

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110013-TP

REQUEST FOR SUBMISSION OF PROPOSALS
FOR RELAY SERVICE, BEGINNING IN
JUNE 2012, FOR THE DEAF, HARD OF
HEARING, DEAF/BLIND, OR SPEECH
IMPAIRED, AND OTHER IMPLEMENTATION
MATTERS IN COMPLIANCE WITH THE
FLORIDA TELECOMMUNICATIONS ACCESS
SYSTEM ACT OF 1991.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, November 22, 2011

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

REPORTED BY: JANE FAUROT, RPR
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P R O C E E D I N G S

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2 **CHAIRMAN GRAHAM:** All right. Back to the
3 agenda. The first item to take action on -- the second
4 item, rather, to take action on is going to be Item
5 Number 3. So if we can turn to that.

6 **MR. BLOOM:** I believe I have the honor,
7 Commissioner. Kevin Bloom with staff.

8 You have before you Item 3, which is Docket
9 Number 110013, which is a revised request for proposals
10 to provide telecommunications relay service in Florida.

11 **CHAIRMAN GRAHAM:** Mr. Bloom, hold on just a
12 second. Are we supposed to have an interpreter here?

13 (Inaudible; interpreter speaking.)

14 Oh, okay. No, that's all right. I just
15 want to make sure that you are here. That's fine.

16 I'm sorry. Continue.

17 **MR. BLOOM:** You may recall that at the
18 September 20th Agenda Conference the Commission voted to
19 reject all bids and directed staff to revise the RFP to
20 reflect the discussions on that date. The
21 recommendation you have before you reflects those
22 changes or those discussions as best as we can capture
23 them.

24 In addition to discussions among staff and
25 revisions, we also conducted a second relay bidders

1 workshop October 25th to discuss these potential changes
2 with any potential bidders. We also presented these
3 proposed revisions to the TASA Advisory Committee on
4 October 28, so we believe all our bases have been
5 covered with regards to core constituencies. At this
6 point we can move forward in whichever way you wish. I
7 believe there are parties present, and I'm not sure if
8 they are here to answer questions or if they wish to
9 address you, but we are prepared to go forward in any
10 way you desire, you determine.

11 **CHAIRMAN GRAHAM:** Okay. Any of the parties
12 present want to speak before we bring it back to the
13 Commission board?

14 **MR. WAHLEN:** I guess we'll start on this end.
15 Good morning, Commissioners. I'm Jeff Wahlen with the
16 Ausley Law Firm. I'm here with Gary Lewein of Hamilton
17 Relay. Hamilton provides relay service in 17 states,
18 the Virgin Islands, and Saipan. We appreciate the
19 opportunity to be here this morning. Hamilton supports
20 the staff recommendation. We appreciate their hard
21 work. We had a very good discussion at the bidders
22 workshop, and we would encourage the Commission to adopt
23 the staff recommendation in the RFP as presented without
24 changes.

25 If you have any questions, Mr. Lewein or I

1 will try to answer them at the appropriate time.

2 **CHAIRMAN GRAHAM:** Thank you.

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

4 Tracy Hatch appearing on behalf of AT&T Florida.

5 We would ask you to take a hard look at
6 portions of the staff recommendation in terms of what
7 should be contained in the RFP. We would like
8 consideration of two things.

9 One, as was discussed in the staff
10 recommendation and at the bidders conference, in terms
11 of the weighting between the technical and the pricing
12 components of the RFP, we think that the 50/50 split is
13 a better approach to go with respect to the RFP. As was
14 explained by the staff in going through, they attempted
15 to eliminate as much of the subjective portions of the
16 RFP that they could. What you will see, though, is the
17 subjective portions are all in the technical side, not
18 on the pricing side. And so if you want to eliminate as
19 much subjectivity as you can, then you would move closer
20 to a 50/50 split. That in and of itself would attempt
21 to alleviate even more subjectivity.

22 The comment in the staff recommendation with
23 respect to why they stuck with a 60/40 split basically
24 seems to rest on a suggestion that somehow quality of
25 service would suffer if you changed the split. And I

1 guess my response to that is that the RFP and the
2 ultimate contract that is awarded will have service
3 quality measures in it. Those are the standards by
4 which the entity providing the service will be held.
5 And so shifting the weight in any sense doesn't affect
6 the quality of service that would be provided to the
7 customers of the relay center. So I'm not quite sure
8 how quality of service fits into that in terms of the
9 staff's analysis, because the quality of service is set
10 forth in the contract. Here the subjectivity part, I
11 think, would weigh in favor of the 50/50 split.

12 The second point that I would make is that the
13 staff discussed -- well, as you recall from the last
14 agenda, there was a discussion by the Commissioners
15 about whether a call center should be included or
16 considered, so on and so forth. At the bidders
17 conference it was discussed. In the staff
18 recommendation you will see that they have eliminated or
19 attempted to eliminate even the opportunity to submit a
20 call center as a part of the bid. We are not quite sure
21 exactly why that is, but we would urge you to include a
22 call center within the RFP as a consideration.

23 We still think that including 200 points would
24 be adequate, but whatever points you would assign to it
25 would be up to the Commission to make that

1 determination. But we think it is important to consider
2 a call center as part of this overall process. If you
3 will look at the TASA enabling statute, what it says is
4 your primary directive is to do the best deal most
5 advantageous to the state. And we urge you to consider
6 a call center as part of that process.

7 I'm available for any questions you may have.

8 **MS. RULE:** Commissioners, I'm Marsha Rule with
9 the Rutledge Ecenia Law Firm, and I am here on behalf of
10 Sprint. And as you a know, Sprint is the current
11 provider.

12 Sprint supports the staff recommendation and I
13 would point out a couple of things. First of all, staff
14 has been doing this for quite sometime and doing it
15 well. The recommendation reflects a lot of their
16 experience in choosing and managing providers. But more
17 importantly, the Commission's goal in issuing the RFP
18 that you are considering today is to get the highest
19 quality of service for the deaf community in Florida,
20 but it must be at the lowest possible price. And since
21 inception of the relay service the Commission has worked
22 diligently to put -- keep prices down and decrease
23 expenses.

24 The requirement for incenting bidders to open
25 a Florida call center will increase costs, and that's

1 directly the opposite goal that you have. You are not
2 to increase costs. The statute says the lowest possible
3 costs, and you have done a great job on that. In fact,
4 if you look back over the recommendations on the TRS
5 budget for the past several years, you have kept a tight
6 reign on them.

7 Any increase in costs to make a few Florida
8 jobs is an expense that all Florida telephone customers
9 will have to pay. And if it doesn't result in any
10 increased quality and it increases the cost, it is not
11 advantageous to the state. Staff has recognized this in
12 the draft RFP and Sprint supports that. Thank you.

13 **CHAIRMAN GRAHAM:** Thank you.

14 Okay. Let's bring this back up to the board.
15 I have to say that I respectfully disagree with the last
16 speaker. I think one of the things that we talked about
17 quite a bit before we rejected the last bid was we
18 talked about having a call center in Florida. I don't
19 think it's something that should be mandated in the RFP,
20 but I think jobs in the State of Florida is a good
21 thing. I think especially in this economy that we are
22 living right now, jobs is a positive. Now, granted this
23 is not a jobs bill, but I don't think we should go the
24 opposite and run from the opportunity to maybe create
25 jobs here in the State of Florida.

1 A question I have for staff, by having -- I
2 know from just hearing different people talk about this,
3 having a call center here, you have people that
4 understand the State of Florida, people that understand
5 the landmarks that are here, that know the cities that
6 are here, that have better understanding of how to spell
7 the little things that we have here. Does it help the
8 staff monitor the quality of service that we are
9 providing by having a call center here in the State of
10 Florida?

11 **MR. BLOOM:** Commissioner, I think I would have
12 to answer that in the affirmative in the sense that if
13 it came to the point where we needed to monitor and we
14 had a budget for it that, yes, proximity would be an
15 issue. If the call center was located near one of our
16 field offices, that would certainly be easier than
17 trying to come up with travel to fly to some other state
18 and do some monitoring there.

19 **CHAIRMAN GRAHAM:** I'm not necessarily looking
20 to mandate this, but I'd like to see it set up as some
21 sort of a bonus if nothing else. You know, maybe make
22 it somewhere like 3 to 5 percent of the RFP and just --
23 it's not required. If you happen to want to provide a
24 call center here in the State of Florida and provide
25 jobs here to the State of Florida, I think that should

1 be a consideration and maybe give you those extra
2 points. Three percent of the points would be, what,
3 about 110 points?

4 **MR. BLOOM:** Yes, sir, it would be in that --
5 it would be in the 100 point range, somewhere, yes, sir.

6 **CHAIRMAN GRAHAM:** So somewhere like 3 to 5
7 percent would be a 100 to 150 points.

8 **MR. BLOOM:** Five percent would come in right
9 at 150 points, yes, sir.

10 **CHAIRMAN GRAHAM:** Okay. Well, I would throw
11 that out there for the Commission to think about.

12 Commissioner Balbis had his light on first.

13 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

14 And, obviously, this is an extremely important
15 service that the state provides to the deaf,
16 hard-of-hearing, blind, and speech-impaired, so I'm very
17 concerned with quality of service, and I'm also
18 concerned about cost. So a question for staff: Is
19 there a way that we can establish a threshold of
20 excellence, of excellent service, and then once that
21 threshold is met, then focus on price, knowing that
22 whoever the winning bidder is will provide that
23 excellent service that I feel is important?

24 **MR. BLOOM:** Commissioner, I think that if -- I
25 think it could happen if it was the will of the

1 Commission, yes, sir. I think if one looks at Page 46
2 of the recommendation, it has the evaluation method to
3 be used in the final check list. This is for the
4 evaluators to do, and it talks about maximum points.
5 You know, if it's ten points, then excellent is 7.6 to
6 10, and it goes right on down the scale. So, in theory,
7 if a bidder was at 7.6, or 76 percent all the way across
8 the board, then they would be providing excellent
9 service. If you were to set that up as perhaps a
10 pass -- perhaps what you are suggesting is that would be
11 pass/fail. If they meet the excellent standards
12 numerically, then you would just consider price by
13 itself?

