is the remedy to the CLECs
6 should there be a problem? I don't anticipate there
7 being a problem to the extent that staff's
8 recommendation, should it be adopted by the
9 Commission, has those conditions precedent that must
10 be met and, you know, any glitches worked out before
11 the retirement of the LENS system is allowed. So
12 does staff envision any problems cropping up like
13 the prior OSS release? And if they did, what
14 remedies or recourse would the CLECs have, if any?

15 **MS. HARVEY:** Commissioner, staff is not
16 anticipating any problems. However, there is the
17 SQM and SEEM plan that is in place that provides the
18 CLECs with financial compensation if orders do not
19 meet the standards that have been established by
20 this Commission.

21 **COMMISSIONER SKOP:** Okay. So they have
22 adequate remedy as a backstop if the implementation
23 or the retirement cost is --

24 **MS. HARVEY:** If there are major problems.
25 Right.

1 **COMMISSIONER SKOP:** Okay. All right.

2 Great.

3 **MS. HARVEY:** The remedies do not, however,
4 address the issue of the up-front edit-checking
5 capability.

6 **COMMISSIONER SKOP:** Okay.

7 **MS. HARVEY:** But if there are any other
8 major failures with the LEX when it is put in place,
9 that would be addressed with the SEEM plan.

10 **COMMISSIONER SKOP:** Does staff agree with
11 the AT&T assertion that although the edit-checking
12 ability in LENS is, is different, it still exists
13 and is able -- the CLECs with appropriate working
14 with the software be able to have the same
15 functionality that existed previously?

16 **MS. HARVEY:** It appears so, yes.

17 **COMMISSIONER SKOP:** Okay. All right.

18 Madam Chair, just briefly and I'm done. I concur
19 with the staff recommendation, but I'm open to hear
20 the concerns of my colleagues.

21 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
22 Stevens, then -- excuse me. Excuse me.
23 Commissioner Stevens, then we'll move to
24 Commissioner Klement, and then we'll come back to
25 you.

1 **COMMISSIONER STEVENS:** Thank you, Madam
2 Chair.

3 And I guess this is a question for
4 Ms. Harvey. Who pays for this system?

5 **MS. HARVEY:** AT&T.

6 **COMMISSIONER STEVENS:** Is this the only
7 system AT&T is going to use or do they use several
8 systems?

9 **MS. HARVEY:** There are several ordering
10 systems that are in place that the CLECs -- that are
11 available to the CLECs to use.

12 **COMMISSIONER STEVENS:** Okay. Is AT&T
13 trying to standardize what system they use?

14 **MS. HARVEY:** They're trying to make their
15 systems uniform across the 22-state region.

16 **COMMISSIONER STEVENS:** Okay. Thank you.
17 Thank you, Madam Chair.

18 **CHAIRMAN ARGENZIANO:** Commissioner
19 Klement.

20 **COMMISSIONER KLEMENT:** Thank you, Madam
21 Chair.

22 For the legal staff, not being a lawyer, I
23 have questions about the process. I've been given
24 to understand that the PAA process allows the STS to
25 then file an appeal and depose the witnesses that

1 they wish to do; is that correct?

2 **MS. BROOKS:** Yes. Yes. After a decision
3 is rendered today there will be a 20-day period for
4 staff to prepare a PAA order. Once that PAA order
5 is filed, there's a 21-day period in which any of
6 the parties, interested persons may protest and
7 discovery may begin.

8 **COMMISSIONER KLEMENT:** But we've heard STS
9 say this morning that that's backward; they should
10 be able to depose these witnesses before we give an
11 opinion.

12 **MS. BROOKS:** Well, the docket was held in
13 abeyance, which has been in Commission practice to
14 stay all proceedings given that this is a proposed
15 agency action, and it would be, they will be given
16 time to do that before hearing. This is an agenda
17 conference to bring the recommendation rather than a
18 hearing, which they will have the opportunity to
19 protest and have you decide upon.

20 **COMMISSIONER KLEMENT:** Is there -- are you
21 aware of any precedent for doing it the way STS has
22 requested?

