

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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IN THE MATTER OF :
:
INTERMEDIA COMMUNICATIONS OF :
FLORIDA, INC. : DOCKET NO. 921074-TF
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BELLSOUTH TELECOMMUNICATIONS, :
INC. d/b/a SOUTHERN BELL :
TELEPHONE AND TELEGRAPH COMPANY : DOCKET NO. 930955-TL
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UNITED TELEPHONE COMPANY OF :
FLORIDA : DOCKET NO. 940014-TL
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CENTRAL TELEPHONE COMPANY OF :
FLORIDA : DOCKET NO. 940020-TL
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BELLSOUTH TELECOMMUNICATIONS, :
INC. d/b/a SOUTHERN BELL :
TELEPHONE AND TELEGRAPH COMPANY : DOCKET NO. 931196-TL
-----:
GTE FLORIDA INCORPORATED : DOCKET NO. 940190-TL
-----:

PROCEEDINGS: SPECIAL AGENDA CONFERENCE

BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JULIA L. JOHNSON

DATE: Wednesday, November 30, 1994

TIME: Commenced at 9:30 a.m.
Concluded at 12:00 noon

PLACE: FPSC Hearing Room 106
101 East Gaines Street
Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
SYDNEY C. SILVA, CSR, RPR
Official Commission Reporter

FLORIDA PUBLIC SERVICE COMMISSION DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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PARTICIPATING:

TRACY HATCH and DONNA CANZANO, Florida Public Service Commission, Division of Legal Services.

CINDY MILLER, Florida Public Service Commission, General Counsel's Office, counsel to the Commissioners.

WALTER D'HAESELEER, MIKE REITH, ROBIN MORTON, LANS CHASE, ANNE MARSH, JILL BUTLER, STEVEN BROWN and ALTON DREW, Florida Public Service Commission, Division of Communications.

PROCEEDINGS

(Hearing convened at 9:30 a.m.)

CHAIRMAN DEASON: We'll go ahead and begin today's special agenda. Who is going to introduce it? Mr. Reith?

MR. REITH: Good morning, Commissioners. Today we're here for Phase II or Part II of the expanded interconnection docket. As a brief recap, Phase I, we went ahead and dealt with expanded interconnection for dedicated services, those being private line special access. Today we're dealing with expanded interconnection for switched access services.

Local transport restructure has also been merged into this docket; because in an ideal situation, when we first envisioned it, AAVs would be permitted to provide those local transport links. Since then, we've reviewed it and our recommendation addresses that.

As a suggestion that the Chairman brought up and we do agree to possibly take up Issues 7 and 8 at the same time because they are linked. It is your pleasure, Commissioners, to go issue-by-issue or have a general discussion up front, whatever you would like.

CHAIRMAN DEASON: Okay. I understand that with the possible exception of Issues 7 and 8, which you suggest and I agree probably should be taken up

1 together, the issue order that we have on the notice
2 here is the order of issues that you would like to have,
3 correct?

4 MR. REITH: Yes, sir, as listed. It starts on
5 Page 2 in the Table of Contents. You're correct, we did
6 take 15, 16 and 23 out of order; those all deal with
7 Phase I, so we felt it was better to go ahead and lump
8 them together.

9 CHAIRMAN DEASON: And that's the order that
10 you presented them in in the recommendation as well?

11 MR. REITH: Yes, sir.

12 CHAIRMAN DEASON: Okay. Commissioners, do you
13 want to go issue-by-issue or is there any kind of
14 generic discussion you want to conduct before we get
15 started?

16 COMMISSIONER CLARK: I think I do have some
17 generic questions. Let me ask the Staff about -- I
18 wanted to get clear in my mind permitting expanded
19 interconnection and the implementation of expanded
20 interconnection. Given the fact that I believe it's
21 your recommendation that there wouldn't be widespread
22 implementation of this because AAVs could not provide it
23 to nonaffiliated entities, if we authorize it by a vote
24 today, who will be in a position now to take advantage
25 of expanded interconnection?

1 MR. REITH: Expanded interconnection for
2 switched access, actually collocating facilities in the
3 LEC office, IXCs would be able to take advantage of
4 that; AAVs would not.

5 COMMISSIONER CLARK: Okay. So what would
6 happen is they would have an expanded interconnection
7 from their POP --

8 MR. REITH: Yes.

9 COMMISSIONER CLARK: -- to the local -- would
10 it be to the access tandem? I know you have it in here
11 back here --

12 A

13 MR. REITH: Page 48 might be a help.

14 COMMISSIONER CLARK: Okay.

15 MR. REITH: Something I would like to point
16 out before we get into this drawing here is if you
17 notice, inside the LCO, the AT and the SWC, the local
18 central office access tandem serving wire center, you
19 see little tiny boxes. "A" represents the AAV; "I"
20 represents the IXC. We were very specific in the
21 drawing as to the type of facility that comes in and out
22 of those.

23 In today's world, the dotted line is what AAVs
24 can provide. That was addressed in Phase I. Of course,
25 we've stayed that order.

1 And the "A" represents the collocation for the
2 Phase I, for the dedicated facilities. If you look at
3 the --

4 COMMISSIONER CLARK: Wait a minute. Say that
5 again.

6 MR. REITH: Okay. The little "A" is the AAVs,
7 collocated facilities, that all is Phase I stuff that
8 we --

9 COMMISSIONER CLARK: When you say that, that's
10 in the local central office?

11 MR. REITH: Yes, ma'am.

12 COMMISSIONER CLARK: Okay.

13 MR. REITH: Yes, ma'am. Now, the way we
14 envision it today, if Staff's recommendation is
15 accepted, the only thing that would change would be the
16 IXCs would be able to collocate facilities, but the
17 links between the IXC facilities would be provided by
18 the AAV, and that's what is represented by the solid
19 line. And that's pretty much an extension of what they
20 are allowed to do today as far as POP-to-POP transport.

21 So there's not a whole lot in addition that an
22 AAV can do as per our recommendation today.

23 COMMISSIONER CLARK: Okay. And if I
24 understood the testimony correctly, there's probably not
25 much in the market left there now; because if it were

1 cost-effective to do it, they would have done it already
2 through private line?

3 MR. REITH: As far as transport and traffic,
4 yes. I understand what we're recommending today is
5 pretty restrictive; and we're consistent or attempting
6 to be consistent with past decisions in our
7 interpretation of the statute, and that's what has
8 driven their ability today to provide service.

9 COMMISSIONER CLARK: Yeah, that was your
10 response to the AAVs, specifically Intermedia and I
11 believe Teleport, saying that they are not prohibited
12 from doing this under the statute. And you responded to
13 them with your own analysis that it is prohibited based
14 on what we decided in the AAV docket.

15 MR. REITH: Yes, ma'am.

16 COMMISSIONER CLARK: Okay.

17 CHAIRMAN DEASON: Let me ask a question along
18 those lines. Correct me if I'm wrong, it is my
19 understanding that the AAVs would like to, and they, in
20 their argument think it is permissible under current
21 statutory authority that we have here at the Commission,
22 they would want the authority to collocate at a local
23 central office and be able to take all traffic that is
24 designated for a particular IXC -- assuming that the AAV
25 has a contract with the IXC to provide that service for

1 them -- to take all of that switched traffic that comes
2 into that local central office that is designated for
3 ABC IXC and take that and carry it over their dedicated
4 facility to the point of presence of that IXC. They
5 think that's permissible and it's your opinion that that
6 is not permissible.

7 MS. CANZANO: That's correct.

8 CHAIRMAN DEASON: If you could just give some
9 further explanation as to why you think that is not
10 permissible.

11 MS. CANZANO: First, I think it goes to --

12 COMMISSIONER JOHNSON: Donna, could you turn
13 us to that page? Where is that analysis?

14 MS. CANZANO: Well, it's under Issue 6, which
15 begins on Page 39 of the recommendation.

16 COMMISSIONER JOHNSON: I know you're
17 addressing the Chairman's question directly but, also,
18 Mike is saying, "Yeah, we're being pretty restrictive in
19 what we're allowing the AAVs to do here. We're being
20 restrictive not because it is a discretionary thing, but
21 we're being restrictive because of Staff's legal
22 interpretation of what the law will allow us to do."

23 MS. CANZANO: Yes, and it's also based upon
24 past Commission decisions interpreting what AAVs are
25 permitted to do; specifically, the AAV order.

1 **COMMISSIONER JOHNSON:** I hate to interrupt,
2 and I'm going to let you continue your train of thought.
3 But when you say "past decisions," were those decisions,
4 too, based upon our interpretation of the law? Because
5 I'm getting a little confused. Because two of you have
6 said it's not only the law but past decisions, but
7 weren't those past decisions just interpreting what the
8 law is? We're consistently interpreting the law.

9 **MS. CANZANO:** Yes.

10 **COMMISSIONER JOHNSON:** Okay.

11 **MR. REITH:** One other thing, there's a point
12 of confusion that was brought out amongst Staff, it is
13 frame of reference. Mr. Wiggins did a pretty good job
14 of trying to focus in on only his client and what his
15 client can do; and we focus on end user, end-to-end.

16 **CHAIRMAN DEASON:** Well, that's the reason I
17 asked the question to Donna, to try to get the statutory
18 basis, because I think that is the key question is
19 within that statute, that section, it depends on how you
20 define "end user." Staff is defining "end user" as the
21 customer, the -- I'm sorry, it's how you define
22 "customer." We're defining it as the end user, the
23 customer being the person that picks up the phone, dials
24 and wants to make a long distance call.

25 And I think that under Intermedia's

1 interpretation the customer is not necessarily the end
2 user; the customer can be interpreted to be the IXC.
3 And maybe I'm oversimplifying it, but that's the way I
4 understood it. If that's not correct, how about
5 explaining that.

6 MS. CANZANO: That's basically what they're
7 saying. They're trying to say that a subscriber can be
8 an end user, so an IXC would be a subscriber of the
9 service and thus a subscriber is an end user.

10 The definition as set before in 364.337 of
11 alternative access vendor services states that means,
12 "The provision of private line service between an entity
13 and its facilities at another location or dedicated
14 access service between an end user and an interexchange
15 carrier by other than a local exchange
16 telecommunications company, and are considered to be
17 interexchange telecommunications services."

18 And then private line service is defined in
19 Section 364.335 as, "Any point-to-point or
20 point-to-multipoint service dedicated to the exclusive
21 use of an end user for the transmission of any public
22 telecommunications service."

23 Our interpretation is you're talking about
24 dedicated services, so you look at the picture as a
25 whole. And we have defined switched access service to

1 consist of three elements. It is, you know, the carrier
2 common line, which is the portion from the end user to
3 the LEC's central office; local switching, which is
4 really in the central office itself; and then the local
5 transport section from the LEC's central office or the
6 serving wire center to the IXC.

7 I believe that some of the AAVs want to just
8 focus on one element of that and say that that is a
9 dedicated element, and then they are entitled to do it
10 and it meets, then, the statutory definition of a
11 dedicated service. And I think that you need to look at
12 the whole picture and not just one piece of the picture.