14 **COMMISSIONER BALBIS:** That's correct. I mean,
15 one of the options I thought about was the aggregate
16 score. If excellent, according to your scale and based
17 on the experience of staff, is 75 percent or greater,
18 then the aggregate score, if a bidder meets that
19 excellent threshold, which again is 75 percent, then we
20 can be assured that if those bidders then move on to the
21 cost portion of the proposal, that the Commission and
22 the state can be assured that whoever wins will provide
23 an excellent service, and we can focus on the lowest
24 cost that still provides that excellent service.

25 **MR. BLOOM:** So once a bidder met that

1 threshold numerically, then we would only be concerned
2 with price at that point?

3 **COMMISSIONER BALBIS:** Correct.

4 **MR. BLOOM:** That could be done if that's the
5 will of the Commission, sure.

6 **COMMISSIONER BALBIS:** That is something that I
7 would like to throw out again, knowing that at least me
8 personally feel that -- that I feel that excellent
9 service is important, and then, again, we know that now
10 we can focus on price. And if we go with the lowest
11 priced service, we know it's still going to provide an
12 excellent product.

13 The other item I'd like to discuss that was
14 brought up by several of the companies and also from the
15 Chairman is the issue about a call center. We had a lot
16 of discussion during the last agenda conference when
17 this was discussed about a call center. I know one of
18 the bidders provided a call center in Florida. And I
19 have been thinking about this issue a lot, and relying
20 on, you know, my experience in both preparing and
21 responding to RFPs, I'm not sure how -- if it would be
22 difficult or not to define what a call center is, to
23 monitor it, and whether or not it would ultimately lead
24 to higher cost.

25 You know, one extreme would be that each

1 bidder then provides a, quote, call center. They rent
2 out a space, hang a sign on the door that says Johnson
3 Telecommunications Call Center, and they have met the
4 requirements of the RFP because, again, it is difficult
5 to define, but the renting of that space costs
6 additional, and that would be passed on to the
7 customers.

8 So I have some concern with requiring a call
9 center. If a company does provide it, and that is
10 reflected into the quality of service that is part of
11 the technical evaluation, I think that will flush out.
12 But, again, I am kind of concerned about, again, how do
13 we define it, how do we enforce it, and how does it not
14 lead to additional cost. So those are all the comments
15 I have at this time.

16 **CHAIRMAN GRAHAM:** Commissioner Brown.

17 **COMMISSIONER BROWN:** Thank you. And as a
18 follow-up to Commissioner Balbis' comment regarding the
19 call center, Staff, do you know approximately how much a
20 call center would cost a company to maintain from
21 previous history?

22 **MR. BLOOM:** Commissioner, in the past round,
23 the AT&T Florida Relay Center was estimated at \$213,882
24 a year.

25 **COMMISSIONER BROWN:** So over the term of the

1 contract if you could?

2 **MR. BLOOM:** It's a three-year contract with
3 potential extensions year-by-year for an additional four
4 years, so you could be talking about potentially a total
5 of seven years, potentially. I think Beth wants to jump
6 in.

7 **MS. SALAK:** I was just going to say that at
8 one point in time we were told that to continue with the
9 call center that it would be well over \$3 million a
10 year, 3.4, I believe.

11 **COMMISSIONER BROWN:** And what is the value of
12 the contract as a whole, approximately?

13 **MS. SALAK:** It runs between about \$6 million,
14 five to \$6 million a year annually.

15 **COMMISSIONER BROWN:** Annually. Okay. And,
16 also, I looked at the statute that staff has recommended
17 that the call center fit within that purview, 427.704,
18 Subsection 3(5) -- well, 3(5) is where I found it. And
19 maybe this is a question for Ms. Miller. With regard to
20 how this fits within the realm of the statute with
21 regard to criteria for consideration, could you
22 elaborate whether Subsection 5 or Subsection 2 applies
23 for the call center?

24 **MR. BLOOM:** Now that we have dived into the
25 pool of law, I'm going to defer to counsel.

1 **MS. MILLER:** When we have looked at the
2 concept of the call center, we thought that the service
3 quality standard would be the standard that it would
4 fall within if it enabled better monitoring of the
5 service. So we did not look at (5) regarding proposed
6 service enhancements and technological enhancements,
7 instead we looked at (2), the overall quality of the
8 service.

9 **COMMISSIONER BROWN:** Thank you. And I just
10 wanted to point that out, because, Commissioners, I felt
11 that that Subsection 5 really fit the call center needs,
12 and it says any proposed service enhancements and
13 technological enhancements which improve service without
14 significantly increasing cost, and my big concern was
15 that cost aspect. So Chairman Graham's proposal to
16 allow a call center without allocating point -- pardon
17 me, have it as an option rather than a requirement, I
18 would be more inclined to support something of that
19 nature rather than having it be a requirement. Because
20 I do think that there is a significant cost that is
21 associated with having a call center -- mandating a call
22 center. And I don't know if that's really what the
23 statute provides for, since I think that it does
24 significantly increase costs. And I do have a few other
25 comments with regard to the RFP, but if we want to stick

1 on the call center.

2 **CHAIRMAN GRAHAM:** Let's deal with the call
3 center, since that's, I guess, the thing that is at hand
4 right now. I agree with Commissioner Brown, the call
5 center shouldn't be something that is mandated. But,
6 you know, I sit back and look at the focus of both our
7 legislators and our Governor right now that are looking
8 to do whatever we can to provide jobs here in Florida.
9 And, once again, like I said, this is not a jobs bill by
10 any means. I think it also helps with the quality being
11 able to monitor this, and have our staff being here to
12 easily monitor that stuff.

13 But the call center, in my opinion, should be
14 a bonus. You should come out with whatever your best
15 product is, regardless if it's here in the State of
16 Florida or not, but if you choose to provide a call
17 center here in the State of Florida, I think that's
18 something that enhances the bid that is before us, and I
19 think there should be points awarded to enhancing that
20 bid.

21 And, you know, I think 3 percent or 5 percent,
22 whatever number you want to come up with, is enough of a
23 percentage. And, like I said, once again, not to be a
24 mandate, but to reward somebody for wanting to bring
25 jobs here to Florida and to be close at hand to work

1 very close with our staff.

2 Commissioner Brisé.

3 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

4 One question to staff in terms of quality of
5 service. Understanding that Florida is a very diverse
6 state in terms of languages, having a call center in
7 Florida, would that in any shape or form facilitate
8 dealing with the languages that we have here in Florida?
9 And I'm thinking in particular to, say, Haitian Creole,
10 for instance, where you have not many states where you
11 may have individuals who can actually work that
12 language.

13 **MR. BLOOM:** I would almost want to defer to
14 those companies that have experience in providing the
15 service on that question. I know that we did at one
16 time look at the number of calls that came in that
17 were -- I think they were identified as French,
18 actually, but I think that was actually Haitian Creole,
19 and I believe it was less than one percent. But perhaps
20 some of the companies have more experience with
21 different languages.

22 **COMMISSIONER BRISÉ:** And I would appreciate
23 hearing from the different companies.

24 **MS. RULE:** This is Marsha Rule, and I don't
25 have statistics for you. I'd be happy to get them. But

1 I can tell you that those calls are handled
2 professionally and quickly by Sprint's current relay
3 service providers, who at this time are located outside
4 the State of Florida. In the past they were located in
5 Florida, however, this Commission approved closing the
6 Florida center in order to get a significant cost
7 reduction. And, you know, the providers have continued
8 their professional service outside the state, subject to
9 all monitoring, electronic and otherwise, by staff.

10 **COMMISSIONER BRISÉ:** Mr. Chairman, can I ask
11 her a question?

12 **CHAIRMAN GRAHAM:** Sure.

13 **COMMISSIONER BRISÉ:** When you say they are
14 handled professionally and quickly, does that mean that
15 the individual who's making the call receives the
16 service, or does it mean that we don't deal with that
17 language so, therefore, we are not able to provide you
18 the service?

19 **MS. RULE:** My understanding is that it is
20 provided in all languages. However, you know, I'd be
21 happy to get those statistics for you directly from the
22 company, if you would like.

23 **COMMISSIONER BRISÉ:** Okay. Thank you very
24 much.

25 **MR. HATCH:** Commissioner Brisé, I don't have

1 the actual statistics in terms of the various language
2 percentage breakdowns. My understanding is that,
3 certainly in AT&T's case, we have experience with
4 language across the globe. And so we can accommodate
5 that, depending on what the demand and the need is.

6 **MR. LEWEIN:** And if I may, like my colleagues,
7 I don't have the figures right in front of me, but we do
8 provide services in I know at least English and Spanish,
9 and what percentage might be Haitian or Creole would be
10 something we would have to look at. But, again,
11 monitoring can be done very easily off site. Hamilton
12 has a background of both relay and the call center
13 business. The telemarketing has been done that way for
14 many years by many different companies as well as state
15 jurisdictions and done very successfully.

16 There really isn't any connection between
17 where the call center is located and, you know, good
18 quality service. Hamilton has six company-owned call
19 centers. They are well staffed with experienced
20 communications assistants, which I think is a definite
21 key. Opening a call center, starting it up from
22 scratch, you definitely are going to have a learning
23 curve. And no matter who staffs it and who gets that
24 bid, service is going to be -- quality of service is
25 definitely going to be an issue until those

1 communications assistants become more experienced.

2 **MS. SALAK:** Commissioner, I just wanted to add
3 that under the current RFP before you today, it is not
4 mandated that anyone offer Haitian Creole. But I will
5 say that some companies do volunteer to do that in just
6 the normal course of their business.

7 **CHAIRMAN GRAHAM:** Yes, sir.

8 **MR. WHARTON:** Thank you, Chairman Graham. I
9 wanted to add one other thing.