23 **MS. BROOKS:** Well, because it has been
24 Commission practice that because staff was
25 conducting its audit and all of the proceedings were

1 held in abeyance -- I'm sorry.

2 **COMMISSIONER KLEMENT:** Okay. Thank you.

3 And for -- I'm sorry.

4 **MS. BROOKS:** And -- I'm sorry.

5 Additionally, the hearing will be a de novo review,
6 so it would -- you would hear everything anew.

7 **COMMISSIONER KLEMENT:** Thank you. For
8 STS, why would you say your company is having
9 problems with the interface and no others seem to be
10 having that?

11 **MR. GOLD:** (Microphone off.) I don't
12 think, I don't think that's accurate. If we take a
13 look at the numbers in staff's audit, they say that
14 in the southeast that 53 CLECs are using LEX. 164
15 are using LENS as of January. Out of the 53 using
16 LEX, we don't know how many were using LEX in other
17 states because LEX has been involved in the
18 non-BellSouth states for years.

19 So what we see by looking at the
20 relatively small numbers of CLECs that have used LEX
21 with most of the CLECs using LENS is that besides
22 what we have seen right, right now, that most of the
23 CLECs are continuing to use LENS and are unaware or
24 haven't tried for whatever reason LEX's concern.
25 And what would happen is what happened after -- what

1 we're scared will happen is what happened after the
2 first OSS release, that things change, a system, a
3 new system is done, everybody is surprised, and we
4 find out, and even as staff said, that the LEX
5 system results in time delays, a learning curve.
6 And even besides a learning curve, when you don't
7 see the corrections in realtime, which they're not,
8 but after an order is processed, there are, there
9 are delays.

10 The way LENS works is the same way that
11 when you order something over the Internet, you type
12 in something, it says required field, it pops up.
13 It makes orders very easy instead of when you
14 submitted it.

15 So we don't believe that based upon
16 staff's own numbers, which we're not criticizing,
17 that we are the only CLEC that is having problems
18 with it. We believe that others would have, would
19 have problems. You know, what we think we're
20 entitled to under the Commission's rulings and the,
21 and the law is a system that STS and other CLECs can
22 compete with, which is a system equivalent to their
23 retail which was found before.

24 And if I may for a second, Mr. Kramer is
25 Director of CompTel and he can address the questions

1 about other CLECs' interests a little better than
2 me.

3 **MR. KRAMER:** Thank you. Thank you,
4 Commissioners. Thank you, Madam Chairman. I am the
5 competitor to AT&T over here. I am a Director of
6 CompTel, and I can assure you CompTel is a national
7 organization and there is significant interest in
8 this case. As a business owner it's going to affect
9 me greatly.

10 LENS had a front-end that was ordered by
11 this Commission in 1998. It wasn't found to be
12 functionally equivalent until 2002. In discussions
13 with AT&T and other CLECs, we realized that the
14 learning curve to get expertise in LEX could get as
15 much as six months. So as a business owner, if I
16 lose somebody who is capable on LEX and for whatever
17 reason an employee turned, it would take me six
18 months to get that person up to speed fully capable
19 of using LEX. I don't have that issue with LENS
20 right now.

21 It has been told to me that if I wish to
22 have this front-end, go build it yourself.
23 Understand, we didn't know about these, these edit
24 problems until August of last year. Now this
25 replacement OSS was told to everybody in '07. And

1 if we didn't ask a question in August of '09, we
2 wouldn't have known about it until we were trained.
3 Now we weren't offered training until we had
4 conversations with opposing counsel, and then there
5 were only two CLECs that were invited to this
6 training, which was a pilot program. It was Birch
7 and STS out of all of the CLECs in the southeast
8 region. When we went to that, we asked the
9 questions about commingling and we were told that
10 that would be addressed at a later date. They
11 weren't addressed at that time.