13 CHAIRMAN DEASON: But, obviously, if the IXC
14 has a point of presence of collocation there in that
15 local central office, and they take all the traffic
16 which is directed to them and then they want to contract
17 with the AAV to utilize that dedicated facility from
18 that central office to somewhere else down the IXC's
19 network, then that is permissible, right?

20 MS. CANZANO: That's permissible if it is the
21 same IXC. Because we have already said in that AAV
22 order that an AAV is allowed to provide IXC POP-to-POP
23 transport; and that's just an extension of that, so long
24 as the switch itself is not in between the IXC's
25 facilities.

1 **CHAIRMAN DEASON:** So really it boils down to
2 **statutory interpretation as to what is permissible.**

3 **MR. REITH:** Yes, sir.

4 **MS. CANZANO:** Yes.

5 **CHAIRMAN DEASON:** What we may think would be
6 **good or bad is really kind of irrelevant, at least for**
7 **purposes of this. It may be discussed during**
8 **legislative debate, but we're not here to discuss**
9 **legislative debate today, we're here to make a decision**
10 **based upon the evidence and the record and our**
11 **interpretation of the statute as it exists today.**

12 **MS. CANZANO:** That's right.

13 **COMMISSIONER CLARK:** But the statute uses "end
14 **user."**

15 **MS. CANZANO:** Yes, it does.

16 **COMMISSIONER JOHNSON:** But it doesn't really
17 **define it.**

18 **MS. CANZANO:** No, it doesn't really
19 **specifically define it. But there's a similar -- one of**
20 **our rules that has to do with operator services defines**
21 **end user as a person who initiates the call. So we're**
22 **borrowing the idea from that.**

23 **COMMISSIONER JOHNSON:** From where? I'm sorry.

24 **MS. CANZANO:** From Rule 25-24.610(1)(c).

25 **COMMISSIONER CLARK:** But I think perhaps the

1 way we use it in the rule is consistent with the way --
2 I have never heard anyone refer to an interexchange
3 provider as an end user unless they are in fact, I mean,
4 if they have a business line or something like that --

5 MS. CANZANO: Right.

6 COMMISSIONER CLARK: -- where they are an end
7 user. But when they purchase the service and then in
8 turn package it and resell it, as far as I know, they
9 have never been characterized as end users.

10 MS. CANZANO: Not to my knowledge.

11 COMMISSIONER CLARK: What?

12 MS. CANZANO: Not to my knowledge.

13 MR. HATCH: Yes, that's correct.

14 COMMISSIONER JOHNSON: I think Intermedia, in
15 their brief, they raised, it was an interesting
16 argument.

17 MS. CANZANO: It sure was.

18 COMMISSIONER JOHNSON: But, and it did, if we
19 knew more -- and I know that perhaps we just don't and I
20 don't know how much weight we would give the legislative
21 intent or the legislative discussions with respect to
22 this issue. And I don't know how much weight I would
23 give that anyway. But I'm more inclined to agree with
24 Staff's analysis of end user being the customer --
25 although I must say I thought Intermedia did an

1 excellent job on their brief.

2 COMMISSIONER CLARK: But to buy into
3 Intermedia's argument, it seems to me the statute would
4 have been written entirely different.

5 COMMISSIONER JOHNSON: Yeah, that's where I
6 started going.

7 MS. CANZANO: Yes.

8 COMMISSIONER CLARK: Yes.

9 I had a follow-up question. Given the fact
10 that the implementation of expanded interconnection is
11 limited by the statute, did you do an analysis of what
12 you think the impact, the financial impact, would be?
13 As I recall what you said about Mr. Beauvais and his
14 comment with respect to the most conservative is 2
15 million and something, the most, the worse scenario
16 would be 23 million --

17 MR. REITH: 27 I think; on Page 29, I believe
18 it is.

19 COMMISSIONER CLARK: Your memory is better
20 than mine. But 29 I should look at?

21 MR. REITH: I believe that's the page, that's
22 the first page --

23 COMMISSIONER CLARK: I would assume that the
24 27 would be if the AAVs were authorized.

25 MS. MARSH: That's correct. He was assuming

1 that competition would be in place at that time.

2 COMMISSIONER CLARK: Okay. And what is the 2
3 million based on?

4 MS. MARSH: That was a more conservative
5 estimate of the same thing. He took different fill
6 factors and used a very conservative estimate to come up
7 with the 2.7 million.

8 In the 27 million he used 100% fill factor.
9 Actually, he used 10% in the one and 100% in the other,
10 so you can see the other one is just another zero up or
11 two zeroes up; and that's really the only difference in
12 those numbers. They both assume full competition.

13 COMMISSIONER CLARK: Okay.

14 CHAIRMAN DEASON: So the conservative
15 estimate, which is the 10% fill factor number, that's
16 assuming full competition.

17 MS. MARSH: Yes, sir.

18 CHAIRMAN DEASON: And the assumption is that
19 even with full competition, given pricing flexibility
20 and other things to the LEC and whatever responses they
21 have to the competition, that it is just a conservative
22 estimate they would only lose 10% of that share. Is
23 that in essence what he is saying?

24 MS. MARSH: Actually, he is not even referring
25 there to what would happen as a result of this docket,

1 given the limitations.

2 In another part of the testimony, he agrees
3 that there would be virtually no revenue impact as a
4 result of the decision here today. So this really
5 assumes, you know, that there is competition.

6 CHAIRMAN DEASON: And none of those numbers,
7 neither the GTE number or the Southern Bell number, make
8 any attempts to try to quantify the revenue enhancements
9 that perhaps could come out of this through customer
10 growth, through stimulation of additional traffic,
11 things of that nature?

12 MR. REITH: Additional services. Yes, sir,
13 you're correct.

14 COMMISSIONER CLARK: They did not take that
15 into account when doing their estimate; is that correct?

16 MS. MARSH: They did not. Several of the
17 parties do discuss the possibility that revenues could
18 even increase due to other charges, such as
19 cross-connect charge and so forth. All the revenue that
20 the LEC gets today would not go away, it would simply be
21 substituted in other ways as a result of what could come
22 out of today. They do discuss it but none of the
23 parties have attempted to quantify it.

24 CHAIRMAN DEASON: I think an important
25 point -- and I think that Mr. Metcalf in his testimony

1 tried to emphasize this -- is that one of the things we
2 need to keep in mind as we go through these things and
3 try to develop policy, realizing we're constrained to
4 some extent by the statutory interpretation, but one of
5 the things we need to remember is that the network --
6 when I use the term "network," I am using it rather
7 loosely -- the network is better off if the customers
8 stay on the network as opposed to going to a private
9 network.

10 If they are utilizing the network, even
11 thought it may be an AAV's network, still the AAV is
12 interconnected to what we would refer to as the
13 traditional network; and that still is a better scenario
14 than losing customers entirely to some type of private
15 network for some type of a VSAT or a private situation.

16 MR. REITH: Yes, sir. And the theory is once
17 the private network is in place, the customer does not
18 come back because they have already invested that
19 capital.

20 COMMISSIONER JOHNSON: Let me go back to one
21 of the generic issues, or our statutory interpretation
22 that AAVs are prohibited from interconnecting with the
23 LEC switch for provisioning of switched access.

24 I thought you all did a real good job of
25 analyzing that and answering the question directly. And

1 I need a feel from you all as to I know we're going into
2 this legislative session and we talk about the issue and
3 we talk about what we think the statute does. Is there
4 room here for a discussion -- whether in the order it
5 would be dicta or whatever -- as to where we think they
6 should go? Should we include that kind of discussion
7 here and the ramifications and the impact?

8 I know they'll be looking to us for guidance.
9 We've said this is what the legislature has told us to
10 do; should we go the next step in saying -- in
11 discussing the issue in terms of the competitive
12 environment that we now live in?

13 CHAIRMAN DEASON: I think that's Issue 5, is
14 it not?

15 MR. HATCH: In a sense it is Issue 5. To get
16 really to your question, it is possible you could do
17 that, it would be a literal dicta. Here's where we are,
18 here's what we could do. But, you know, if we had our
19 dreams or our druthers, then perhaps it would be
20 different and it can be different this way.

21 COMMISSIONER JOHNSON: You think it is taken
22 care of in 5, then?

23 MR. HATCH: In many respects I think it is
24 taken care of in 5.

25 The other question is you whether you want to

1 do that at all.

2 CHAIRMAN DEASON: That's the question that I
3 have --

4 COMMISSIONER JOHNSON: That's why I raised it,
5 because I --

6 MR. HATCH: Since you have your White Paper
7 project in process now, my suggestion to you is that's
8 really a better place to do it.

9 COMMISSIONER CLARK: It seems to me the
10 expanded interconnection, the basis of that you
11 recommend it is that it will be implemented that way.
12 It is inescapable.

13 MR. HATCH: Yes.

14 COMMISSIONER CLARK: And I think we're
15 having -- one of the reasons I did not support
16 legislation to allow, last year, to suggest it was
17 appropriate for AAVs to provide it to nonaffiliated
18 entities was I didn't have any kind of facts or
19 education to lead me to conclude that was the right
20 decision. You recall Staff indicated they felt it was
21 the right place to be, I just didn't have that knowledge
22 that you all have.

23 I feel I have it now; and as a result of this
24 hearing, I think we are in a position to say we think
25 expanded interconnection is in the public interest. It

1 is our interpretation of the statute that it can be
2 implemented at this point, but we do think it should be
3 implemented and the statute needs to be changed.

4 CHAIRMAN DEASON: Well, Commissioner, it is
5 kind of ironic, during that discussion I supported the
6 legislation --

7 COMMISSIONER JOHNSON: So did I.

8 CHAIRMAN DEASON: -- and the reason I did is
9 because the legislation at that time that we were
10 contemplating did not say it is in the public interest,
11 it just gave the authority to the Commission to take a
12 look at it and then make that determination after we had
13 had a thorough investigation and we assured ourself that
14 it could be implemented in. I think, consistent with
15 that, we would have the authority if we felt it was
16 necessary to protect the public interest to impose
17 certain type of constraints or restraints or transitions
18 or whatever. So that's why I supported it at that time.

19 The reason that I cannot support Issue 5 here
20 today is that it doesn't do that. It just makes the
21 very bold statement that, "It is in the public
22 interest," and it don't give the Commission -- my fear
23 is -- and it may be. I'm not saying it is not. In
24 fact, I'm kind of inclined to say that it probably is,
25 but I'm not convinced of that yet.

1 And my fear is that if we make a determination
2 on Issue 5 as it is currently stated, that's going to be
3 used by certain parties -- and I don't blame them; if I
4 were in their shoes, I would, too -- it is going to be
5 used to convince the legislature simply to include in
6 the law that this will be done. And I think that that
7 perhaps would not give the Commission the flexibility
8 and the discretion to take a look at it and, if we so
9 chose, to implement some type of transition or
10 restraints or other considerations. And I don't even
11 know what they would be at this point and maybe there
12 would be none, but that's what my fear is.

13 If you recall, when we discussed the White
14 Paper, that was one of the things we were saying: We're
15 willing to make this statement that competition and we
16 need to open up the local network and all of that if the
17 Commission is empowered to have flexibility and
18 discretion and to look at it and make sure that it is in
19 the public interests with these considerations or with
20 those considerations.