10 I think we have a healthy appreciation for the
11 jobs issue. We don't think a call center should be
12 mandated, and we don't think you should give any points
13 for an in-state call center. But if the Commission
14 decides to do that, we would strongly encourage you to
15 be very careful about how many points you allocate to
16 that, and our basis for that is the law of unintended
17 consequences. Sometimes funny thing happens when people
18 turn in their bids.

19 The more points you add to an in-state call
20 center, the greater the chance is that the winning score
21 will have a higher price or lower service. And I would
22 caution you to not offer a lot of points to an in-state
23 call center, because you could end up with a result that
24 you don't like. So our strong suggestion would be don't
25 reward an in-state call center at all, but if you do,

1 only give a few points to it. Otherwise, you could end
2 up with an unintended consequence.

3 **CHAIRMAN GRAHAM:** Well, the last bid that came
4 in, my understanding of the difference between the
5 Number 1 bid and the Number 2 bid was how many points;
6 close to like 400 points?

7 **MS. SALAK:** Yes, sir, it was 400 points.

8 **CHAIRMAN GRAHAM:** So if there is a 400-point
9 difference between Bid Number 1 and Bid Number 2, adding
10 150 points to a call center, I don't think it's going to
11 switch much. I think what it will probably do is
12 encourage the bids to sharpen their pencil a little bit
13 more, because they know that if they choose not to
14 provide a call center that there is going to be a
15 150-point swing that is there.

16 **MR. WHARTON:** Well, I certainly agree that we
17 are all going to have sharper pencils this time, and I
18 think that's one of the reasons why the likelihood of a
19 closer score results. This is going to be the second
20 time. We are all going to be smarter, and our pencils
21 will be sharper. So we do think that the law of
22 unintended consequences could raise its head on this
23 issue the second time, perhaps even more likely than the
24 first time.

25 **CHAIRMAN GRAHAM:** What would be your

1 suggestion of the amount of points to add for a call
2 center, other than zero?

3 (Laughter.)

4 **MR. WHARTON:** Other than zero? You know, a
5 tie breaker, something that amounts to a tie breaker, no
6 more than that. The statute encourages good service at
7 a low price. It doesn't talk about jobs. The
8 monitoring could be done remotely. It is done remotely.
9 The language issue is an international issue. We can
10 all deal with that. If you are going to reward a call
11 center, it should be no more than a tie breaker,
12 whatever amount that would be. But minimal, just as a
13 tie breaker.

14 **CHAIRMAN GRAHAM:** Okay. I agree with the fact
15 that it should come down to some sort of a tie breaker,
16 but, once again, I think 100 to 150 points. Three to
17 5 percent is roughly pretty much what that does. It
18 breaks the tie. I think if somebody is within 100
19 points of the next person and they can provide a call
20 center here in the State of Florida, I think that's a
21 win.

22 Commissioner Brown followed by Commissioner
23 Brisé. I'm sorry, Balbis.

24 **COMMISSIONER BROWN:** Thank you. And what is
25 the equivalent of 3 percent, is that 150 points or is 5

1 percent 150?

2 **MR. BLOOM:** Five percent, Commissioner, would
3 be about 150 points. Three percent, by my crude
4 arithmetic is 90.75, so 91. So it would be around 100
5 points for 3 percent.

6 **COMMISSIONER BROWN:** But if we -- and not to
7 confuse the issue, but if we go with the discussion
8 further about pricing and cost with what Commissioner
9 Balbis was talking about, how does that factor in? I
10 guess, pricing under Commissioner Balbis' earlier
11 proposal regarding the scale on Page 46, how does that
12 interact with the cost?

13 **MR. BLOOM:** Well, it would not. They would be
14 wholly separate. The technical and the price proposals
15 are wholly separate. The evaluators would evaluate the
16 technical side of it, but that's all they do. They do
17 not have access to the price data. So to answer your
18 question, how would it interact with what Commissioner
19 Balbis has suggested would be that it might -- if a
20 company added those points, it would help them get to
21 that threshold.

22 **COMMISSIONER BROWN:** Okay. Is pricing more in
23 line, I guess, with that 50/50 split under that earlier
24 proposal by Commissioner Balbis?

25 **MR. BLOOM:** It would -- no, it would not. I

1 think if I heard Commissioner Balbis correctly, there
2 would be a numeric threshold that you reach on the
3 technical side. Once you reach that, then your price
4 proposal is considered. If you don't reach it, your
5 price proposal is not considered. So it would, in
6 essence, be a pass/fail, if I'm understanding the
7 Commissioner correctly.

8 **COMMISSIONER BROWN:** Okay.

9 **CHAIRMAN GRAHAM:** Commissioner Balbis.

10 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

11 And that is correct, that was the proposal so that,
12 again, we are assured of an excellent quality of
13 service. The follow-up to what Commissioner Brisé had
14 said concerning language, if we do not have the
15 requirement that these companies provide the service, I
16 would strongly suggest that we do make that a
17 requirement. And we have, obviously, a diverse state.
18 We have a lot of Spanish-speaking citizens and other
19 languages, and if that's something where you're seeing a
20 percentage of those calls that require that service, I
21 think that's important that we, again, require that so
22 that those citizens that need that can be provided that
23 service.

24 And then a follow-up, again, to the call
25 center. I think that any points that you assign, there

1 is going to be a correlating price component to it. And
2 as a bidder, you can look at, well, I'm going to lose
3 the 150 points, so I have to change my price
4 accordingly. And alternatively, the company that is
5 providing it knows they can raise their price. So any
6 points assigned can result, likely will result in
7 changes to the price. That's why I think, and,
8 Chairman, I think you mentioned it in your last
9 statement that in a tie breaker I agree with that
10 completely, if you have the same price and one company
11 is providing jobs in Florida and one company isn't, I
12 think we can assign, you know, we can take that into
13 account in determining who the winning bidder is.

14 So I would recommend that only in a
15 tie-breaker situation or if we needed to define
16 tie-breaker, make it one point, so that, again, in a
17 tie-breaker it would be won by those that provide the
18 call center.

19 **CHAIRMAN GRAHAM:** Staff, what's the total
20 points?

21 **MR. BLOOM:** At the present time, Commissioner,
22 it is 3,025 total.

23 **CHAIRMAN GRAHAM:** 3,025 points. So if
24 somebody came back and there was five-points difference
25 between 3,025, do you think a Florida office or a

1 Florida call center only makes one-point difference, and
2 not a five-point difference, or a 50-point difference,
3 or a 100-point difference out of 3,025 points?

4 **COMMISSIONER BALBIS:** And if we can engage in
5 some debate here, I appreciate that. I think we need to
6 look at it in two scenarios. One with the scenario as
7 staff has proposed with the 60/40 split, which is how
8 you are addressing it. And then if you look at it with
9 what I propose where you have a threshold, now you are
10 looking at solely price. So that is where, if you are
11 assigning points to it and a percentage, et cetera, that
12 is going to equal a dollar amount no matter which way
13 you cut it, so I agree.

14 And then going back to the 60/40, I have been
15 involved in those situations, and you sit in a room and
16 you mathematically calculate what each point is worth,
17 and there is a decision that's made. So, yes, I believe
18 that any assignment of points will result in price
19 changes, especially if you go with my proposal where we
20 are looking solely on price, knowing we have a provider
21 that is providing excellent service, then any points are
22 just going to result in paying more for the service,
23 unless it's a tie. And then we are getting -- it's a
24 win/win for everyone.

25 **CHAIRMAN GRAHAM:** Well, I think we are almost

1 saying the same thing. I think there is -- when you say
2 a tie, I don't believe a tie is both companies coming in
3 exactly at 500 points. I think there is a margin of
4 error for a tie. Especially if you are dealing with,
5 once again, 3,000 points. I think if you are within
6 100 points as far as I am concerned, statistically you
7 might as well just be a tie. And so I don't think by
8 adding 100 points -- and, once again, that just being a
9 bonus and not being something that is mandatory, they
10 can make the decision if they want to add that or not.

11 Commissioner Brisé.

12 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.
13 And under the proposal that Commissioner Balbis has
14 looked at in terms of developing a threshold for
15 excellence, if a company has a call center in Florida,
16 are there any points that could potentially be assigned
17 on the technical part because of the fact that they have
18 a call center or they are proposing a call center in
19 Florida so that that could influence the decision?

20 **MR. BLOOM:** Commissioner, if I'm hearing the
21 discussion correctly, any points, discretionary points
22 awarded for a call center would have to be on the
23 technical side. It could not be on the price side. It
24 would be reflected in the price, obviously, but it would
25 be on the technical side, if I understood the

1 Commissioner correctly.

2 **MS. SALAK:** So it could help them reach the 75
3 percent threshold and standard of excellence, but after
4 that it would be based strictly on price. And just so I
5 can clarify, my understanding is if -- and correct me if
6 I'm wrong, if we add the call center as an optional
7 service, you are only envisioning one price estimate
8 from the company? Because there was that issue last
9 time about having two prices presented to us, one with
10 the optional service and one without. And I would hope
11 if they offered it, we would only have one price that
12 they can --

13 **CHAIRMAN GRAHAM:** I'm just looking for one.

14 **MS. SALAK:** Okay.

15 **CHAIRMAN GRAHAM:** Commissioner Brown.

16 **COMMISSIONER BROWN:** Thank you.

17 And I think what I'm hearing from the rest of
18 the board is that we are all amenable to the optional
19 provision, but it gets down to whether we do the tie,
20 what percentage we assign, if we assign a percentage at
21 all. And I would really like to hear from staff on
22 whether you have some guidance for us on that issue.

23 **MR. BLOOM:** I'm not clear on the question,
24 Commissioner.

25 **COMMISSIONER BROWN:** We have been talking

1 about, we all agree that an option would probably be
2 desirable for a call center rather than a mandate. And
3 we are stuck on whether we have a tie, whether we assign
4 a percentage in addition to the tie, and I think we are
5 kind at a crossroads of what is acceptable.