12 There are significant problems with LEX.
13 These preorder online edits which are realtime allow
14 us to be functionally equivalent to AT&T's retail
15 systems so that as a competitor to AT&T I have equal
16 standing. I can compete on the street. That's very
17 important to me. Without that, if I'm asked to
18 create a frontline edit program such as LENS, I
19 don't have the economic capabilities of AT&T. I
20 don't have the capability that Verizon did when they
21 built theirs. They have millions upon millions of
22 dollars of assets, but it still took them three
23 years to build this front-end. Three years would
24 put me at a significant competitive disadvantage
25 while their RNS systems can take customers on the

1 phone and convert them right then and there. If I
2 make a mistake, I'm not going to know that until I
3 submit the order. When it comes back as rejected, I
4 don't know what the mistake is. I have to figure it
5 out. That could take up to 15 minutes, or I'm timed
6 out and I've got to start the process again.

7 There are things that have to be brought
8 before this Commission and should have been brought
9 to this Commission now so you can see it. We put
10 together a very simple DVD, it's less than five
11 minutes, which would be very demonstrative of the
12 significant differences. All we ask for is to have
13 the functional equivalent of what we have now in
14 LENS. I'm not asking for anything more. I wouldn't
15 mind LEX if you give me the functional equivalent of
16 the linear online preorder edits that I have now.
17 And it is going to cost us a fortune.

18 **CHAIRMAN ARGENZIANO:** Thank you.

19 Commissioner Klement.

20 **COMMISSIONER KLEMENT:** Yes. Aren't the
21 two systems running side by side during a
22 transition; is that a plan?

23 **MR. KRAMER:** That's correct. And that's
24 why we know they're functionally different. One is
25 nowhere near the functional equivalent of LENS. It

1 just isn't there.

2 **COMMISSIONER KLEMENT:** Is there a date
3 when the new, when the LEX will be imposed across
4 the board?

5 **MR. KRAMER:** Well, they intend on taking
6 LENS out of Commission May 7th. I hope they bring
7 it back on Monday.

8 **CHAIRMAN ARGENZIANO:** Mr. Hatch, did you
9 want to address --

10 **MR. HATCH:** May I? Commissioner Klement,
11 just a couple of things. First, LEX is not a brand
12 new system. LEX has been used in AT&T's 13-stage
13 region, which is the Ameritech, the SBC, the Pacbell
14 states for a good number of years. Even in the
15 southeast the transition from LENS to LEX is not new
16 either. AT&T announced the transition from LENS to
17 LEX as early as May of 2007. Now the actual rollout
18 of LEX was delayed for internal reasons and also for
19 the April release issues, lots of things got put on
20 hold. But this is not a new issue. It's been out
21 for a long time.

22 The edit-checking capabilities of LEX are
23 essentially -- they have been enhanced and tinkered
24 with over time, but essentially they're the same as
25 has been in LEX since day one. So this issue of

1 this is a whole new different edit-checking
2 capability is just simply not correct.

3 **COMMISSIONER KLEMENT:** May I ask for an
4 opinion regarding the problems that STS seems to be
5 having? What would you say might be the problem?

6 **MR. HATCH:** It's not entirely clear to me
7 what their problems are. It is, it is true that the
8 way LENS deals with edits is you enter a field, it
9 says you blew it, you have to go back and fix it.
10 That's that linear approach. And so you can't
11 proceed through the LSR process except by correcting
12 each field as you go.

13 In LEX you enter lots of data on lots of
14 fields all the way to the end and you punch a button
15 to submit, and it's virtually instantaneous when it
16 comes back and says you have errors in these fields,
17 all of these fields. So the time lag is ultimately
18 very little in our opinion.

19 **COMMISSIONER KLEMENT:** Okay. Does it tell
20 you which field the error is? I am familiar with
21 that when I'm filling out these forms and I forget a
22 zip code or something and it won't let me proceed.

23 **MR. HATCH:** Right. If you're looking --
24 your typical online form, you can enter lots of
25 information. If you leave it blank, you can still

1 submit and then it comes back and it says fill in
2 this, fill in this, fill in this.

3 **COMMISSIONER KLEMENT:** Yes.

4 **MR. HATCH:** Essentially that's how LEX
5 works.