21 My fear is that the result from the
22 legislative process may be that there's just a single
23 statement in the law that says, "You will do this." And
24 that may be good public policy and I'm not saying it is
25 not, and I'm sure it would get adequate debate at the

1 legislative level; but I'm just not convinced that we
2 need to make the bold statement in Issue 5 at this point
3 without the caveats, certain caveats similar to those
4 that we included in our White Paper when we made the
5 bold statement that the local network should be opened
6 up to competition.

7 That's what my concern is. I discussed it at
8 some length yesterday with Staff; and I think there may
9 be some mixed feelings on it, but I think they can
10 understand the point of view I'm trying to share with
11 you.

12 COMMISSIONER JOHNSON: I'm a little confused
13 on that Issue 5, then.

14 I guess -- and I needed to hear that because I
15 guess I was kind of thinking that we have the
16 flexibility and that we were making that determination
17 now after a hearing? I thought this is what we wanted
18 to do, to have this opportunity. But I understand what
19 you are saying is that we might be narrowing ourselves
20 in too much perhaps to have this broad statement.

21 CHAIRMAN DEASON: That's what my concern is.
22 But at the same time, if you feel confident that as a
23 result of this proceeding that this is the path we
24 should go down and there's absolutely no doubt in your
25 mind it should be done, it should be done as quickly as

1 possible, and there is not going to be adverse impacts
2 on the LECs and the captive residential customers, fine,
3 maybe this is the avenue to do it and perhaps there is
4 no need for any longer delay. I'm just not yet quite
5 that far down that path. I may be headed down that
6 path, I'm not yet there.

7 COMMISSIONER JOHNSON: I understand that. I
8 do feel this is the path we should be headed down but I
9 do feel that we need to have some flexibility. So I
10 don't know how to get there; I don't know if this is
11 just sending us on a road and we can't take a turn or
12 what this is doing. But I was assuming in Issue 5 we
13 still would have some of the implementation authority
14 and have some of the safeguards and have the ability to
15 control this, but perhaps not.

16 MR. DREW: Mr. Chairman?

17 COMMISSIONER JOHNSON: But what is Staff's
18 opinion?

19 MR. DREW: Could you reiterate again what
20 would make you more comfortable? I mean, it sounds like
21 the issue somewhat interpreted is pretty broad?

22 CHAIRMAN DEASON: My approach and my question
23 to Staff yesterday was a quite simple one: Is there
24 even any need to address Issue 5 to resolve the true
25 issues in this docket? That's what my concern was. And

1 I was basically told it is not absolutely necessary but
2 that, depending on what the consensus of the Commission
3 is, it may be helpful. And I can see both sides of it.

4 COMMISSIONER JOHNSON: I thought this was a
5 necessary issue to making a determination -- a public --
6 oh, no. That's what we wanted the legislation to say,
7 that we -- okay, I'm confused.

8 COMMISSIONER CLARK: If I'm understanding your
9 reservations, Chairman Deason, it's sort of that this is
10 a part of a bigger picture. And what we have said to
11 the legislature is that this is a good idea and opening
12 up local exchange is a good idea. But we need to have
13 the tools to ensure that the timing of it is correct so
14 that in the long run we have full and fair competition.
15 And the timing is essential both to protect ratepayers
16 through the transition and to ensure that the
17 competition does develop.

18 To turn the local exchange companies loose too
19 soon may kill any developing competition. To hold them
20 back may have an adverse impact on the cost of local
21 rates. It's trying to do it all at the proper time.

22 And if I understand what you're saying is, we
23 should be careful that we see this as a piece of a
24 larger picture, and that, even though we may be
25 recommending expanded interconnection and believe at

1 this time that, based on this record, it appears that it
2 would be -- that the legislation should be changed to
3 allow alternative access to providers to serve
4 nonaffiliated entities, that we still need the
5 flexibility, such as with zone pricing and other things,
6 to allow the LECs to fairly compete for those customers.

7 CHAIRMAN DEASON: I think that's basically
8 correct. My concern -- for example, one of the biggest
9 concerns I have, of course, is the impact, the financial
10 impact, potential impact. And, I don't think that
11 the -- my opinion is that the record is not as ample as
12 it could otherwise have been. And there's some question
13 as to the limited numbers that we have, whether that
14 contemplates -- what exactly those numbers contemplate.
15 And whether Staff's conclusion that the financial
16 impacts would be negligible, I think that conclusion was
17 reached or based upon the statutory interpretation that
18 these type services are not permissible, but what would
19 Staff's recommendation be if it was under an assumption
20 that that statutory restriction were removed and we were
21 having total and full competition; what would those
22 financial impacts be? And, I don't really think Staff's
23 prepared at this time to make an assessment of what that
24 would be. If they are, please speak up. But I don't
25 think you are.

1 MS. MARSH: No, we're not.

2 COMMISSIONER CLARK: Well, then, you need to
3 clarify for me Mr. Beauvais' testimony. I mean, I had
4 understood the 27 million to be if they lost all the
5 access, or if they lost that what they predict they are
6 vulnerable to competition and that would include
7 alternative access providers providing access to
8 nonaffiliated entities. Am I incorrect in that?

9 MS. MARSH: No, ma'am, you are correct in
10 that. I understood the Chairman to say was Staff ready
11 to assess it.

12 CHAIRMAN DEASON: Staff's conclusion is it's
13 negligible. And I think that's based upon your
14 interpretation of what is statutorily permissible.

15 MS. MARSH: That's correct.

16 COMMISSIONER CLARK: Okay. Sorry.

17 CHAIRMAN DEASON: And you are saying it's in
18 the public interest because this is a concern we really
19 don't have.

20 My question is, could you still say that we
21 should do this if it was total and full, and that you
22 could say that there's not going to be any adverse
23 impact on the LECs and their customers, and I don't
24 think you are ready to say that yet. If you are, please
25 share that information with us.

1 MR. REITH: I would go on, and you can add to
2 this, when we probed to look at this in this docket -- I
3 mean, a lot of the answers we got is, "We don't know."
4 And the numbers were tough coming and the numbers we got
5 are rough estimates. And I think that's pretty
6 indicative of the feeling out there. I mean this is new
7 ground. This is definitely a preliminary step we're
8 taking or trying to take.

9 CHAIRMAN DEASON: And it may be that it is
10 something that we can't really put our hands on, nobody
11 has the answers, and at some point maybe we're going to
12 have to take more steps down this path based on faith.

13 MR. REITH: It's definitely going to be an
14 evolution. We've just got to take it one at a time.

15 CHAIRMAN DEASON: Walter, you're fixin' to
16 give up your attaboy, you're coming to the table.

17 MR. D'HAESELEER: I'm a little concerned
18 because of another one that's coming up tomorrow.

19 There is a point in time when you have to make
20 a decision, even though it be a hard one and you may not
21 be comfortable that you don't have all of the
22 information that you'd like to have.

23 I'm a little surprised at what has been said
24 from the Staff in that if you ask the companies for
25 information on what they're going to lose, they are

1 going to do some modeling, they are going to make some
2 assumption, just like you've got in the other docket,
3 and until it actually happens and you experience it, you
4 really don't know what the impact is. But you have to
5 look at the big picture. And I think the big picture is
6 that they being able to offer this would be in the
7 public interest.

8 Now, there may have to be some fine-tuning
9 later on and some adjustments made, but, you know,
10 you've got a big decision to make tomorrow and I'm
11 concerned because you won't have all of these numbers
12 you're seeking.

13 COMMISSIONER CLARK: Let me ask a question.
14 Who is on the interLATA, is it everybody?

15 MR. HATCH: It's the full Commission.

16 COMMISSIONER CLARK: One thing that, I mean
17 this -- with respect to No. 5, it is a policy decision
18 that I'm comfortable making, but on the other hand, I
19 have sort of -- the two Commissioners that aren't here,
20 I will have made a policy decision for them in effect.

21 MR. D'HAESELEER: It's the tone that I'm a
22 little concerned about. I mean, if you're really
23 looking for solid numbers, it's --

24 CHAIRMAN DEASON: I'm not so much looking for
25 solid numbers in this case. The only reason I'm

1 bringing that up is that I still want the Commission to
2 be able to have the flexibility and the controls and put
3 in safeguards if we deem it necessary.

4 My concern is whether that such a -- a finding
5 of this, which is bold and direct, that could be
6 interpreted to where that it could be implemented, it
7 could be inserted into the law that says that,
8 "Commission, you will do this. And you don't have to
9 worry about any type of controls or safeguards or
10 whatever because you've already said it's in the public
11 interest so you must be assured that it's fine." And
12 I'm just not willing to say that. That's what my
13 concern is.

14 Even with our white paper, as you recall, we
15 had a lot of discussion and debate, but we all, the
16 consensus was, "Okay, yeah, we can make this statement,
17 but what we're saying is that we need the ability and
18 the authority to implement Universal Service Fund, if we
19 think that's the appropriate thing to do," the whole
20 myriad of things that we discussed. And that gave
21 everybody some comfort that we're retaining enough
22 authority to assure ourselves that whatever the
23 decisions and the path that we take, that we can -- in
24 our humble opinion we can do it, make those decisions
25 which we think are in the public interest. And we're

1 looking for the broad direction from the legislature but
2 not so much the specifics, like the Ten Commandments,
3 "You will do this, you will do this, and you will not do
4 this."

5 MR. D'HAESELEER: Yeah, and I agree with you.
6 I just thought we were changing our tone that if we
7 don't have numbers, we can't make policy decisions.

8 CHAIRMAN DEASON: No, I wasn't saying that. I
9 realize that at some point we're going to have to make
10 decisions based upon the best information that we have.
11 I guess I'm not at the point of saying that this type
12 competition is in the public interest, period, and not
13 say as long as -- there's the necessary -- the
14 Commission has the authority to implement -- and there
15 may not be any need for any additional safeguards. But
16 I don't think anybody is going to know until we start
17 implementing it and getting further down that path.

18 COMMISSIONER JOHNSON: Is there a way for us
19 to add some of those qualifiers in our analysis, you
20 know, that we think that this is in the public interest
21 but add the warnings and things that we need to look
22 at -- I don't want to say the authority that the
23 Commission needs, but issues that are still out there.

24 CHAIRMAN DEASON: I was very comfortable with
25 whatever was contained in the last -- in the legislative

1 proposal. It was very comfortable. Basically it lifted
2 that restriction and gave the Commission the discretion
3 to take a further look at it. But what I hear Walter
4 saying is I think he's convinced that this constitutes
5 the analysis -- the hearing, the evidence -- that he's
6 comfortable in just saying this is the way to go,
7 period.

8 MR. D'HAESELEER: Yes, but I can live with --
9 I mean, I don't have any problems with some kind of
10 caveats. But what I really am concerned about is that
11 we really won't have the numbers a lot of people are
12 comfortable with in some of these major decisions we're
13 going to be faced with. That's my concern.

14 COMMISSIONER JOHNSON: I don't know if we're
15 necessarily saying numbers, but saying that we need to
16 have the authority to analyze and review.