6 **MR. BLOOM:** Commissioner, I would have to
7 agree with Chairman Graham. Given the number of points
8 available and the fact that there are five different
9 evaluators for every technical proposal, the likelihood
10 of a tie is, I would have say, so statistically remote
11 as to not be in play here. I just can't envision it.
12 Having looked at the score sheets from the last round of
13 bids, they are all over the map.

14 **MS. SALAK:** I would just add that if you use
15 Commissioner Balbis' idea, and then the Chairman's idea,
16 so we put additional points in, that we have the goal of
17 excellence, 75 percent that he added. So even if you
18 added it with the additional points, you are either
19 going to have -- I mean, to reach 75, and the only thing
20 that throws them into that would happen to be the call
21 center, if that were to happen that means they are
22 providing extremely good service, and that threw them
23 into the category. So you are still going to maintain
24 just about -- if it's not excellent, it's going to be
25 very, very, very good. So it doesn't seem to be an

1 issue to me, personally.

2 **COMMISSIONER BROWN:** And I think the
3 combination of the two would be desirable, and I would
4 be inclined to support maybe a 3 percent point system
5 along with Commissioner Balbis' earlier proposal.

6 **CHAIRMAN GRAHAM:** Is that a motion?

7 **MR. HATCH:** Mr. Chair, may I make an
8 observation before you get too deep into this? There
9 may be some confusion about what is really sort of being
10 on the table. If you take one bid, and your price
11 includes a call center, that price will be higher. It
12 will guarantee you that no call center will be offered
13 because others -- now, if you take into consideration
14 that there is an increase in cost, but there are other
15 added benefits to having a call center, then you end up
16 in a scenario where you do one with a call center, you
17 do one without a call center, then you make the choice
18 whether the call center benefits outweigh any increase
19 in cost for your ultimate decision as to what is the
20 appropriate product to contract for to be supplied to
21 the citizens. So you have to be very careful here.

22 Now, in conjunction with that, if you take
23 Commissioner Balbis' proposal, which is simply a
24 pass/fail on technical, that will absolutely guarantee
25 that no call center will be offered, because you cannot

1 make up on technical quality the offset that you would
2 have on the price side. You would simply take that out
3 of the -- you would have a simple pass/fail, then
4 everything is on price. Everything is on price,
5 assuming everybody is technically competent, which I
6 presume that they are.

7 **CHAIRMAN GRAHAM:** Well, I know staff wants to
8 deal with one price, and I would like to deal with one
9 price. So, I mean, if it's one of those things where
10 having a Florida call center is going to mean that
11 difference of a price, then you make a decision if you
12 want to provide the call center or not provide the call
13 center. I mean, I think it's just that simple.

14 **MR. HATCH:** I just want to make sure everybody
15 understands.

16 **CHAIRMAN GRAHAM:** Yes.

17 Commissioner Balbis.

18 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

19 I just want to clarify, to make sure we are on
20 the right page. I think we are on the same page. And I
21 have been convinced by Chairman Graham on this, and I
22 think that assigning the additional points on the
23 technical side so that, again, once we get that
24 threshold of excellence we move on to price, then we can
25 accomplish both things and ensure that we have excellent

1 quality of service at the lowest possible price.

2 And just one comment, and I certainly don't
3 want to engage in debate with the gentleman from the
4 telecommunications company, but I don't think your
5 argument is valid in that you are assuming that having a
6 call center in Florida is inherently inefficient, and we
7 should accept a level of inefficiency just because there
8 is some call center in Florida. If a company can
9 provide a call center in Florida and make it efficient
10 to provide the service, then they should, and that would
11 be reflected in the price. So I disagree with the
12 way -- the direction we are going in is going to assure
13 that we are not going to have a call center. There
14 could be a company out there that can provide a call
15 center, provide the excellent service at the lowest
16 price, and I think that's what we all want.

17 **CHAIRMAN GRAHAM:** Let's go back to
18 Commissioner Brown. And your motion was?

19 **COMMISSIONER BROWN:** My motion is to have an
20 optional requirement, an optional classification, or, I
21 guess, qualification if that's the appropriate term, for
22 a call center in-state with a correlating percentage of
23 3 percent awarding that, in addition to support
24 Commissioner Balbis' proposal regarding the technical
25 portion assigning the pass/fail that he earlier

1 discussed.

2 Is that clear?

3 **CHAIRMAN GRAHAM:** Mr. Bloom.

4 **MR. BLOOM:** Commissioner, all we would ask is
5 could we round it to 100 percent, which would be
6 3-point-something percent, because to get 3 percent
7 exactly is going to give us a real awkward number.

8 **CHAIRMAN GRAHAM:** You just want to go to 100
9 points, you mean?

10 **MR. BLOOM:** It would be easier.

11 **CHAIRMAN GRAHAM:** Whatever the percentage is.
12 Okay.

13 **COMMISSIONER BROWN:** Definitely. I'm amenable
14 to that.

15 **COMMISSIONER BALBIS:** And I second that.

16 **CHAIRMAN GRAHAM:** It has been moved and
17 seconded, what Commissioner Brown said. (Laughter.)

18 Staff, are you clear with what that was?

19 **MS. MILLER:** We did some research on
20 Commissioner Balbis' approach, and we believe that it is
21 legal, and we have checked with the statutes and there
22 is no violation that we can see. We have also checked
23 with Department of Management Services' procurement
24 attorneys, and so forth. If you could, we would like to
25 hear if any of the bidders have any thoughts on that.

1 In other words, we would like to hear them now, if they
2 do, rather than later, on that approach.

3 **CHAIRMAN GRAHAM:** On the pass/fail on the
4 technical side?

5 **MS. MILLER:** Right.

6 **MR. LEWEIN:** If I may, I appreciate all the
7 work that both the Commissioners and the staff have put
8 into this and all the time that you have taken on this.
9 My only concern would be, as you have mentioned,
10 somebody mentioned, all three providers are technically
11 efficient. They can probably get to that level of
12 basically a pass/fail on the technical end, and it's the
13 degree of excellence then that -- going down this path,
14 the degree of excellence may not be judged. You will
15 actually end up in a bidding war on price, which, you
16 know, obviously, that is a concern, where is the price
17 best for the state. But our main concern as well is
18 what is the best quality for the deaf and hearing
19 community, and that's something that I don't think we
20 want to forget is that is the service we are providing,
21 and we are trying to provide the best possible quality
22 of life for those individuals.

23 And let's not forget the fact that the current
24 provider for this service has twice closed call centers
25 in the state in order to lower the pricing. I think

1 that proves that there is a definite connection between
2 an in-state call center and the price of the services.

3 **CHAIRMAN GRAHAM:** Once again, the question is
4 on technical pass/fail.

5 **MR. HATCH:** Candidly, Commissioners, I haven't
6 given it any thought, so I'm not prepared to give you an
7 opinion as to the legality or otherwise. I understand
8 staff's concern, but I'm not prepared to give you an
9 opinion on that today. That is the first time I have
10 heard of a pass/fail standard.

11 **MS. RULE:** And like Mr. Hatch, I certainly
12 haven't had a chance to confer with my client about it,
13 so I cannot represent what their position would be.
14 But, again, we support every effort to get the highest
15 quality of service and to take that quality into account
16 at the lowest possible price. And I'm concerned that
17 this may -- may downgrade the technical quality scores.
18 But, again, I have not had a chance to consult with my
19 client and cannot represent what their position would be
20 at this time.

21 **CHAIRMAN GRAHAM:** Commissioner Brisé.

22 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.
23 And this is not necessarily to the providers. I'm
24 trying to clear this in my mind. For the pass/fail, if
25 we say the minimum threshold is 75 percent or something

1 to that effect, it doesn't mean that other points that
2 are associated with that don't carry on. It just simply
3 means that they have met the minimum threshold, and I
4 think that that is what Commissioner Balbis was
5 intending or it is just simply a pass or fail.

6 **COMMISSIONER BALBIS:** Mr. Chairman.

7 **CHAIRMAN GRAHAM:** Yes.

8 **COMMISSIONER BALBIS:** No, and I want to be
9 clear what I'm not -- and as the maker of the motion,
10 hopefully, you agree. My proposal was not a pass/fail.
11 It was ensuring that we have a threshold of excellent
12 service. But my proposal was not to carry on those
13 points, because I think you are always going to have an
14 argument regardless of the method that points are
15 assigned. I should have had three points instead of two
16 points for this, and I think you are always going to
17 have proposers questioning the point assignments
18 regardless.

19 It isn't a pass/fail. It is a minimum, almost
20 minimum qualifications, if you will, and that minimum
21 qualification is providing excellent service, and then
22 we move on to the price. Again, we have the assurances
23 that we are getting an excellent service at the lowest
24 cost. So just to be clear, that is what I am proposing.
25 And I don't think we're ever going to alleviate the

1 concerns of a bidder when you have subjective points
2 assigned in any manner.

3 So I appreciate the utilities' concerns. I
4 personally don't think, whichever direction we go in, we
5 are going to alleviate those concerns. And I'm
6 comfortable with the motion that is on the table.

7 **CHAIRMAN GRAHAM:** I guess I have got a
8 question, because I think I understood it the same way
9 that Commissioner Brisé understood it. And it sounds
10 like you said contrary to that, that once you have hit
11 the pass/fail, once you have hit the minimum criteria on
12 the technical side, those points just completely go
13 away.

14 **COMMISSIONER BALBIS:** Then they receive the
15 full amount of points, each proposer that meets that
16 minimum requirement reaches the full amount.

17 **CHAIRMAN GRAHAM:** I don't know if I agree with
18 that.

19 Commissioner Brown.

20 **COMMISSIONER BROWN:** If I may, and for staff's
21 clarification. Mr. Bloom, so once it's 75 percent or
22 greater, or is it 76 percent in that excellent
23 categorization, and then the points go away and then the
24 whole focus is on the cost. So there will be
25 excellent -- they have to meet the excellent quality of

1 the technical portion, and then the focus is on cost
2 thereafter.

3 **MR. BLOOM:** That's our understanding of what
4 is being proposed, Commissioner.