6 **COMMISSIONER KLEMENT:** Okay.

7 **MR. HATCH:** And that's what staff was
8 looking at when it did its comparison. And the DVD,
9 staff has seen that. It's part of their analysis.

10 So in terms of the edit checking,
11 different? Yes. More time consuming? In opinion,
12 no, ultimately once you get used to the system.

13 Now to your point, LEX has been out there
14 and online since November. So the CLECs have had
15 lots of time to engage in using LEX and to figure
16 out how it works, whether they have problems. Help
17 is available from us if you have problems dealing
18 with that. We have done that.

19 With respect to the testing that STS
20 mentioned, there were not just two carriers invited.
21 It was an open invitation to all carriers to come
22 and test who wanted to test. Only two actually
23 showed up. STS was one. I think Birch, I believe,
24 was the other. So it's not correct to say that we
25 only invited two.

1 And with respect to STS, they wanted to
2 test a very narrow piece of LEX, which at that point
3 we were there to demonstrate the generic whole LEX,
4 not just this narrow commingling piece, which is a
5 new thing from -- that doesn't exist in LENS really.
6 It's a new part of LEX.

7 With respect to order volumes and whether
8 this thing is really working, we have provided some
9 preliminary data. What the most recent data shows
10 you, which you would expect actually over time, is
11 the firm order volumes in LEX now exceed LENS by two
12 to one. Where, you know, you go back a couple of
13 months, you had very few LEX orders, lots of LENS
14 orders, that's now crossed over. You now have many,
15 many more LEX orders than you have LENS orders. The
16 carriers are migrating to LEX, and so thus far
17 nobody has given us any reason to have concerns that
18 it's not working the way STS alleges.

19 There are a total of 206 carriers in
20 Florida or in the south -- I'm sorry -- the
21 southeast. That's right. 93 have actually migrated
22 and are submitting orders. We've got 108 that are
23 green, ready to go. They can submit orders any time
24 they want. We've got five that we're still working
25 through the final process to get them up to speed.

1 **COMMISSIONER KLEMENT:** And one more
2 question, Madam Chair.

3 **CHAIRMAN ARGENZIANO:** You're recognized.

4 **COMMISSIONER KLEMENT:** Mr. Gold, without
5 going into specific questions, the kind of
6 information you expect to get in deposing the AT&T
7 people, can you enlighten us a bit about it, why it
8 seems so important?

9 **MR. GOLD:** Yes, sir. I think we can get
10 into some of the -- I'm sorry. I think we could get
11 into some of the differences between the two
12 programs. We talk -- we set to depose people that
13 would be dealing with the CLECs on a day-in and
14 day-out basis. We could get the problems that other
15 CLECs have been experiencing instead of real
16 numbers.

17 I think we can also try to establish,
18 which we have, some of the technical difficulties
19 between LEX and, and LENS, as well as some of the
20 testing that was done before the Commission wasn't
21 testing on a realtime basis. It was testing that
22 was set up by, by AT&T.

23 But looking at the numbers, looking at the
24 problems that other CLECs have gone into I think
25 would be absolutely critical, which the only

1 information we have right now is a survey done of I
2 understand either 13 or 14 different, different,
3 different CLECs. And I think the differences
4 between LEX as it existed and LENS is, is very
5 critical because staff based, has put a lot of time
6 in comparing -- relying upon other states'
7 examinations of LEX done ten to 12 years ago. Those
8 were examinations done in Michigan in Michigan Bell,
9 Texas of Southeastern Bell and California Pacific
10 Bell. And there was no corollary, correlation
11 between the retail systems in Michigan, Texas and
12 California and the retail systems in Florida ten
13 years ago, much less today.

14 And if the staff passed on -- gave a lot
15 of credence to the abilities of LEX because of a
16 comparison to a completely different system, we
17 believe that is something that we need to go into
18 with the people that are familiar and know these two
19 systems. We believe those depositions would not
20 have taken a lot of time. In fact, after the staff
21 recommendation came out, we again, and the letters
22 are attached to our motion, we said, hey, last
23 Thursday and Friday, let us take these depositions,
24 let us ask the questions, and we would be before
25 you, we would be before you today. We were told

1 absolutely not, and --

2 **CHAIRMAN ARGENZIANO:** Mr. Gold?