17 CHAIRMAN DEASON: Sometimes you need the
18 authority just to put brakes on a little, you know.

19 COMMISSIONER JOHNSON: Exactly.

20 CHAIRMAN DEASON: Maybe we're going too fast
21 down the information superhighway; I don't know. Maybe
22 we're not going fast enough. I think a lot of people
23 would say that's the case.

24 Any more kind of generic questions?

25 COMMISSIONER CLARK: No. Mr. Chairman, I

1 think maybe we can, when we get to 5, we can work with
2 it a little bit and maybe get something that would
3 satisfy you, and still acknowledge the information we've
4 gotten so far.

5 And if I hear you correctly, it's sort of we
6 need to be able to employ some safeguards, or have the
7 ability to change our path if we find that we're doing
8 damage to universal service or -- the path we started on
9 needs some adjustment to protect the public interest.

10 CHAIRMAN DEASON: Let me raise perhaps a more
11 specific question; would we have -- and this is perhaps
12 a question nobody has the answer to, but would we have
13 the authority -- if we were to make this finding and for
14 some reason that statutory provision was lifted, and
15 then a few years down the road we made some type of a
16 finding that, while this has been wildly successful and
17 there's been competition and those customers, the IXCs
18 and some of the large customers, have benefited from it,
19 but there's been some strain or some pressure put upon
20 basic rates, would we have the authority then to require
21 some type of a contribution from these AAVs and IXCs
22 with some type of a Universal Service Fund, or since we
23 have already basically determined them to be in the
24 public interest, that they are kind of exempt from some
25 type of an assessment of contribution to a Universal

1 Service Fund?

2 MR. HATCH: Hard question. If you want to go
3 to the extreme edge, I think perhaps you have any
4 inherent authority -- but that's a risky proposition,
5 and I'd hate to give you any kind of committal answer to
6 that without doing a lot more work on the question.

7 COMMISSIONER JOHNSON: Well, then, that makes
8 me real nervous.

9 COMMISSIONER CLARK: Can you put, I mean it
10 seems to me that it could be put in the legislation to
11 the extent that there needs to be universal --

12 MR. HATCH: I didn't get that far yet. It
13 depends on what comes out of of the legislature, if
14 there, in fact, is a Universal Service Fund package put
15 forth and how that works; that may very well answer all
16 the questions.

17 CHAIRMAN DEASON: See, that's what bothers me
18 about this whole thing; we're talking about how we want
19 to structure legislation, and that's not the purpose of
20 this docket.

21 MR. HATCH: I understand.

22 CHAIRMAN DEASON: Here comes Walter again.

23 COMMISSIONER JOHNSON: But I'd like to know
24 that the impact that the findings in this docket would
25 have on legislation, and if you're telling me that if we

1 made this public interest determination, that we may put
2 ourselves in a box where that if we don't get
3 legislation, then our hands may be tied?

4 MR. HATCH: I'm not sure I understand your
5 question.

6 COMMISSIONER JOHNSON: Well, you were just
7 saying, the Chairman was asking you about the public
8 interest determination -- go ahead.

9 MR. HATCH: Well, the basic question was could
10 we establish some sort of a Universal Service Fund down
11 the road if we perceived a problem? If that's the
12 question, I don't have a good clear answer for you that
13 I'm willing to run up the flagpole.

14 COMMISSIONER JOHNSON: And you're saying
15 because we made a -- that this is a public, this is in
16 the public interest determination, we may have a road
17 block establishing a universal service mechanism down
18 the road.

19 MR. HATCH: In the greater scheme of things,
20 if you're looking at the big picture, I don't believe
21 this is that big of a pothole in the information
22 highway -- to use the current jargon. But historically
23 we have solved our universal service questions by how we
24 deal with the interconnection with the LECs, local
25 exchange networks. We have built revenues into certain

1 rates and rate levels to accommodate certain things, to
2 solve certain problems and to solve a lot of other
3 issues. BHMOC for revenue neutrality and lots of CCL
4 and how we raise and lower those rates based on what we
5 think the current problems are and how the mix falls
6 out, what we think is the best mix all the way around.

7 To the extent that you eliminate the LEC
8 monopoly per se when they are not the only game in town,
9 then you have a much, much bigger, broader problem to
10 consider. This doesn't reach that, frankly. I mean --
11 it's getting that direction, but this is not related,
12 really, directly to that problem. And that problem has
13 to be solved, if at all, by some sort of systematic
14 Universal Service Fund. Now, how that is going to look,
15 how it would work, who knows. Until that happens, I
16 don't think you have the kind of problem you're worried
17 about.

18 CHAIRMAN DEASON: Did our white paper address
19 at all the lifting of the restriction on affiliated
20 entities in AAV --

21 MR. HATCH: I don't know. I don't know,
22 Mr. Chairman. I wasn't part of that project directly.

23 MR. TUDOR: The way it was addressed was, we
24 had the three scenarios with the broadest one and the
25 one we proposed being the one that said, open up the

1 local market and expand competition widely and that
2 would be covered under that umbrella, but then, the B
3 option was one that just addressed some very limited
4 areas, and one of those addressed there was lifting the
5 unaffiliated entity restriction.

6 MR. D'HAESELEER: Commissioner, in my opinion,
7 as long as these people are certificated, are under your
8 control, and subject to rate approval, you can do
9 whatever you want through rate design. And I don't
10 think there's any problem. You may not call it a
11 Universal Service Fund, it could be profits or anything
12 else, but I think you could address some concerns about
13 rate dislocations.

14 CHAIRMAN DEASON: Walter, I don't necessarily
15 disagree, but you do realize the recommendation in this
16 case does not even have these folks file tariffs; which
17 I'm not -- I mean I'm --

18 MR. D'HAESELEER: Right. But through
19 interconnection rates and other rates, you can
20 accomplish this same thing.

21 COMMISSIONER CLARK: Put it in the RIC, huh?

22 MR. D'HAESELEER: I mean, there's a lot of
23 ways of doing it.

24 COMMISSIONER CLARK: But the RIC has risks in
25 the sense that you could drive people to a private

1 network.

2 **CHAIRMAN DEASON:** That's absolutely correct.
3 And the fact that the common wisdom is that the RIC
4 can't survive in the long term, it's got to go away at
5 some point. Just like BHMOC, it was good public policy
6 to try to reduce, eliminate that.

7 **COMMISSIONER CLARK:** And I think all of these
8 things are transition mechanisms. I think when we get
9 to Issue 5, maybe we can make it clear that I think the
10 record does indicate expanded interconnection is in the
11 public interest and consistent with our white paper. It
12 is in the public interest to allow AAVs to provide
13 access for nonaffiliated companies, but we need to be
14 clear that this will have a revenue impact on local
15 exchange companies; that revenue has been used to keep
16 local rates low, and as part of a legislative package
17 the impact of opening up competition and the transition
18 to competition has to address how we assure that
19 universal service can be maintained, and that has to do
20 with how you replace or not replace revenues.

21 And maybe we can caveat with the fact that,
22 you know, that there are -- you need to understand the
23 revenue impact and the legislation has to address how we
24 protect universal service as we go to competition.

25 **CHAIRMAN DEASON:** I don't disagree with what

1 you just said.

2 Any other generic discussions? Okay, we can
3 proceed. Issue 1 is a stipulated issue.

4 Issue No. 2 also is a stipulated issue.

5 Issue No. 3.

6 COMMISSIONER CLARK: I can move Staff.

7 COMMISSIONER JOHNSON: Staff.

8 CHAIRMAN DEASON: Issue 3 has been moved and
9 seconded. Show that approved.

10 Issue No. 4? Commissioners, I got the
11 distinct impression that while different parties may
12 prefer things a little bit differently, I think
13 everybody basically agreed that expanded interconnection
14 is -- under the FCC's virtual collocation that the FCC
15 format for that is acceptable. I think basically that's
16 what Staff is saying.

17 COMMISSIONER CLARK: Is that Issue 4?

18 COMMISSIONER JOHNSON: That's Issue 4.

19 CHAIRMAN DEASON: That is Issue 4.

20 COMMISSIONER JOHNSON: Move.

21 COMMISSIONER CLARK: No. Issue 4, "Is the
22 expanded interconnection for switched access in the
23 public interest?"

24 COMMISSIONER JOHNSON: I thought that was --
25 I'm getting them confused.

1 **CHAIRMAN DEASON:** Maybe I'm looking at --

2 **COMMISSIONER JOHNSON:** Are the issues laid out
3 the same way in the guide as they are in the --

4 **CHAIRMAN DEASON:** Well, I'm off of my issue
5 numbers then.

6 **COMMISSIONER JOHNSON:** Me, too. Could you all
7 go through or at least explain what Issue 4 is.

8 **MR. DREW:** Issue 4 states -- asks the
9 question, "Is expanded interconnection for switched
10 access in the public interest?" Staff is recommending
11 that the Commission find that it is.

12 Overall, the parties believe that it is in the
13 public interest. We found that the local exchange
14 companies agree that there may be some benefits to
15 allowing expanded interconnection for switched access,
16 and asked the Commission to bear in mind that there are
17 certain caveats that the Commission should look at,
18 specifically in the area of revenue impact.

19 Overall, we've identified benefits to expanded
20 interconnection as documented in the record. We've
21 identified overall minimal revenue impacts to the LEC,
22 and we did not identify, based on the record, any
23 significant rate impact on the general body of
24 ratepayers. And that was the basis of our conclusion.

25 **CHAIRMAN DEASON:** I'm mistaken. I had gotten

1 off on the wrong list of issues here, but you're
2 correct, Commissioner.

3 COMMISSIONER CLARK: Mr. Chairman, I would
4 add, there was one thing that you mentioned, and I think
5 should be added to, on Page 28, "Based on the above
6 testimony, Staff concludes the benefits that may occur
7 from introduction of expanded interconnection for
8 switched access include," and I agree with those, but
9 should there be something added that the avoidance of
10 uneconomic bypass of the public network? I mean, one of
11 the things that Mr. --

12 MR. DREW: Metcalf.

13 COMMISSIONER CLARK: I guess it was --
14 indicated, and to me that is a public benefit because
15 there's a far greater danger to the maintenance of the
16 public switched network if you have the development of a
17 lot of private networks, because I don't believe people
18 will be as ready to come back, and I would add that as
19 another matter.

20 MR. DREW: Yes. We would agree, since we did
21 find in our analysis if customers were to go to their
22 own private networks, they would less likely return to
23 the public network. They would have already sunk costs
24 into building their own networks and would less likely
25 go back to the public network.

1 **COMMISSIONER JOHNSON:** Yeah. I think that we
2 could add that as a 7 and the discussssion could be
3 embellished a little bit, but you do discuss it in the
4 analysis.

5 **CHAIRMAN DEASON:** Okay. Do we have a motion
6 then on Issue 4?

7 **COMMISSIONER CLARK:** I move Issue 4.

8 **COMMISSIONER JOHNSON:** Second.

9 **CHAIRMAN DEASON:** It's been moved and
10 seconded. Show that Staff recommendation on Issue 4 is
11 approved as discussed. Issue No. 5?

12 **COMMISSIONER CLARK:** Mr. Chairman, let me give
13 this a try.