5 **COMMISSIONER BROWN:** That is what I
6 understood, and I support that.

7 **CHAIRMAN GRAHAM:** I guess my concern is if you
8 are on the technical side of things, I mean you could
9 just barely meet that threshold. And don't get me
10 wrong, as Ms. Salak said earlier, if you hit that
11 threshold you are going to be -- you're providing
12 excellent. But you can over-surpass that threshold, and
13 I think, you know, you get an extra 200 points on the
14 technical side of things. I think if you're providing
15 that much, those should come to your total bill score.
16 I mean, I don't think you should just completely wash
17 that away.

18 **MR. WAHLEN:** Commissioner Graham, I'm going to
19 sound a little contradictory to what I said earlier, but
20 I'm a lawyer, and I guess that means I can do that.
21 Without waiving our position that you shouldn't reward
22 an in-state call center, I want to say this. There is a
23 relationship between price and service, and it's not
24 entirely clear to us sitting here exactly how this
25 approach is going to work, but it sort of sounds like a

1 pass/fail. And I think doing that interferes with the
2 relationship between price and service. And I think you
3 probably want to have the ability to look and make some
4 decisions on quality of service.

5 If you set a minimum threshold and then say
6 we're going to look at price after that, chances are you
7 are just going to get the minimum threshold. And that's
8 going to constrain the Commission in its
9 decision-making. So without confusing things too much,
10 if the Commission is determined to reward an in-state
11 call center somehow, and it sounds like it is, we would
12 suggest that you simply give 100 points for an in-state
13 call center, and not confuse things with a minimum
14 threshold or something that looks like a pass/fail.

15 Not knowing exactly how that would work, we're
16 concerned that it would create a threshold of service
17 that the parties would not go over. It would just
18 become a price fight. But if you just put in 100 points
19 for a call center, it seems to me that the relationship
20 between price and service can continue to move, and it
21 would give the Commission the ability to reward much
22 better service. It may be that one of these bidders
23 will come in with something that is much better for a
24 reasonable price.

25 So that's our thinking right now. We are not

1 exactly sure how the price minimum or the service
2 threshold would work, the pass/fail. And I apologize
3 for sounding like I'm contradicting where we started,
4 but I think we have seen where this is headed. And
5 rather than confuse things with a pass/fail, we would
6 just encourage you to give 100 points on the technical
7 side to an in-state call center, if that's the will of
8 the Commission.

9 **CHAIRMAN GRAHAM:** I have to apologize to
10 Commissioner Balbis. I misunderstood where he was
11 initially. I thought we were just looking to set a
12 minimum criteria just to make sure that there was going
13 to be excellent service provided. I didn't realize that
14 once you hit that excellent service that those points
15 become moot for the most part. Because I think if
16 somebody, you know, scores extremely well on the
17 technical side, I mean, I think that should add -- that
18 should carry on with their bid, and you should be
19 rewarded for that. And, you know, if you provide that
20 kind of excellent service, even overboard, then there is
21 a cost associated with that, and your cost, your bid
22 doesn't have to be as cheap as the other bid, because
23 you are providing that much better of a service.

24 Now, granted there is -- you know, I
25 understand once you hit that minimum threshold it is all

1 going to be good, but good, better, best. And if you
2 can get the best service for a couple of dollars more,
3 you know, by what I'm understanding that the bid -- what
4 I'm understanding what the motion was, that there is no
5 good, better, best. Once you have hit good, then
6 excellent. Once you have hit excellent, then it all
7 comes out to cost. And I think if you surpass
8 excellent, then you should be able to get a little bit
9 more as far as the cost goes.

10 Commissioner Brown -- I'm sorry, Commissioner
11 Balbis.

12 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
13 And I apologize for not being clear in my proposal. Let
14 me back up and talk about how I got to developing that
15 proposal. My concern has always been on the subjective
16 assignment of points for the technical side. And as an
17 example, which I think illustrates it well, if you go to
18 Page 50 of the recommendation, or Page 42 of the RFP,
19 and Checklist Item Number 11, which the brief title is
20 "Minimum CA Qualifications and Testing," and it's worth
21 100 points. And it refers you to -- I'm sorry. Go to
22 Item 12, CA Training. It refers you to RFP reference
23 B8, which is Page 25 of the recommendation, which lists
24 for CA training, each bidder shall demonstrate in the
25 proposal how ongoing CA training will be provided by

1 including with its proposal an outline of the proposed
2 CA training plan, et cetera, et cetera.

3 That is a very subjective description that
4 puts the evaluating committee in a difficult position of
5 assigning 0, 10, 50, 80, 100 points on something that is
6 entirely subjective. So then I went towards, because
7 this is so important and because there is a subjective
8 nature in assigning points, how can we be sure that
9 regardless of the outcome we are going to get excellent
10 service. So then I went to the threshold idea.

11 I looked at what staff put together on poor,
12 fair, good, or excellent, I believe is the descriptions,
13 and my thought was this Commission will accept nothing
14 less than excellent. And given the subjective nature of
15 scoring, I don't want to unfairly burden the state with
16 additional cost, because five points were assigned here
17 because a proposer said we are going to provide the best
18 service instead of the utmost best service or something
19 to that effect. And really that is what you get in
20 these proposals.

21 So in order to eliminate the subjectiveness of
22 the scoring, establish the threshold and go from there.
23 And it would, in essence -- I hate to say pass/fail. I
24 like to state it more as a threshold or a minimum
25 qualification, which is you have to provide excellent

1 service, and go from there. So, again, I apologize for
2 not being clear, but that is how I developed the
3 proposal because of the subjective nature.

4 **CHAIRMAN GRAHAM:** Well, I'm glad Commissioner
5 Brisé asked the question. I'm clear where you are. I
6 don't agree, but that's fine. I think we need to put
7 this piece to bed to figure out where the board is. If
8 they want to have those technical points carry on after
9 you hit the minimum threshold or not. And I guess I
10 will just go ahead and poll and we can decide -- I mean,
11 that's the easiest way to do it if those points are
12 going to continue on or not. And after the
13 determination is made, then we will move forward with
14 the motion that is on the floor.

15 Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

17 Before we move forward, a question. I just
18 feel like I'm missing something. This is probably
19 overly simplistic, but if I may, Commissioner Balbis,
20 how is a determination of excellence made without
21 subjectivity?

22 **COMMISSIONER BALBIS:** It is not, and that's
23 the dilemma that we are in. So how do we minimize --
24 knowing that there is a variance in the points assigned
25 due to subjectivity, how do we make sure that the end

1 product is excellent service? So that is where -- it
2 isn't the individual checklist item numbers you have to
3 receive 75 percent, which I think would be difficult;
4 it's the aggregate score. So I feel that you would
5 eliminate the subjectiveness on it. But to answer your
6 question is it's not.

7 **COMMISSIONER EDGAR:** Thank you. And thank you
8 for that, because, like I said, I felt like I was maybe
9 missing something, and I may still be.

10 Just a general comment. I do believe that
11 with all of the discussion that we are all striving for
12 the same thing, and I believe that submitters will be
13 striving to make the best proposal for the same thing,
14 which is great service at great value. But I just do
15 feel like we may be way into the weeds more than is
16 really going to contribute value to that end result.

17 Evaluators by nature are to bring some
18 subjectivity to analysis and evaluation. And I think we
19 need to recognize that there is a process for
20 evaluators, and that is not us, for the evaluators to be
21 in that position because they have expertise and
22 knowledge of the technical needs and also the special
23 needs of the client base that we are attempting to
24 serve. So I'm not sure how to get to there from here,
25 but I would just ask maybe that we take, you know, half

1 a moment to pause and think about, again, what it is we
2 are trying to accomplish, and recognize that there is a
3 process that is laid out by statute that is supposed to
4 have some clarity and supposed to, in my opinion,
5 recognize the expertise of the evaluators and that
6 process and by virtue of having a panel of evaluators,
7 therefore, that is supposed to help balance any
8 individual subjectivity. So thank you for the
9 opportunity, Mr. Chairman.

10 **CHAIRMAN GRAHAM:** Were you looking to respond?

11 All right. I guess the question that is at
12 hand right now is should it be a minimum standard or
13 should it be pass/fail? I know Commissioner Balbis
14 would like for it to be pass/fail. He doesn't like
15 those terms, but he wants it to be pass/fail.
16 Commissioner Brown wants it to be pass/fail.

17 Please.

18 **COMMISSIONER BROWN:** Thank you.

19 Actually, instead of doing a poll, I did want
20 to amend my motion, but first make some clarification to
21 how I got to supporting Commissioner Balbis' proposal.
22 I also being in alignment with AT&T's representative,
23 his argument regarding the 50/50 split. I originally
24 felt that it is more in tuned. I wasn't persuaded by
25 the staff recommendation regarding the 60/40 split, so I

1 felt that the costs should be of equal weight to the
2 technical portion. And I tried to figure out how can we
3 get there to comply with the statute with what provider,
4 what bidder would be the most advantageous to the state.

5 To me, looking at the factors, I thought cost
6 was very important with regard to -- in addition to the
7 quality of service. So how I got to that, I thought
8 that -- I was trying to find a way to somehow give
9 greater importance to the cost.

10 That being said, I think this is a great forum
11 for us where we get an opportunity to listen to the
12 bidders and to hear their comments and to hear -- or the
13 proposed bidders -- to hear their comments and
14 incorporate them into our RFP, and to really give that
15 some credence, some weight. And being a former city
16 employee, I can appreciate the RFP process. I have been
17 involved in it and understand the inherent subjectivity
18 that underlies with reviewing these applications. But I
19 think what the bidders have provided to us today, they
20 are concerned with that threshold pass/fail, and I am
21 going to amend my motion at this time to support --
22 again, to support the call center in the State of
23 Florida with 100 points, as an option with 100 points
24 assigned to that. And then I do have some additional
25 modifications to the RFP, but I'm going to leave the

1 second portion that I originally meant off.

2 **CHAIRMAN GRAHAM:** So your motion is
3 specifically just dealing with the call center and the
4 rest of it is on hold right now.