3 **MR. GOLD:** Yes, ma'am.

4 **CHAIRMAN ARGENZIANO:** Can you hang on a
5 minute?

6 Commissioner Klement, did that adequately

7 --

8 **COMMISSIONER KLEMENT:** Yes, it does.

9 Thank you, Madam Chair.

10 **CHAIRMAN ARGENZIANO:** Okay. We're going a
11 little beyond what the question was.

12 **COMMISSIONER KLEMENT:** Yes.

13 **MR. GOLD:** I apologize.

14 **CHAIRMAN ARGENZIANO:** I think it was, was
15 mentioned several times. If staff would once again
16 go into the reasons why they were told what they
17 were told to make sure the Commissioners understand
18 the process and what was protocol, what is protocol.

19 **MS. BROOKS:** In reference to procedure,
20 Chairman?

21 **CHAIRMAN ARGENZIANO:** Yes, please.

22 **MS. BROOKS:** There is a 21-day -- this is
23 a proposed agency action. This action comes before
24 the Commission in agenda. After the agenda and
25 staff has rendered their decision, there is a 20-day

1 period of time for staff to prepare a proposed
2 agency action order. After that order is prepared,
3 there's a 21-day protest period.

4 It has been Commission practice when a
5 docket is held in abeyance that all proceedings have
6 been, are stayed. So this is the procedure on why
7 discovery has not been allowed at this point.

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

9 Commissioner Skop, I believe you had a
10 couple of questions, and then we're going to wrap it
11 up.

12 **COMMISSIONER SKOP:** Yes. Thank you, Madam
13 Chair.

14 Just briefly to, to Mr. Hatch and one to
15 staff. Mr. Hatch, I think that you mentioned that
16 notwithstanding the AT&T desire to standardize the
17 CLEC ordering interface across its region, that the
18 data that you referenced shows a CLEC migration to
19 the adoption of LEX within the production
20 environment; is that correct?

21 **MR. HATCH:** That's correct.

22 **COMMISSIONER SKOP:** What type of volume
23 are you saying? You mentioned a two-to-one, but do
24 you have specific volume numbers? I mean, is this
25 stable --

1 **MR. HATCH:** The numbers are proprietary,
2 but we can give you a sheet that shows you what
3 those numbers are, if you would like to look at
4 them, and then we'll gather it back up.

5 **COMMISSIONER SKOP:** Let me go on to my
6 more important question in the interest of time.

7 On Page 9 of the staff recommendation
8 there were 13 remaining open post-production
9 discrepancies that were set for resolution by 17
10 April 2010. Can you represent to the Commission
11 that those discrepancies have been resolved?

12 **MR. HATCH:** All but one have been closed.
13 The last item is expected to be closed shortly,
14 within the new few days.

15 **COMMISSIONER SKOP:** All right. Thank you.

16 And then to staff, with respect to the
17 conditions precedent before staff would allow the
18 retirement of the LENS system, do you, does staff
19 anticipate that coming back to the Commission at
20 agenda conference or final action, or would that be
21 staff's administrative authority to allow AT&T to
22 retire LENS?

23 **MS. HARVEY:** (Microphone off.) Sorry. We
24 are seeking administrative authority to close that
25 once we review AT&T's response. And if it's found

1 adequate, then staff would approve.

2 **COMMISSIONER SKOP:** All right.

3 Commissioners, I guess, given the concerns of the
4 parties, I'm comfortable with the staff
5 recommendation. I know if the Commission, if the
6 will of the body were to handle that retirement at a
7 subsequent agenda conference or just grant the
8 administrative authority, I'm comfortable either
9 way, if there's any concerns.

10 **CHAIRMAN ARGENZIANO:** Commissioners, any
11 questions? Comments?

12 **COMMISSIONER STEVENS:** I'm fine with
13 staff's recommendation.