14 I would say that something to the effect
15 that -- I guess in an attempt to gain your support, that
16 the record in this docket indicates the offering of
17 dedicated and switched services between nonaffiliated
18 entities by non-LECs appears to be in -- well, I would
19 say is in the public interest provided. However, it
20 will have an impact on revenues to the local exchange
21 companies, which may have put pressure on local rates,
22 and the Commission -- but the Commission should maintain
23 the flexibility to address that revenue impact through
24 pricing. Maybe not be as specific as "pricing," but
25 there is another part of the public interest that we

1 should be able to maintain the ability to address that
2 should we see that the impact is unacceptable.

3 CHAIRMAN DEASON: I basically agree with that.
4 I think this is probably a subissue, maybe even a small
5 subissue, when you look at what we had in our white
6 paper the bigger question of should there be additional
7 competition in the local network. And we basically made
8 the statement that yes, but you need to realize what the
9 impacts could be, and the Commission needs certain tools
10 and certain flexibility as we transition through that.
11 And, I think what you're basically saying is that this
12 needs to be couched in those same terms.

13 COMMISSIONER CLARK: Yes.

14 CHAIRMAN DEASON: If that's the way that we
15 want to try to address it, I can agree with that.

16 COMMISSIONER CLARK: I haven't been very
17 eloquent, but I think we've discussed it adequately
18 then.

19 CHAIRMAN DEASON: I think Staff can be much
20 more eloquent when they write the order than we are
21 sitting up here, but I think you understand what we're
22 trying to express.

23 MS. CANZANO: You want to maintain your
24 flexibility.

25 CHAIRMAN DEASON: Right. And --

1 **COMMISSIONER JOHNSON:** I think all of the
2 stuff that Commissioner Clark was saying, reminding the
3 public as a whole and putting it in our document that we
4 are aware that this could put some upward pressure on
5 local rates. And I think as a Staff, as the
6 legislature, as the general body, as they read that, I
7 think that's one of our jobs, to remind them that we're
8 going into competition; this is a transitional state,
9 we'll be in a transitional stage, and there are a lot
10 on things that could happen and reminding them of the
11 pressure on upward rates and reminding them of -- our
12 local rates, and reminding them of our need to maintain
13 the ability to address that issue. I don't know how, I
14 don't know if it's in pricing or what, but to address
15 that issue.

16 **CHAIRMAN DEASON:** I think, you know, we can't
17 sit here today and envision what's going to be happening
18 two, three, five, ten years down the road, but I'm sure
19 there's going -- there is going to be a proliferation of
20 these type hearings that we're having right now. I
21 think this could be going on for years. That's my own
22 personal opinion. And that we just need the flexibility
23 to look at these things as they come up on a
24 case-by-case basis.

25 **MR. HATCH:** They have been going on since

1 1982. (Laughter)

2 CHAIRMAN DEASON: If anything, the pace has
3 quickened more and more as opposed to less and less.

4 COMMISSIONER CLARK: But I think it should be
5 pointed out that the Staff has recommended, and I agree
6 with it, that one of the ways to combat that is to give
7 flexibility to the LECs on their pricing. That may not
8 be enough. It may be enough.

9 I mean, I think one thing I'd like to make
10 clear is by expanding interconnection, you may have the
11 effect of stimulating the market and we may have a
12 revenue impact.

13 CHAIRMAN DEASON: It could be a win-win
14 situation. It's possible.

15 You mentioned flexibility not only to the
16 Commission but to the LECs to address competition and
17 we're going to address this in subsequent issues. But
18 my discussions with Staff is one of the concerns I had
19 is about what type flexibility should be given, and, of
20 course, Staff's recommendation is just to have zone
21 density pricing at this point. And I was a little bit
22 concerned about that, but they explained to me that that
23 would be for right now; that they envisioned the
24 Commission having flexibility -- additional flexibility
25 needs to be given to the LECs, so that's something we

1 can transition into and look at in subsequent
2 proceedings, that gave me some comfort.

3 I think Staff, do you understand where we are
4 on Issue 5?

5 MS. CANZANO: Yes, we do.

6 CHAIRMAN DEASON: Okay, good, because I tried
7 to express that but sometimes it's difficult.

8 MR. REITH: We'll run the language by you.

9 COMMISSIONER CLARK: Okay.

10 CHAIRMAN DEASON: Issue No. 6?

11 COMMISSIONER CLARK: I love the way you worded
12 this issue, "We can, but it can't be implemented to the
13 extent." I can move Staff on Issue 6.

14 COMMISSIONER JOHNSON: Second.

15 CHAIRMAN DEASON: Show Issue 6 approved.

16 Issue No. 7? 7 and 8 I think we discussed we
17 may want to take up together because depending on how we
18 vote on Issue 8 could have an impact on Issue 7.

19 COMMISSIONER JOHNSON: Yeah. I was thinking
20 we'd do Issue 8 first.

21 MR. REITH: And in Issue 7, Ms. Canzano is
22 recommending if you all do vote in virtual collocation
23 in 8, then there's no reason to address 7.

24 COMMISSIONER JOHNSON: I'm prepared to move 8.

25 COMMISSIONER CLARK: Second.

1 **CHAIRMAN DEASON:** Show Staff recommendation on
2 Issue 8 is approved. That basically moots Issue 7, does
3 it not?

4 **MR. REITH:** Yes, sir.

5 **CHAIRMAN DEASON:** So, no need for a vote at
6 all.

7 **MS. CANZANO:** There's no need. Issue 9 has
8 been stipulated as well as 10 and 11. Issue 12?

9 **MR. REITH:** Issue 12 addresses reciprocal
10 interconnection.

11 Staff is recommending that the Commission
12 should not mandate reciprocal interconnection on behalf
13 of the interconnectors and the AAVs, but we do
14 definitely encourage it. And the parties, the AAVs in
15 the docket, have stated that they would be willing to
16 entertain reciprocal interconnection arrangements on the
17 same basis that the LEC would allow them to interconnect
18 with their network.

19 The reason Staff is recommending those, we
20 don't believe it's necessary to mandate, and also we
21 have some concerns as to the size of the players.

22 Reciprocal interconnection, you're talking
23 symmetry and a decision on what you do to both sides of
24 the players. But when you look at the market, it's not
25 really a symmetrical market. We allow the LEC to do --

1 have great flexibility in the services they offer and
2 how they operate. We restrict AAVs by statute and it's
3 my belief, and Staff's opinion, that it's not necessary
4 to mandate it.

5 **CHAIRMAN DEASON:** Commissioners, this is one
6 of the issues that has given some concern to me. And
7 I've had a discussion with Staff about this yesterday.
8 And first of all, I guess at a very superficial level it
9 just seems intuitive that if you are going to require it
10 on one side, you require it on the other side. That's
11 parity, that's equality and that's fairness.

12 Of course, Staff has brought up some other
13 arguments about the ability, the size of the
14 participants and their negotiations, and it may not be
15 fair negotiations, and that this may be needed at this
16 point to further competition, and things of that nature.
17 And I can understand those arguments.

18 But what we need to realize is that we're
19 mandating it. I guess we've taken that vote. We've
20 said we're mandating that there will be collocation,
21 we're saying it's virtual, we're leaving it up to the
22 LEC. If they want to do it physical they have that
23 option; but they don't have the option to say, "No, we
24 want to negotiate and these are the terms." We're
25 saying, "You will do it; you will do it, and we're

1 mandating virtual, but we're giving you the option of
2 physical."

3 When we get to the tariffs -- which is
4 something we're not going to be addressing today, we may
5 get into some of the particulars -- but we're making
6 that mandate.

7 Here, for the reciprocity argument, we're not
8 making any mandate at all, we're just saying, "Well, we
9 think it is a good idea and we would encourage it, but
10 that's it." Then my question is, are we basically
11 reversing the tables to where then the non-LECs in this
12 entire game, they have the upper hand, and they
13 basically are better to negotiate.

14 Now, I know we have testimony and evidence in
15 the record that basically says all the non-LECs, they
16 would be foolish not to negotiate some type of agreement
17 because they have the facilities and they basically
18 would be just foregoing revenues that they would not
19 otherwise get. I agree with that, that has a lot of
20 intuitive appeal, also.

21 But my concern is with the end-use customer.
22 And I think there is some testimony in the record that
23 says to the extent a LEC can collocate with a non-LEC
24 and utilize those facilities which, perhaps, in that
25 particular set of circumstances and those facts in that

1 isolated case, that that would be a lesser cost option
2 and more efficient option, that's good and everybody
3 benefits from that.

4 I guess where I've come down on this is that,
5 instead of just saying we're just going to encourage it,
6 maybe we should take it one step further and say that
7 we're going to require it but the non-LEC has the option
8 to show why that is not appropriate, and they have to
9 show that to the Commission.

10 Now, I know that we are basically inviting
11 more filings and that sort of thing. But we have
12 testimony saying that they don't think that's going to
13 happen; they think if someone comes to them with a
14 legitimate offer to utilize their facilities, that
15 that's revenues that they otherwise would not get and
16 that they are more than willing to negotiate.

17 I'd say that we would not only encourage it,
18 we would require it but let the parties negotiate the
19 terms and conditions; and then, if there's a dispute,
20 bring that to the Commission. That's what I'm a little
21 bit more comfortable with.

22 COMMISSIONER JOHNSON: And what Staff is
23 saying is, don't require it, but if there's a dispute,
24 it will come to us. You're saying, require it, and if
25 there's --

1 **CHAIRMAN DEASON:** You know, I think it's --
2 maybe it is a distinction without a difference. I just
3 think it is one step closer to -- it is one stronger
4 statement than just saying "encourage."

5 **MR. REITH:** I would like to make a couple of
6 observations. Expanded interconnection, the purpose of
7 it was to have a start in opening up the LEC's
8 bottleneck. AAVs, in order to get to the customer base
9 that the LEC has, they would have to construct
10 significant facilities. Central office is the
11 aggregation point; so the view that came down or the way
12 the FCC had envisioned it was that this is something
13 needed to allow the AAV market to grow.

14 Now we're turning the tables is what you're
15 saying. So, one of the things I wrestle with is, is a
16 mandate needed from the standpoint that a LEC cannot
17 reach a customer? Or, maybe add a broadband facility,
18 possibly? They may not have the facilities in the case;
19 AAVs' certain business customers.

20 **CHAIRMAN DEASON:** But the LEC needs to have
21 the option to look at various alternatives and say,
22 "This is the least-cost way to provide service." We can
23 avoid building a facility to serve an important customer
24 but maybe they only anticipate one customer in that area
25 and there's no need to build their own facilities. If

1 that's the least-cost option, that's another win-win
2 situation.

3 MR. REITH: I agree when you, I agree with
4 you. Like I say, these are just observations, the
5 things that I wrestled with when I was going through
6 this rec.

7 CHAIRMAN DEASON: I understand what you're
8 saying, too, that the non-LECs, they're not the
9 bottlenecks. And that's what part of this whole process
10 is: In opening up competition, you've got to address
11 that bottleneck.