5 **COMMISSIONER BROWN:** That's right.

6 **CHAIRMAN GRAHAM:** Okay. That's your motion
7 and second. Let's put that issue to bed.

8 Commissioner Brisé.

9 **COMMISSIONER BRISÉ:** I have a question --

10 **CHAIRMAN GRAHAM:** Sure.

11 **COMMISSIONER BRISÉ:** -- on the motion. So at
12 this point we're suggesting the motion is that we are
13 going to not necessarily do the threshold as was
14 understood before, but that the points are going to
15 carry over?

16 **CHAIRMAN GRAHAM:** No. The motion that's on
17 the floor right now is strictly the call center and
18 that's it.

19 **COMMISSIONER BRISÉ:** So the motion is -- and
20 let me ask this to the maker of the motion to make sure.
21 So the motion only deals with the call center including
22 that for the 100 points, or does it include anything
23 else?

24 **COMMISSIONER BROWN:** I was ready to deal with
25 both issues.

1 **COMMISSIONER BRISÉ:** That's what I thought.

2 **COMMISSIONER BROWN:** So that we can lay that
3 to rest. And that is correct, Commissioner Brisé.

4 **COMMISSIONER BRISÉ:** So, therefore, to the
5 original question, I got the 100 points part. So are we
6 carrying the additional points above and beyond the
7 threshold, or are we leaving it at the threshold as a
8 pass/fail -- or not as a pass/fail, but as Commissioner
9 Balbis had originally looked at?

10 **COMMISSIONER BROWN:** My intent is to leave it
11 at is, incorporating -- listening to some of the bidders
12 comments today, I think we leave it as is and consider
13 those points that go above the excellent, so to speak,
14 and allocate them accordingly and leave it as is.

15 **COMMISSIONER BRISÉ:** I think that's clear.

16 **CHAIRMAN GRAHAM:** So then your motion is
17 contrary to Commissioner Balbis'?

18 **COMMISSIONER BROWN:** Right.

19 **CHAIRMAN GRAHAM:** Got you.

20 Okay. Commissioner Balbis.

21 **COMMISSIONER BALBIS:** Thank you.

22 And I don't know if -- I guess I have
23 de-seconded my second. I just want to be clear on the
24 motion. I have a concern that if we carry those points
25 forward that now we have to look at closely the

1 percentage of technical score versus price score. And
2 my main concern is that we're going to be put into a
3 position of approving staff's recommendation on a
4 selection for a company that is providing a service that
5 is not the lowest price, and it's several hundred
6 thousand dollars more expensive than the second bidder,
7 which is what we had before.

8 If you look at the true breakdown of calls, I
9 believe there was a several hundred thousand dollar
10 difference. And we are going to be in a position of
11 approving the winning bidder, which is much more
12 expensive than the second bidder, and there is not that
13 much of a difference in the service they provide.

14 So I want to avoid us being in that situation.
15 And if we move forward with her motion, I would like to
16 look closely at the percentages so that it minimizes
17 that risk and makes us more comfortable with the outcome
18 of this process.

19 **CHAIRMAN GRAHAM:** I think that we can address
20 the percentage after we deal with the motion that's on
21 the floor, because I think there's arguments on both
22 sides of that. But I think the motion on the floor is
23 to address your minimum standard and to address the call
24 center. And if we can, we can go -- after we pass that
25 motion, or that motion fails, then we can deal with the

1 percentage argument, if that is okay.

2 **COMMISSIONER BALBIS:** Then I will hesitantly
3 second that motion.

4 **CHAIRMAN GRAHAM:** Okay. There are no lights
5 on. All in favor of the Brown motion, which will set a
6 minimum standard carrying points forward and have --

7 **MS. MILLER:** We're confused.

8 **CHAIRMAN GRAHAM:** -- and have a Florida call
9 center -- Ms. Salak.

10 **MS. MILLER:** We're just confused.

11 **CHAIRMAN GRAHAM:** Okay.

12 **COMMISSIONER BROWN:** I think minimum standard
13 is probably the wrong word to use. I would say the
14 motion is -- I hate saying it again. The motion is a
15 Florida call center optional at 100 points, and approve
16 the staff recommendation with regard to the issue of
17 assigning technical points, leave it as is as proposed
18 by staff.

19 **COMMISSIONER BALBIS:** Mr. Chairman, and also
20 that any bidder that doesn't meet the excellent criteria
21 is not considered. That was the threshold part that I
22 seconded.

23 **COMMISSIONER BROWN:** Yes. Yes.

24 Do you understand, staff?

25 **MS. SALAK:** At this point can we ask are the

1 points up to 100 points, depending on the description of
2 the center, or is it a flat 100?

3 **CHAIRMAN GRAHAM:** No, no, no. It's just a
4 flat 100. It's you provide one or you don't.

5 **COMMISSIONER BROWN:** Are the parties clear?
6 Thanks.

7 **CHAIRMAN GRAHAM:** Okay. All in favor of the
8 motion signify by saying aye.

9 (Vote taken.)

10 **CHAIRMAN GRAHAM:** Any opposed? Grumble,
11 grumble, grumble. The motion passes.

12 Okay. Commissioner Brown, quick with the
13 light.

14 **COMMISSIONER BROWN:** Thank you.

15 I'm going to be real quick with my suggested
16 comments. I have three on the RFP. I will be real
17 quick and talk very fast, unfortunately.

18 On Page 18 of the staff recommendation, which
19 is Page 10 of the Attachment A, for those of you that
20 don't have the correct numeric numbering, Paragraph 11,
21 which is entitled Rejection Of Proposals, Correction of
22 Errors, the second sentence -- is everybody there on the
23 Commission?

24 **CHAIRMAN GRAHAM:** No. I'm sorry, I didn't
25 hear. What page are you on?

1 **COMMISSIONER BROWN:** 18 of the staff rec.

2 **CHAIRMAN GRAHAM:** Okay.

3 **COMMISSIONER BROWN:** 10.

4 **CHAIRMAN GRAHAM:** Gotcha.

5 **COMMISSIONER BROWN:** Okay. Second sentence on
6 Paragraph 11. It begins, "The PRC Chairman and the FPSC
7 also reserve the right to accept proposals despite minor
8 irregularities and to allow a bidder to correct such
9 minor irregularities." I wanted to add at the end of
10 that sentence, "Upon notification by the PRC Chairman."
11 And the reason behind this is that that latter part of
12 the sentence is a little confusing about timing of
13 whether the parties can submit proposal changes. And
14 from my discussion with the staff, it's the PRC Chairman
15 that will notify the bidder of the irregularity and not
16 the other way around. So I just wanted to clarify and
17 include that latter part in there.

18 **CHAIRMAN GRAHAM:** Commissioner Brown, you are
19 going to have to repeat that one more time, and slowly
20 for us slow engineers over here.

21 **COMMISSIONER BROWN:** The second sentence,
22 Paragraph 11, "The PRC Chairman and the FPSC also
23 reserve the right to accept proposals despite minor
24 irregularities and to allow a bidder to correct such
25 minor irregularities." I wanted to insert at the end of

1 that sentence, "Upon notification by the PRC Chairman,"
2 for clarification of how that process actually occurs,
3 which from my understanding with staff, and please feel
4 free to jump in, is the correct way of the process.

5 **CHAIRMAN GRAHAM:** Staff, are you clear with
6 that?

7 **MS. MILLER:** Yes.

8 **CHAIRMAN GRAHAM:** And you have no problem with
9 that?

10 **MS. MILLER:** That is correct.

11 **CHAIRMAN GRAHAM:** And that was a motion from
12 Commissioner Brown, and I will second it. All in favor
13 of that motion say aye.

14 (Vote taken.)

15 **CHAIRMAN GRAHAM:** Any opposed?

16 Commissioner Brown, you have the floor.

17 **COMMISSIONER BROWN:** Second change. I'm
18 almost done. Page 37 of the staff rec, Page 29 of
19 Attachment A, or of the RFP. Under Paragraph 52,
20 performance bond. I know that the bidders at the bidder
21 conference were excited to hear that that would be on an
22 annual basis rather than being at the beginning of the
23 contract. So, again, I wanted to provide some
24 clarification. At the end of the first paragraph, last
25 sentence, beginning with, "The bond may be renewed

1 annually, and shall be in effect for the entire duration
2 of the contract and provided to the FPSC upon execution
3 of the contract." And I wanted to insert the words, "Or
4 upon the request by FPSC's contract manager."

5 So because they are providing that annually
6 rather than at the beginning of the contract, it would
7 be beneficial to the Commission to have that ability to
8 request that if needed. It could potentially be a very
9 long-term contract.

10 **MS. MILLER:** We think that would be helpful.

11 **CHAIRMAN GRAHAM:** Potential bidders, please,
12 if you have any concerns during this process, if you
13 will raise your hands so I can get your objections.

14 **MR. WHARTON:** No objections.

15 **CHAIRMAN GRAHAM:** Okay. All right.
16 Commissioner Brown's second amendment on the floor and
17 seconded.

18 All in favor say aye.

19 (Vote taken.)

20 **CHAIRMAN GRAHAM:** Any opposed?

21 By your action you have approved.

22 Commissioner Brown.

23 **COMMISSIONER BROWN:** Thank you.

24 Third and final. On Page 40 of our staff
25 recommendation, Page 32 of the RFP under Paragraph 56,

1 regarding liquidated damages. I felt that we needed to
2 reword, again, for clarification the beginning second
3 paragraph where it begins, liquidated damages.

4 "Liquidated damages" -- and here is how I would
5 personally reword it to be in compliance with what our
6 statutes say typically with regard to show cause
7 actions. "Liquidated damages shall accrue up to the
8 following amounts per day of -- insert the word
9 'each' -- violation." And that mirrors what our
10 statutes say with regard -- when we have show cause
11 issues, which I think is akin to liquidated damages.

12 **CHAIRMAN GRAHAM:** Staff.

13 **MS. MILLER:** Yes. We believe that would also
14 help clarify it.