14 **COMMISSIONER SKOP:** Okay.

15 **CHAIRMAN ARGENZIANO:** Commissioner
16 Klement.

17 **COMMISSIONER KLEMENT:** A clarification of
18 what the staff just said regarding if, if they
19 won't -- that they won't have to come back to agenda
20 if there's, if there's a protest filed.

21 **CHAIRMAN ARGENZIANO:** Can you -- if
22 there's a protest -- can you elaborate?

23 **MS. HARVEY:** Oh. If a, if a protest is
24 filed?

25 **MS. BROOKS:** The matter would be set for

1 hearing if a protest is filed.

2 **COMMISSIONER KLEMENT:** Okay. So what I'm
3 hearing and understanding is that if we vote on this
4 as some -- indicate to accept your recommendation,
5 then STS can protest and get their depositions.

6 **MS. BROOKS:** You're absolutely correct.

7 **COMMISSIONER KLEMENT:** And we will -- and
8 then it will come back before us.

9 **MS. BROOKS:** Yes.

10 **COMMISSIONER KLEMENT:** Thank you.

11 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you. I was just
13 going to try and clarify that to the extent that if
14 the order is, the PAA is protested, then it would be
15 set for hearing. But if the PAA is not protested,
16 then staff would have the administrative authority
17 in their own discretion that the conditions
18 precedent were met prior to allowing the retirement
19 of the LENS system.

20 **COMMISSIONER KLEMENT:** Yes.

21 **CHAIRMAN ARGENZIANO:** Okay. Any other
22 questions?

23 **MR. HATCH:** Madam Chairman, may I
24 interpose one moment?

25 Just to be real clear before your --

1 because I don't want there to be any mistakes, the
2 December order basically said you hold up -- we
3 disagreed with your ability to say you can't retire
4 LENS because we have a replacement system, LEX,
5 that's out there that we believe is functionally
6 equivalent. Now that question in our view has been
7 answered.

8 Now that order says until the Commission
9 has reviewed the staff's audit and made a decision.
10 It doesn't say that you can't retire LENS until STS
11 is completely happy with every issue that they could
12 conceivably raise. And it is our view that with the
13 audit report bolstering our initial suggestions to
14 you, that LEX is a completely adequate replacement
15 of LENS. It is our intention to take LENS down as
16 soon as we possibly can.

17 Now we have committed to working with the
18 staff and we hope to make the staff, you know,
19 comfortable with the responses that we have already
20 given them and if they need a little more
21 information.

22 But understand this, there is a real
23 financial cost to maintaining LENS in parallel with
24 LEX. And the more time that goes on, the more
25 difficult that becomes.

1 **CHAIRMAN ARGENZIANO:** Commissioner
2 Stevens.

3 **MR. HATCH:** And we would plan to retire
4 irrespective of a protest. Now if they protest,
5 they're entitled to everything that they want to
6 throw into the hearing based on their complaint.
7 And if it is found by the Commission that there's
8 some defect or deficiency and they order us to go
9 fix it, then we'll go from there.

10 **CHAIRMAN ARGENZIANO:** Thank you.
11 Commissioner Stevens.

12 **COMMISSIONER STEVENS:** I go back to who
13 paid for the system, why are we going this
14 direction? And I understand financial impacts,
15 standardization, and that's why I agree with the
16 staff recommendation.

17 **COMMISSIONER SKOP:** Madam Chair.

18 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
19 Skop.

20 **COMMISSIONER SKOP:** Thank you, Madam
21 Chair. If there's no further questions as to the
22 disposition of Item 3, I'd move to adopt the staff
23 recommendation for Issues 1 and 2.

24 **CHAIRMAN ARGENZIANO:** Do I have a second?

25 **COMMISSIONER KLEMENT:** Second.

1 **CHAIRMAN ARGENZIANO:** Okay. All those in
2 favor, say aye.

3 (Unanimous vote.)

4 Opposed? It is adopted. Thank you very
5 much.

6 (Agenda Item 3 concluded.)

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DATED THIS 23rd day of April, 2010.



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

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