12 We're making concessions, we're unbottling to
13 some extent the bottleneck, and that benefits certain
14 participants in this market. And I think that if they
15 want that benefit, they should be willing to make some
16 concessions, too; and I think they have some
17 responsibilities if they're going to be players --

18 MR. REITH: Yes.

19 CHAIRMAN DEASON: -- in this whole scheme of
20 things. And I just think that is not a very burdensome
21 responsibility to say if there's a legitimate request
22 from the LEC to interconnect, you shall. And you're
23 free to negotiate the terms and conditions and,
24 hopefully, only one out of a thousand will reach the
25 Commission in a dispute level. But I think they should

1 know they have a responsibility to look at that and to
2 interconnect and only in some extreme circumstances
3 would they not -- perhaps if it would jeopardize their
4 own network or whatever.

5 Of course, that's some old AT&T arguments from
6 long ago, right? But if it would jeopardize their own
7 network. But I think, even in the negotiation process,
8 the LECs would realize that if that is a true concern,
9 they wouldn't push it any further. But I think they
10 have a responsibility to interconnect.

11 MR. REITH: I understand.

12 COMMISSIONER CLARK: I just have a question.
13 If we mandate interconnection, is there a possibility
14 that it can be used by the LECs for anticompetitive
15 purposes? I guess my concern was, could they buy up all
16 the available interconnection and prevent the AAV from
17 competing?

18 MR. REITH: I have never thought of it from
19 that standpoint. But off the top of my head, if we're
20 talking negotiation, allowing them to negotiate as
21 Commissioner Deason states --

22 COMMISSIONER CLARK: But if we mandate, I
23 mean, you still have to interconnect.

24 MR. REITH: I would imagine there would be a
25 dispute, and it would come to us.

1 **CHAIRMAN DEASON:** Maybe I'm being overly
2 cautious, Commissioners.

3 **COMMISSIONER CLARK:** No, I think you have
4 articulated what the choice is. And I, you know, I
5 guess --

6 **CHAIRMAN DEASON:** I mean, people that are
7 going -- even though we're going to more and more
8 competition, I still think if somebody is going to be a
9 competitor in this market, not only are they going to
10 get the benefits of other competition but they're going
11 to have some responsibilities as well. I think this is
12 one small responsibility, and that is the LEC comes to
13 them and says, "We have customer XYZ over here and he or
14 she wants this; and instead of building our own
15 facilities, it is going to be a whole lot more
16 cost-effective if we can interconnect with you at this
17 point and have you provide this part of the service."

18 And I think 999 times out of 1,000, the
19 non-LECs are going to say, "Yeah, that is great, we will
20 be happy to provide the service and negotiate a fair and
21 reasonable rate for that." But I think that if they
22 know there's a responsibility to do that then I think it
23 is going to facilitate those negotiations.

24 **MR. REITH:** You may be correct in the 99% of
25 the time. The only other observation I would like to

1 make is, when we allowed the AAVs in the market, we
2 really, as far as restricting by the interpretation of
3 the statute of what they're allowed to do, we really
4 didn't put a lot of terms and conditions on them on how
5 they should operate because they are such a small
6 company and they have such a small niche market. We
7 chose to be pretty flexible relative to what we required
8 of the LEC. I believe that is the direction we're
9 trying to go here also.

10 COMMISSIONER JOHNSON: We have to watch that,
11 though, because the world is changing. When they
12 entered the market it might have been a smaller niche
13 market; but we have to be aware of that, as we start
14 opening things more and more, they're growing, so that
15 we have to be more concerned than we were before about a
16 lot of the activities that were allowed or that weren't
17 reviewed.

18 MR. REITH: And decisions we make in other
19 dockets, too.

20 COMMISSIONER JOHNSON: Certainly.

21 COMMISSIONER CLARK: Is there any analogy to
22 be drawn in this situation and what was done early on
23 with respect to equal access? My recollection is that
24 one of the ways the equal access was implemented in
25 Florida was the EAEAs. And the thought being, not only

1 should the interexchange carriers have equal access to
2 customers, customers should have equal access to the
3 interexchange carriers.

4 Is there a concern that there won't be -- and
5 I guess in this case it is more correct to say
6 nondiscriminatory access to everyone who wants to make
7 use of the AAVs network? I guess maybe the analogy is
8 not appropriate because it is a different situation.
9 But I think what the Chairman is indicating, do we have
10 to do that to ensure the interconnectivity of networks?

11 CHAIRMAN DEASON: And let me -- there is one
12 complication to my suggestion and I realize that. And
13 it was brought out, I think in the record, by the cable
14 companies. It is their position that we're preempted
15 from ordering them to do any type of interconnection.

16 MR. REITH: Yes, that is their position. And
17 although we don't really have any support in the record
18 to argue that, that was something that was raised in the
19 brief.

20 CHAIRMAN DEASON: So that, I remember reading
21 it somewhere --

22 MR. REITH: I kind of hesitate to address
23 that.

24 CHAIRMAN DEASON: It is just a legal argument.
25 Is that something we should be concerned with is that

1 should be a reason not to require -- because my
2 suggestion is to require it but to allow full and open
3 negotiation; and then if there's a dispute, bring it to
4 the Commission.

5 MR. HATCH: That portion of the cable
6 company's operation that is being used to provide AAV
7 service subject to your jurisdiction; I think you have a
8 tremendous amount of leverage and authority to make them
9 interconnect under whatever terms and conditions you
10 find in the public interest. The statute clearly
11 defines it that way, so I don't think the preemption
12 issue is that big of a problem.

13 COMMISSIONER CLARK: Mr. Chairman, I'm willing
14 to move Staff on this issue with the understanding that
15 we are going to watch the issue of interconnection; and
16 that to the extent LECs believe that they are not --
17 they are being discriminated against or the efficiency
18 of the network is affected, that they should bring it to
19 our attention. I think both parties have an interest in
20 seeing that this works. And if they don't, they can
21 come back here and we'll address it.

22 I guess I'm coming at it from a standpoint of
23 let's do what we need to do; avoid more overregulating;
24 but if the situation develops that we need to address
25 it, we will.

1 **COMMISSIONER JOHNSON:** I'm going to second
2 that for the same reasons. And also, I think my
3 inclination is to the extent and where we can let them
4 go and not mandate and see how this market is actually
5 going to work, I would like to have those examples,
6 those models. And to the extent that this isn't
7 working, we may learn something from that, too, as
8 opposed to the traditional mandate and then complain.

9 Let's not mandate, let's free it up, and let's
10 see how the parties act and react, and let's see whether
11 or not there is a disparity and whether or not the
12 parties are at equal bargaining positions.

13 **CHAIRMAN DEASON:** Would it be fair to say that
14 if we took that approach, that if a problem area
15 developed, that we subsequently could take a look at it;
16 and if we felt it was appropriate, we could at that
17 point implement some type of a requirement to --

18 **COMMISSIONER JOHNSON:** That's how I was
19 reading --

20 **MR. REITH:** Yes. And that's why I added that
21 last sentence on the recommendation statement. If the
22 dispute does arise, come see us. We need to know if
23 this works or not.

24 **CHAIRMAN DEASON:** Yeah. Commissioners, we
25 have a motion and a second. I would prefer taking it

1 one step further and requiring it and having disputes
2 brought, but I don't feel so strongly about it at this
3 point because we really don't know how this is going to
4 work. A lot of the evidence we have is that the
5 non-LECs in this particular market are going to be
6 welcoming any offers by the LECs to utilize their
7 facilities. And I hope that is the case and that we're
8 not going to have problem areas; and with the
9 understanding that if problems do develop, we can look
10 at it subsequently, I'm willing to go along with the
11 motion and the second. So show that Staff's
12 recommendation is approved.

13 COMMISSIONER JOHNSON: And again,
14 Mr. Chairman, I found comfort in that language that
15 Staff provided that if a dispute arises, that we have
16 the opportunity to review those requests to interconnect
17 on a case-by-case basis.

18 COMMISSIONER CLARK: And I think it should be
19 made clear in the order -- which I think it will, based
20 on the recommendation -- that this is to address the
21 asymmetry in the market. That at some point, we may not
22 mandate interconnection for anyone.

23 MR. REITH: Or we may want to revisit and
24 reverse.

25 COMMISSIONER CLARK: Yeah. I mean the

1 direction we want to go in is less regulation; and to
2 the extent the market works, that regulation is
3 unneeded.

4 CHAIRMAN DEASON: Okay. That addresses
5 Issue 12. Issue 13 is stipulated, and that brings us to
6 Issue 14.

7 MR. CHASE: Commissioners, Issue 14 addresses
8 the question, "Should all switched access providers be
9 required to file tariffs?" And this goes back a lot to
10 Issue 12; it is very related to that. Because if you
11 don't order reciprocal interconnection, then Staff says
12 it doesn't make sense to make everybody file tariffs,
13 all non-LEC and LEC entities or switched access
14 transport.

15 But using some of the same caveats in that
16 Staff analysis, we talked about that at this time, due
17 to the customer of switched access transport are the
18 IXCs and they are very knowledgeable of the market. So,
19 if the AAVs are not filing tariffs, then the IXCs --
20 they can't really, you know, pull a fast one on the
21 AAV/IXCs because they know what the rates are and what
22 the conditions are.

23 But that is at this time. And so if over time
24 we find there's a problem either way, that if the AAVs
25 are able to hurt the LECs, then we can come back and

1 maybe want to impose some type of tariffing requirement
2 on the AAVs. But if -- and then, on the other hand, if
3 we find that it is working, we may want to loosen the
4 tariffing requirements on the LECs. But we're just
5 saying at the start, at this time, that it is really not
6 necessary to order the AAVs to file tariffs for switched
7 access transport.

8 COMMISSIONER CLARK: We don't require AAVs to
9 file any tariffs currently?

10 MR. CHASE: No.

11 MR. REITH: No ma'am, we don't.

12 COMMISSIONER CLARK: Let me ask a question
13 with respect to if we approve zone density pricing.
14 Does that set -- that means within a zone, they have
15 some flexibility in how to price it? Or just is it
16 flexibility within a zone or between zones?

17 MR. REITH: It would be within a zone and
18 then --

19 CHAIRMAN DEASON: It would be a uniform price
20 within a zone. They cannot give a customer-specific
21 rate. They have to give the same rate to every customer
22 that comes that is within that zone. Right?

23 MR. REITH: Yes. And I'm hesitating because
24 we don't have exact, precise plans in front of us. That
25 is how we envision it.

1 **COMMISSIONER CLARK:** So their pricing is going
2 to be known?

3 **MR. REITH:** I want to say that you also can
4 entertain the possibility of a band that they can
5 operate within. So to say their price is known, I don't
6 want to go that far; but you could say you know that
7 they are allowed to operate within maybe 10% of the
8 tariff rate within that zone. That is another
9 possibility that we can go.

10 **CHAIRMAN DEASON:** But I guess my concern, my
11 question that comes back -- and I know the participants
12 are not equal at this point --

13 **MR. REITH:** Yes.

14 **CHAIRMAN DEASON:** -- but is it an unfair
15 advantage for the non-LECs to not have a tariff when
16 we're requiring the LECs to have a tariff if we want the
17 two to compete?