15 **CHAIRMAN GRAHAM:** Okay. That has been moved
16 and seconded. All in favor say aye.

17 (Vote taken.)

18 **CHAIRMAN GRAHAM:** Any opposed?

19 By your action you have approved all three
20 Brown amendments.

21 **COMMISSIONER BROWN:** And I did want to add
22 that I did have a few --

23 **CHAIRMAN GRAHAM:** You only get three. I'm
24 sorry, Commissioner Brown.

25 **COMMISSIONER BROWN:** It's a catch-all; it's a

1 catch-all. I did have a few additional nonsubstantive
2 issues, and I would give staff the authority to make any
3 nonsubstantive changes after we approve this RFP.

4 **CHAIRMAN GRAHAM:** Nonsubstantive. Give me an
5 example or a specific.

6 **COMMISSIONER BROWN:** Okay. There are some
7 inconsistencies with the word provider, capitalization
8 of provider and then undercase. There is also -- there
9 is some confusion with the word provider when it should
10 be bidder in certain paragraphs, and really nitty-gritty
11 stuff that I think staff has the authority to take care
12 of.

13 **CHAIRMAN GRAHAM:** I know that your legal
14 profession was down this path, so I do not -- I'm not
15 even trying to get in front of that train, so I will
16 take your word for it, and I think that we would allow
17 staff to make those nonsubstantive changes.

18 Okay. I see no lights on.

19 Commissioner Balbis.

20 **COMMISSIONER BALBIS:** Yes. Mr. Chairman, if
21 now is the appropriate time to discuss the percentages.

22 **CHAIRMAN GRAHAM:** Yes.

23 **COMMISSIONER BALBIS:** I would reiterate my
24 concern to try to minimize the likelihood of us being
25 put in a position of approving a winning bidder due to

1 technical points that are much, much, much more
2 expensive than the second bidder, so I would like to see
3 the percentage assigned to the technical points be
4 reduced and the price segment be increased. And I
5 believe now it is at 60/40, is that correct?

6 **MR. BLOOM:** Yes, sir, 60 percent technical,
7 40 percent price.

8 **COMMISSIONER BALBIS:** And knowing that with
9 the amendment that passed we are going to have each
10 bidder have a minimum of excellent quality of service,
11 so I'm comfortable with increasing the cost percentage,
12 you know, as high as possible. I don't know if I will
13 get the support of that, but I think somewhere closer to
14 25 percent technical, 75 percent price would give me
15 more comfort as to what comes from this process.

16 **CHAIRMAN GRAHAM:** I thought you were going to
17 go from 60/40 to 50/50. 20/80?

18 **COMMISSIONER BALBIS:** It's like buying a car.

19 **CHAIRMAN GRAHAM:** That almost in a roundabout
20 way goes back to not giving any points for technical.

21 **COMMISSIONER BALBIS:** No, that would be zero
22 percent technical, 100 percent -- so I look at it as a
23 compromise is what I feel.

24 (Laughter.)

25 **CHAIRMAN GRAHAM:** Okay. I can't second that,

1 Commissioner Balbis.

2 **COMMISSIONER BALBIS:** And it was not a motion;
3 it was more of a discussion.

4 **CHAIRMAN GRAHAM:** Okay.

5 Commissioner Brown.

6 **COMMISSIONER BROWN:** And the reason why I
7 turned my light was because I wanted to help him out
8 here. But I will tell you, I'm more in tune to the
9 50/50 allocation to make it more equitable. And, again,
10 in the staff recommendation the reason why staff was not
11 persuaded by deviating from the 60/40 split was because
12 one of the advisory members expressed some concerns that
13 the quality of service would be diminished by reducing
14 that 60 percent to 50 percent. It was just one member,
15 but, obviously, it was persuasive enough for staff to
16 leave it as is. And, again, I wasn't as convinced about
17 that it would be diminished, the quality of service
18 would be diminished by reducing the percentage to 50/50,
19 but I would like to hear from the rest of the board.

20 **CHAIRMAN GRAHAM:** So was that a motion?

21 **COMMISSIONER BROWN:** I will make it after we
22 hear some discussion.

23 **CHAIRMAN GRAHAM:** I don't see anybody's light
24 on.

25 Commissioner Brisé.

1 **COMMISSIONER BRISÉ:** Just a question for
2 staff. What is the impact of going to 50/50 in terms of
3 a split there versus 60/40 considering the motion as we
4 are moving forward?

5 **MR. BLOOM:** Other than to say it puts them on
6 level footing in terms of an overall number of points.
7 I mean, keep in mind the technical is wholly separate
8 from price. The evaluators who evaluate the technical
9 do not ever see the price proposals. So you would just
10 be -- as Commissioner Balbis suggested, you would be
11 taking a little less of what has been referred to as
12 subjectivity on the technical side out of the equation
13 and putting just that much more percentage on the price
14 side of the equation. As far as the implications of it,
15 without having seen the bids, I don't think there is
16 anything further we could give you.

17 **COMMISSIONER BRISÉ:** Okay.

18 **CHAIRMAN GRAHAM:** Let's take a five-minute
19 recess.

20 (Recess.)

21 **CHAIRMAN GRAHAM:** We talked about changing the
22 ratio between the technical and the price. There has
23 been suggestions out there of going as far as 80/20,
24 75/25. There has been suggestions of going 50/50. I
25 have yet to hear a motion if we're going to change it,

1 so I guess we are at that point if someone would like to
2 make a motion, or if we want to let it stand as is and
3 move forward.

4 Commissioner Balbis.

5 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
6 And, again, I'm not comfortable with staff's
7 recommendation of 60/40. If the 50/50 gets us closer,
8 which it does, to alleviating my concerns, I would move
9 that we change the ratios to 50/50 between the technical
10 and the price scoring.

11 **CHAIRMAN GRAHAM:** It has been moved and
12 seconded to change the ratio to 50/50. Any further
13 discussion on changing the ratio to 50/50?

14 **MR. WAHLEN:** Chairman Graham, are you
15 interested in comments?

16 **CHAIRMAN GRAHAM:** Sure, please.

17 **MR. WAHLEN:** We think the staff got it right.
18 We think 60/40 is right. If you look at the statute,
19 Page 2 of the staff recommendation, the Legislature has
20 suggested -- directed the Commission to consider seven
21 factors; six of them are service, and one of them is
22 price. Obviously, it is not simply a mathematical
23 issue. But the Legislature in its language clearly
24 favors service slightly over price, and we think the
25 60/40 makes sense. We think it's the right balance. We

1 encourage you to leave it as is.

2 **CHAIRMAN GRAHAM:** Others?

3 **MR. HATCH:** Mr. Chairman, AT&T would encourage
4 you to move to a 50/50 split. The problem with the
5 service portion, as everybody has discussed here, is
6 inherently there is a fair amount of subjectivity
7 involved in coming up with that absolute score. And if
8 you want to take that out of it, then you move away from
9 the 60 percent to the 50 percent.

10 **CHAIRMAN GRAHAM:** Please.

11 **MS. RULE:** I haven't had the chance to consult
12 with my client on the exact percentage of split, but
13 they have supported the staff recommendation and think
14 staff got it right.

15 **CHAIRMAN GRAHAM:** Okay. We have changing the
16 staff recommendation from 60/40 to 50/50 on the table.
17 It has been moved and seconded. Any other discussion on
18 changing that? Seeing none. All in favor of making the
19 change to 50/50 signify by saying aye.

20 (Vote taken.)

21 **CHAIRMAN GRAHAM:** Any opposed? By your
22 action, you have changed to a 50/50 split. Okay.

23 We have, I guess it would be five amendments
24 to Item Number 3. The four Brown amendments and the one
25 Balbis amendment.

1 Commissioner Balbis.

2 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

3 And I assume as we prepare to close this item
4 out, I would like to focus on how do we define what a
5 call center is. And if we can maybe get staff's input.
6 Have we ever had the definition of a call center in any
7 previous contract or documentation? Is there a way we
8 can define it to make sure that we are not in a
9 situation where the intent of the Commission is not met
10 by a loophole, if you will, by not defining what a call
11 center is?

12 **CHAIRMAN GRAHAM:** Can you make it just as
13 simple as if the calls are handled in the State of
14 Florida it's a call center? If it's not, then it's not.

15 **MR. BLOOM:** We have gone that route before,
16 Commissioner, in previous contracts mandated that a
17 certain percentage of the calls run through the Florida
18 call center. I think it's fair to say it didn't end
19 well. As far as is there a definition of a call center,
20 I don't know if any of the previous bidding proposals
21 have ever sought to quantify exactly what that means.
22 You know, I'm familiar with your concern that you just
23 don't want someone to hang a shingle out and say call
24 center, and hire a few temps and just sit there
25 pretending to answer phones, but I don't know that we

1 have ever defined it, sir.

2 **CHAIRMAN GRAHAM:** What if we just said a
3 percentage of the calls are handled in the State of
4 Florida, and call it 75 percent?

5 **COMMISSIONER BALBIS:** Maybe we can hear from
6 the companies on how they would address it if they would
7 provide a call center as an option.

8 **MR. HATCH:** I guess the heat is on me for that
9 one. I can't give you an absolute specific definition
10 of a call center. To the extent that you want to say
11 your calls will be predominately handled through a
12 facility in Florida, that is one way to approach it.
13 You can't say all calls handled in Florida. For
14 example, if there are problems with a particular center,
15 you will have diverse routing, you will go to other
16 centers to take excess load and things like that. Those
17 are just particular management issues regarding
18 providing the service that the Commission probably
19 doesn't need to be really involved in.

20 However you want to characterize it, I think
21 it would have to be something along the lines of that
22 the calls that originated in Florida are answered by an
23 attendant in Florida predominately or some percentage of
24 them on a usual normal business day, or something like
25 that. But I don't have any specific definition to offer

1 you. It has never come up, so I'm just shooting in the
2 dark in some respects.

3 **CHAIRMAN GRAHAM:** Please, sir.

4 **MR. WHARTON:** Thank you, Commissioner. Two
5 things. One is we would, I guess, agree with AT&T's
6 general approach, but if your goal is to have employment
7 in Florida, I would make that percentage pretty high,
8 75, 80, 90 percent. I mean, if that is what the
9 Commission's goal is, I would make it as high as
10 possible. And the other thing we would recommend is
11 that you make it clear that if you close your call
12 center in Florida, the contract terminates.

13 We don't need a situation where you get the
14 job because you had a call center in Florida, then you
15 decide it costs too much and you close it. So a
16 condition ought to be that if you have a Florida call
17 center, it has got to stay in effect the entire term of
18 the contract or the contract terminates early.

19 **CHAIRMAN GRAHAM:** Commissioner Balbis.

20 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
21 And thank you for those comments. I agree with several
22 of your points. And maybe the way to handle it is,
23 again, require a 75 percentage of calls being handled in
24 Florida throughout the term of the contract. And I
25 think that would meet the will of the Commission and

1 make sure that the shingle issue is avoided.

2 **MR. HATCH:** Commissioners, may I ask a
3 question that you may need to consult even with your own
4 staff on this. If you say an absolute 75 percent, is
5 that 75 percent on a normal business day, is that an
6 aggregate week, is it an aggregate month, or is it an
7 aggregate on a year, for example? You may have on a day
8 a huge volume of calls come into your call center, and
9 you will transfer some of that traffic to other
10 available call centers where 75 percent would not be
11 available on a day. So, I mean, you have got to be very
12 careful how you are going to structure that 75 percent
13 or whatever percentage number that you create.

14 **CHAIRMAN GRAHAM:** I assume that there is
15 reporting that goes back to staff. When does that
16 reporting go, is it monthly, quarterly?

17 **MS. SALAK:** It's monthly we get call data.

18 **CHAIRMAN GRAHAM:** Well, let's just say
19 quarterly that 75 percent of the calls need to be
20 handled in the State of Florida, if you indicate that
21 you are a call center.

22 **MR. HATCH:** On a monthly basis?

23 **CHAIRMAN GRAHAM:** Quarterly.

24 **MR. HATCH:** Quarterly.

25 **CHAIRMAN GRAHAM:** Okay. Do we need to make a

1 motion to add that or change that it to the RFP?

2 **MS. SALAK:** Yes, I think -- yes.

3 **CHAIRMAN GRAHAM:** I believe Commissioner
4 Balbis made that motion, and I seconded it.

5 Commissioner Brown.

6 **COMMISSIONER BROWN:** Thank you, Mr. Chairman.

7 I did have a comment regarding your earlier
8 comment regarding canceling the contract if the call
9 center should cease to exist. Currently in the RFP
10 there is a cure period of 14 days, which I think may be
11 a little short to reopen a call center at that time, and
12 I would -- if the Commission is amenable to having that
13 cancellation provision in the RFP, I would offer to
14 extend that cure period to allow the provider to have an
15 opportunity to put in a new call center so that the
16 contract does not cease based on the inability to find a
17 new call center or lease space or whatnot.

18 **CHAIRMAN GRAHAM:** So the cure period is just
19 specifically for the call center?

20 **COMMISSIONER BROWN:** I would think that there
21 would need to be a greater cure period for that
22 provision, for the call center provision.

23 **CHAIRMAN GRAHAM:** And your cure period goes to
24 how long?

25 **COMMISSIONER BROWN:** Staff, do you have a

1 recommendation?

2 **CHAIRMAN GRAHAM:** I mean, because there is
3 acts of God out there; a tornado or hurricane, God
4 forbid, may take a call center out. Is there a cure
5 period for reopening of a call center?

6 **MS. SALAK:** And you are going to include acts
7 of God in that cure period? I mean, normally the acts
8 of God are usually taken out, but we can -- I would give
9 them a month, at least, to get --

10 **COMMISSIONER BROWN:** All right. And I would
11 be curious to hear from the bidders if they are amenable
12 to 30 days.

13 **MR. WAHLEN:** I think usually this is --
14 usually when these call centers close it's a fairly
15 deliberate process. People are making an economic
16 decision about whether it makes sense to keep it open.
17 I think that has been the history of this. We are not
18 particularly concerned about a hurricane or whatever.
19 We are concerned about getting the bid because you
20 promised to have a call center and then making a
21 deliberate decision to close the call center because it
22 is no longer economical to provide service at the price
23 you offered. So 30 days to cure for closing a call
24 center, I guess that's okay, but I think the real issue
25 is are you going to close it after you have used it to

1 get the bid.

2 **MR. HATCH:** I think the question that you are
3 trying to get an answer for is not an automatic
4 termination, although you could do that, but you have to
5 have at least some provision for continuity of service,
6 which I think is what your concern is, in terms of if a
7 decision is made to essentially eliminate a call center
8 after you have won the bid, then that would have to be
9 brought to the Commission at least for notification
10 purposes, if nothing else. At that point then the
11 Commission would have to begin a new RFP process in
12 order to assign and find a new bidder, and that the call
13 center continue during the interim period or at least
14 some provision be made for continuity of service during
15 that process.

16 **CHAIRMAN GRAHAM:** Well, I think most of this
17 stuff can all be handled in the contract. This is all
18 just a bid process right now, and so I think we are just
19 getting kind of deep into the weeds. Because if you win
20 it through a call center, we can make sure that a
21 contract that gets signed has all the specifics about
22 the call center. I think we do need to add that
23 75 percent of the calls need to be handled in the State
24 of Florida, but the rest of this stuff we can handle, I
25 think, in the contract.

1 So, Mr. Balbis, Commissioner Balbis, if your
2 motion is that 75 percent of the calls -- if you
3 indicate you have a call center and 75 percent of the
4 calls will be handled in the State of Florida, reported
5 on a quarterly basis, that will be seconded.

6 **COMMISSIONER BALBIS:** That is my motion.

7 **CHAIRMAN GRAHAM:** All in favor say aye.

8 (Vote taken.)

9 **CHAIRMAN GRAHAM:** Any opposed? Okay.

10 Now, are there any other things that need to
11 be addressed before we pass this?

12 Commissioner Brown.

13 **COMMISSIONER BROWN:** I just wanted to point
14 out that the RFP actually effectually becomes the
15 contract. So the contract is not -- this will, in
16 essence, become the contract. So anything that we want
17 included in that contract needs to be discussed at this
18 forum, because we will not see it again.

19 **CHAIRMAN GRAHAM:** Well, I think we have
20 discussed it, but we can make sure that staff includes
21 the language as far as, you know, you have indicated you
22 have a call center. For some reason the call center
23 closed down, you have X number of time period, 30 days,
24 to rectify that.

25 **MS. MILLER:** It may also help, on the

1 cancellation of the contract it is the term may, the
2 FPSC may by written notice terminate the contract upon
3 24-hours notice. So that's not a shall in there. It is
4 not absolutely triggered, and I thought that might help
5 to know that it may not be as draconian as it sounds.

6 **CHAIRMAN GRAHAM:** So your point is?

7 **MS. MILLER:** So my point is that going with
8 the 30 days, if there was a situation where you thought
9 in no way does that mean that the contract should be
10 terminated, you would have the ability to not terminate
11 the contract.

12 My other point is -- so I think you could
13 leave it open. However, I agree that this RFP
14 becomes -- and their response is part of the contract.
15 So if you had a concern even with the language being
16 may, then you might want to address it now. But if you
17 are comfortable because you are not required to
18 terminate the contract, then you might not have to
19 address it.

20 **CHAIRMAN GRAHAM:** I think I'm a little
21 confused with your legalese. Now, my understanding is
22 if you win the contract based on the fact that you said
23 you were going to provide a call center in the State of
24 Florida, and you choose to close that call center in the
25 State of Florida then, in my opinion, that contract

1 shall be terminated.

2 **MS. CIBULA:** Commissioner, Samantha Cibula of
3 Commission legal staff.

4 What it would trigger, it would be a breach of
5 the contract, and then it could trigger the cancellation
6 provisions or the liquidated damages provisions of the
7 contract. And from there, if there is a breach, we see
8 a breach in the contract, then we would bring a
9 recommendation back to the Commission to say,
10 Commission, do you want to cancel this contract? And if
11 you vote yes, then we will give them 24-hours notice to
12 cancel the contract. And I think at this point the call
13 center, if someone decides they are going to shut down
14 the call center after a few months into the contract, we
15 would bring that back to the Commission and say, you
16 know, with a recommendation about whether the contract
17 should be terminated or not. And they would have still,
18 I think, 14 days to cure that under the contract would
19 be sufficient, in my opinion, if it is an intentional
20 breach of the contract, not an act of God or a
21 hurricane, which I don't think that this contemplates.

22 **CHAIRMAN GRAHAM:** Okay. You guys are the
23 attorneys. You tell me if we need to change something
24 in the contract, because I think you guys understand
25 where the will of the board is.

1 **MS. CIBULA:** I think the 14-day provision is
2 sufficient if someone decides they are going to
3 intentionally close the call center and not give them
4 additional time to get a call center back up and running
5 again. That would be a different situation than if
6 there was a hurricane that hit or something, which I
7 don't think that would entail in this contract.

8 **CHAIRMAN GRAHAM:** Commissioner Brown.

9 **COMMISSIONER BROWN:** And, thank you,
10 Ms. Cibula, for pointing that out, but I think we have
11 the latitude. I thought it was shall and not may. May
12 gives us discretion. We don't have to cancel it within
13 the 14 days, we can. So I think the Commission staff is
14 aware of our intent of having some leeway for 30 days.
15 That being said, we can leave it as is, in my opinion.

16 **CHAIRMAN GRAHAM:** Okay. So we have Item 3 as
17 four, five, six times amended before us. Any further
18 discussion? Seeing none, all in favor say aye.

19 (Vote taken.)

20 **CHAIRMAN GRAHAM:** Any opposed?

21 By your action you have finished with Item 3.

22 **MR. WAHLEN:** Thank you very much.
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STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 29th day of December, 2011.



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