18 **MR. REITH:** I believe something that we could
19 draw on is the tariffs that are filed today in the IXC
20 market. Those are there and they use them to check up
21 on each other. So, it could be an advantage or a
22 disadvantage, depending on your point of view.

23 I understand what you are saying, and the LECs
24 would be going out there not knowing what the AAVs are
25 charging; and the AAVs could look in the tariff and say,

1 "Hey, this is your tariff rate."

2 But on the flip side -- and we are not
3 recommending this for switched access, but in the
4 dedicated transport and the dedicated pieces of the LECs
5 have CSAs, so they are allowed to address the
6 flexibility. So they can deviate from their tariff
7 also. But again, we are not --

8 CHAIRMAN DEASON: The LECs do have CSAs on the
9 local transport?

10 MR. REITH: They have it for dedicated
11 facilities. We're not recommending that for local
12 transport, which we're saying is switched access
13 transport.

14 CHAIRMAN DEASON: You just --

15 MR. REITH: I'm sorry -- I shouldn't have
16 brought that up. Go ahead.

17 MS. NORTON: There's no contract service
18 arrangement authority on switched access at all today.

19 CHAIRMAN DEASON: Right. It is your
20 recommendation that there not be. You're not
21 recommending that that flexibility be given to the LECs.
22 The flexibility you're recommending is the zone density
23 pricing.

24 MS. MARSH: That's correct.

25 MR. REITH: Yes.

1 **MR. D'HAESELEER:** Commissioners, again this is
2 kind of philosophical: Do we want to treat all the
3 players the same or is there a dominant group or one
4 that we treat differently from the others?

5 I think historically in the competitive market
6 we haven't treated them all alike. We have treated the
7 dominant players differently than the other ones.

8 I would argue, you know, if you were to ask
9 me, "Do we need tariffs for all the LECs?" My answer
10 would be no. Other ones probably would say yes, it is a
11 matter of convenience. But if we're really truly after
12 reducing the amount of regulation and letting the
13 markets work, I think we have to be more flexible than
14 we have traditionally, and we need to have few
15 constraints or restraints and let's see if this thing
16 works. And if it doesn't, I think we have the tools and
17 the regulatory statutory authority to make changes.

18 **COMMISSIONER CLARK:** Well, let me ask a
19 question about, it seems to me one of the things that, I
20 don't know, people advance is -- economic theory with
21 respect to competitive markets, is there be information
22 about the product and the price of the product. You
23 need to know those things in order to make the right
24 economic choices.

25 **MR. D'HAESELEER:** Customers can call and find

1 out, yes.

2 COMMISSIONER CLARK: Well, wait a minute. Let
3 me -- in this case, one of the rationales for not
4 requiring the filing is the people who are going to be
5 purchasing this service are sophisticated
6 telecommunications companies not an end user. I guess
7 that does address the customer. My question is, with
8 respect to the tariffs we have required of other
9 providers other than the LECs, do we require tariffs
10 when you have an end-use customer such as MCI has to
11 file their tariffs so that we can be assured that when a
12 customer calls and says, "This is my bill and this is
13 what I have been charged," we can look at the tariff and
14 make sure that the company is delivering the quality of
15 service at the price they committed to? Is that not a
16 concern in this case, because the customer is just
17 buying a wholesale service to resell to end users?

18 MR. D'HAESELEER: I think yes, the players are
19 different, or the consumers.

20 You make an interesting point. And that is,
21 what is our role in a competitive market, and is it
22 really to see that nobody is being cheated? Or if there
23 is a complaint, you know, should we resolve it?

24 I don't know. That is debatable. In
25 competitive markets, if you don't like one provider, you

1 go to another one.

2 COMMISSIONER CLARK: Well, I do think that we
3 have to protect the public interests in the sense of
4 making sure that the information customers have is
5 accurate. And when they buy a service that, in fact,
6 the telecommunications companies, which is allowed to
7 operate if it is in the public interest, is in fact
8 delivering that service. It is not -- it is because of
9 the nature of the service that that sort of burden,
10 extra burden, is there, in my opinion.

11 My question is, do we have any tariffs -- have
12 we required tariffs to be filed when it is -- I guess
13 I'm going to refer to it as a wholesale service, a
14 service that is only bought by another
15 telecommunications service provider?

16 MS. MARSH: We have a rule that says a minor
17 interexchange company, which is everybody except AT&T,
18 may enter into contracts with other telecommunications
19 companies for the provision of service. So when it is a
20 telephone company buying from a minor interexchange
21 company, we do not require tariffs in our rules today.

22 Do you understand what I'm saying?

23 COMMISSIONER CLARK: No, you didn't answer my
24 question. Are there any tariffs that it is a
25 company-to-company where we do require tariffs?

1 MR. CHASE: Switched access tariffs.

2 UNIDENTIFIED SPEAKER: Switched access.

3 MR. HATCH: Yes, ma'am, there are. For
4 example --

5 COMMISSIONER CLARK: Well, I guess I should
6 clarify that. Other than a LEC?

7 MR. HATCH: Yes ma'am. For example, AT&T
8 software-defined network tariffs, that's bought both by
9 end users and by IXC resellers. The IXC reseller may
10 subscribe to SDN itself and that would be pursuant to
11 tariff. Now, it can be pursuant to contract but nothing
12 stops them from signing up --

13 COMMISSIONER CLARK: Let me be more specific.
14 Other than what was the dominant carrier.

15 MR. HATCH: The same thing happens with MCI in
16 Prism and some of their services as well.

17 MS. BUTLER: You're saying, do we mandate any
18 nondominant carrier to tariff a service?

19 COMMISSIONER CLARK: Tariff a service which is
20 strictly a wholesale service.

21 MS. BUTLER: A wholesale service. I can't
22 recall that we do.

23 MR. HATCH: No. I don't recall any.

24 COMMISSIONER CLARK: Let me switch gears a
25 little. There is always the possibility of predatory

1 pricing by an alternative access provider, assuming it
2 has the financial wherewithal to consistently underprice
3 their service and take the entire business away from the
4 local exchange company. That's an anticompetitive
5 activity on their part. It benefits the customers,
6 they're not going to complain. How is the local
7 exchange company going to know that is going on until
8 it's too late?

9 MR. CHASE: That is what I was talking about,
10 that if that is happening, the LEC can come to us and
11 ask. But you know, how do they know --

12 COMMISSIONER CLARK: Until it is too late?
13 They just find that all their switched access, everybody
14 is going elsewhere to get it. I suppose there are
15 long-term contracts.

16 You know, I just, I see it as a tool to ensure
17 fair competition; and it is not just a tool for the
18 customer to price shop, it is also a tool to determine
19 anticompetitive activities on the part of another
20 supplier.

21 But maybe -- I mean, there are plenty of
22 markets that don't do that. You know, you don't have to
23 tell in the purely competitive market, you know, you can
24 give somebody a good deal if you choose to. But we need
25 to ensure nondiscriminatory --

1 MS. BUTLER: I think that the difference maybe
2 here is that you look at who you are dealing with, with
3 the AAVs and the other companies. They are operating in
4 a competitive environment. Every place they operate is
5 competitive. They have no place that they can go to
6 subsidize their service. The difference between them
7 and the local exchange company is that the LEC has got
8 other monopoly services that ostensibly -- what we worry
9 about is whether or not they are subsidizing their
10 competitive operations with their monopoly customers.

11 COMMISSIONER CLARK: I'm not suggesting that
12 they could do it long term, but they could do it short
13 term for long enough to get the business and they have
14 the business.

15 MS. BUTLER: But then they can't live if they
16 do that. They have no place to go to get that money
17 from that they've given away. And that's where I see
18 the difference.

19 They can do it on an individual customer
20 basis, but they can't do it everywhere. They can't do
21 it all over.

22 COMMISSIONER CLARK: I think they can. They
23 can't sustain it. And you're saying if they can't
24 sustain it, they won't do it.

25 MS. BUTLER: Then they won't do it.

1 **CHAIRMAN DEASON:** But your recommendation is
2 not to let the LEC do it on an individual customer
3 basis.

4 **MS. BUTLER:** Not now.

5 **CHAIRMAN DEASON:** And maybe^t this is an absurd
6 example, and I'm good at making absurd examples. But,
7 you know, it's like K-Mart and Wal-Mart. If Wal-Mart
8 has to -- if they put out an advertisement and that's
9 their flier, and those are the prices, that they can't
10 charge more or less than what's in there, well, you
11 know, all K-Mart has got to do is say, "Bring in your
12 Wal-Mart flier, and I'll charge you penny less," or 10
13 cents or whatever, "than what Wal-Mart's price is." And
14 they can't meet that because they have got a tariffed
15 rate that says whatever they print in the their flier,
16 that's it; they can't deviate from that. And K-Mart
17 knows every week what prices they are going to charge
18 because that comes out.

19 What I'm saying is that it appears to me --
20 and I know that the non-LECs are the nondominant players
21 in this market, but all they have to do is go to a
22 customer, and say, "All right. You've got the LEC over
23 there, here is their published rate, it's right here,
24 it's on file with the PSC. We're going to beat it every
25 time. So any time you need any service, you just come

1 to us." How is the LEC going to compete against that?
2 Because you're saying don't give them contract service
3 arrangements. How are they going to compete?

4 MS. BUTLER: I guess -- it's not happening
5 today in the markets in special access. I don't believe
6 that the LECs are keeping all the special access
7 customers that they have today at tariffed rates,
8 because there are very few contract service arrangements
9 today for services for which we allow contract service
10 arrangements, so there are a lot of customers that stay
11 with the local exchange company despite the fact that
12 there are --

13 CHAIRMAN DEASON: Only those customers to
14 where it's not -- where the LEC -- the non-LECs don't
15 have a cost advantage. Apparently they cannot provide
16 the service at a lesser -- because if they can provide
17 it at a lesser cost and still get a contribution, why
18 don't they undercut the LEC's rate and get the customer?

19 MS. BUTLER: Because I think there are a lot
20 of considerations other than cost that go into
21 customers' decisions on who they are going to use for
22 their service. That would be the easy answer on that
23 one.

24 But we look at this -- at least I do, myself,
25 as today we have these very small companies, and they

1 are starting, just beginning to compete in markets that
2 are dominated by very large companies. And if your goal
3 is that you want more competition to occur, the result
4 of that will be that the very large companies are not
5 going to have some of the business that they did today,
6 and that should be good. You should want that. Because
7 that's what competition is all about.

8 CHAIRMAN DEASON: What competition is about is
9 the person that can provide the best service, the most
10 reliable service, the most innovative service at the
11 least price, assuming they are not going to price
12 anything below cost --

13 MS. BUTLER: At the least cost.

14 CHAIRMAN DEASON: No, the least price.
15 Because if they can -- as long as they don't price below
16 cost, because price is the thing to the customer, and if
17 somebody can be more efficient and have superlow cost
18 and the price only be a little bit less than their
19 competitor and they make superprofits, that's what
20 competition is all about. Sure, you do it that way.

21 MS. BUTLER: That's true, except if that
22 occurs, if somebody comes into the market and they can
23 do it with a lower cost than anyone else, but they don't
24 increase their price --

25 CHAIRMAN DEASON: Then prices are driven

1 towards everybody's cost. And to the point where your
2 prices reach cost and you still can't be competitive,
3 you get out of the business.

4 MS. BUTLER: I agree. But the incident you're
5 talking about is where somebody comes in and they can
6 provide it at a lower cost but they don't lower their
7 price, then I would say to you if there's that great of
8 a margin between cost and price, that profit in there,
9 somebody else is going to come in and --

10 CHAIRMAN DEASON: Sure, that's the competitive
11 model.

12 MS. BUTLER: -- be able to offer that low cost
13 at a lower price and put that guy out.

14 CHAIRMAN DEASON: You're right. And in the
15 long term, prices are going to be driven towards cost
16 and there's going to be competition on everybody to get
17 their costs down. And that's what we want to encourage,
18 is we want the business to go to the provider that can
19 do it most efficiently and provide the service that the
20 customer wants. That's the model that we want. I mean,
21 that's the competitive model, right?

22 Now, the question is having one party to that
23 file tariffs and be restricted by that and have another
24 party not, is that going to facilitate the competitive
25 model working to where customers are going to get the

1 service they want at the lowest price, cost, whatever
2 you want to call it? And I think what Staff is saying
3 is you don't have a concern in this situation.

4 MS. BUTLER: I think what we're saying is that
5 we're not going to jump into this thing and have a full
6 blown competitive market to start out with. It's not
7 going to work like that. And we believe that it will
8 become more competitive. And as that occurs, it will
9 make sense to allow the LECs more flexibility then. But
10 for starters we think that zone density pricing is
11 adequate.

12 COMMISSIONER CLARK: Let me ask a question.
13 It seems to me that Centel suggests that nondominant
14 providers still have to file tariffs at the FCC level
15 but it's streamlined; is that correct?

16 MR. CHASE: Yes.

17 COMMISSIONER CLARK: What was the FCC's
18 rationale for doing that?

19 I guess the thought being as long as we're
20 mirroring FCC on everything else, why don't we do it on
21 the tariffing? If they just have streamlined procedures
22 in the same way that the FCC is doing it.

23 MR. HATCH: Commissioner Clark, I'm not sure
24 what FCC has done in terms of their process. But we
25 have also got 364.05, which are basic tariff filings

1 statutes that you're going to have to cope with in terms
2 of streamlining any kinds of tariffs.

3 COMMISSIONER CLARK: What?

4 MR. HATCH: 364.05. It's your tariff statute
5 that says you have got to file 60 days, da, da, da. For
6 good cause shown, you can suspend or limit the 60 days.

7 COMMISSIONER CLARK: Can't we exempt people
8 from that requirement?

9 MR. HATCH: Maybe.

10 COMMISSIONER CLARK: I thought we could impose
11 different regulations.

12 MR. HATCH: We can, but you've got to go all
13 the way through a proceeding to do that, and you have
14 not done that yet.

15 COMMISSIONER CLARK: I'm imposing different
16 regulations on the nondominant carrier, not the LEC.

17 MR. HATCH: Their IXCs, they are okay. The
18 streamline proceeding for the AAVs is not a problem.
19 That's the IXCs --

20 COMMISSIONER CLARK: That's what I'm talking
21 about, because that's the ones we're talking --
22 I guess --

23 MR. HATCH: You were saying LECs, and that's
24 why perhaps I jumped in, and I'm confused.

25 COMMISSIONER CLARK: United and Centel's

1 position is that they should be required to file it, and
2 they point out that nondominant providers have more
3 streamlined tariffing procedures before the FCC but they
4 must tariff nonetheless. What's wrong with following
5 what they are doing?

6 MR. CHASE: The difference is that the FCC
7 requires AAVs to file tariffs -- to file tariffs. This
8 is talking about switched access transport, and this
9 Commission does not require AAVs to file tariffs in the
10 first place for anything else, so we're differing from
11 them from the start.

12 COMMISSIONER JOHNSON: I need for you all to
13 back up. I think you might have done it in your
14 introduction and I was reading something else. But
15 there were two points in the analysis; one was you
16 clearly linked Issue 12 with this issue in saying that
17 if -- where was that -- if we decided that reciprocal
18 interconnection is not required, then there's no need
19 for the tariff filing. I need someone to explain to me
20 how -- because I was being a little -- I had one opinion
21 on one and another opinion on the other, and I need for
22 you to explain to me again how these two are tied
23 together and how it doesn't make sense to break them up.

24 MR. CHASE: Okay. Let's take, for example, if
25 in this issue you decided to require the AAVs to file

1 tariffs, that would essentially be ordering reciprocal
2 interconnection in the other issue. Because by filing
3 the tariff for access transport, the AAV would have to
4 offer to similarly situated people the same terms and
5 conditions, and so that's why we're saying that they are
6 linked.

7 COMMISSIONER CLARK: Well, I guess I saw it
8 differently because it seemed to me mandating the offer
9 is one thing, but saying you can do it, but if you do
10 it, it's pursuant to tariff is something else.

11 MS. BUTLER: It is, but we're looking at it
12 backwards. If you don't mandate it, you shouldn't
13 require tariffs because tariffs are, by implication, a
14 mandate. Once I have a tariff on, then I say, "I'm
15 going to do this; I have to do this. I have to offer
16 this service to everybody."

17 COMMISSIONER CLARK: I guess the distinction
18 you're making is they can do it on a contract basis now;
19 they can offer it to only one entity if they chose to.
20 By filing a tariff they would have to do it for more,
21 anybody that comes in. And assuming they have the
22 physical ability to do it, they would have to do it.

23 CHAIRMAN DEASON: And I guess that strikes --
24 I understand the arguments. I can see both sides, but
25 that really is one of my biggest concerns is that we're

1 going to competition, and the non-LECs, AAVs, they can
2 sit down with a specific customer and they can tailor
3 something. And the LECs are not going to -- under your
4 recommendation, the LECs are not going to have that
5 opportunity. There's going to be a filed tariff, and
6 they can differentiate within zones, but if a customer
7 is in that zone, each and every customer is entitled to
8 that rate and there's an obligation to serve. Now, I
9 know we're talking about sophisticated customers and all
10 of that.

11 But that seems to me to be -- I don't know,
12 it's not equal, and maybe it shouldn't be, and part of
13 your argument is that the LECs are the dominant and they
14 are the ones who have the nonmonopoly, and they are the
15 ones that have the ability perhaps to subsidize, but we
16 have CSAs in other areas, and I know CSAs are not a
17 cure-all, but we have requirements and obviously they
18 cannot negotiate a contract that's going to be below
19 their cost. That certainly would be anticompetitive,
20 and that, by definition, would result in some
21 subsidization somewhere else, and we don't want that as
22 well. But, you know, we want competition, but I don't
23 want a participant to go into the competition with one
24 hand tied behind their back.

25 COMMISSIONER JOHNSON: In a way I think you're

1 right, in that we aren't treating everyone equally as we
2 go into competition but there's almost no way to avoid
3 it. To me, the way that the system is set up now, there
4 are often opportunities or situations where the LECs now
5 have an advantage. And as I read this, it is in my
6 opinion Staff's attempt to kind of push us into a more
7 competitive market and, indeed, it does give the AAVs
8 the edge because we want more competitors. And it looks
9 as if, to some extent, something like this may encourage
10 more market growth for the AAVs. I don't know if that's
11 bad.

12 CHAIRMAN DEASON: Well, let me ask this
13 question: If we're convinced the AAVs should not file
14 tariffs and there's a lot of argument for that, and we
15 don't have a requirement to file tariffs or anything
16 else now, what is the overriding public policy that says
17 that the LECs should file tariffs? They are just filing
18 tariffs for sophisticated customers as well. What's to
19 be gained by requiring -- if we want some symmetry here,
20 why not not require tariffs by anyone?

21 MR. HATCH: Currently, the statute requires
22 the LECs to file tariffs.

23 CHAIRMAN DEASON: We'd have to make a finding
24 that it's a competitive --

25 MR. HATCH: Under 338. In fact, we brought a

1 recommendation to you not too long ago dealing with
2 private line specifically, and the decision was that
3 it's not effectively competitive in part because of the
4 affiliate restrictions. So until you have a fully
5 competitive market, then you cannot change that
6 regulatory scheme to that extent.

7 COMMISSIONER CLARK: Mr. Chairman, I'm going
8 to move Staff but with the same understanding with
9 respect to issue --

10 MS. BUTLER: Is it Issue 12?

11 CHAIRMAN DEASON: 12?

12 COMMISSIONER CLARK: Yeah. It seems to me
13 that the direction we want to go in is less tariffs, not
14 more. And that we should revisit this if and when there
15 is a change with respect to the law on AAVs.

16 COMMISSIONER JOHNSON: Second.

17 CHAIRMAN DEASON: Would revisit what?

18 COMMISSIONER CLARK: Filing of tariffs.

19 CHAIRMAN DEASON: That the LECs would be
20 required to file tariffs? This specific issue is
21 dealing with whether AAVs should file tariffs.

22 COMMISSIONER CLARK: Yeah, and I guess the
23 whole notion of who should file tariffs would be
24 revisited.

25 MR. CHASE: Right.

1 **COMMISSIONER CLARK:** There's one of three
2 scenarios, you continue to do it the way you do it,
3 everybody files it or nobody files it.

4 **MR. CHASE:** Exactly.

5 **CHAIRMAN DEASON:** That is the motion. Moved
6 and seconded.

7 I'm going to -- here again, I'm kind of torn
8 on this issue. I can see both sides of the argument.
9 I'm going to vote with the majority to approve Staff's
10 recommendation, but I'm going to need some really
11 serious convincing by Staff given that's the arrangement
12 why we should not have CSAs to allow the LECs to deviate
13 from a stated tariff if they need to do so in response
14 to competition. And with that, we're going to take ten
15 minutes.

16 **(Brief recess)**

17 - - - - -

18 **CHAIRMAN DEASON:** I call the agenda back to
19 order. We're on Issue 17.

20 **COMMISSIONER CLARK:** I move Staff.

21 **CHAIRMAN DEASON:** We have a motion to approve
22 Staff. Is there something you need to change?

23 **MR. DREW:** There's one correction. In the rec
24 statement, it says that they should file tariffs that
25 "mirror the FCC as of January 1, 1994," that should be

1 '95.

2 COMMISSIONER CLARK: Move Staff.

3 COMMISSIONER JOHNSON: Second.

4 CHAIRMAN DEASON: Moved and seconded. Show
5 Staff's recommendation is approved on 17. I believe 18
6 is where we get to talk about flexibilities and CSAs and
7 all that sort of thing.

8 MS. MARSH: Yes, sir, it is. This issue
9 addresses whether the LECs should be granted additional
10 pricing flexibility for switched access services. The
11 parties have suggested three types of pricing
12 flexibility, zone density pricing, contractual servicing
13 arrangements, and a plan called a switched access
14 discount plan. Staff has recommended that zone density
15 pricing be approved but that the other forms of pricing
16 flexibility not be approved at this time.

17 The basis for the analysis was very much
18 hinged upon whether or not there would be competition.
19 The LECs made very strong arguments that if there was
20 competition, they needed pricing flexibility in order to
21 compete and in order to retain revenue.

22 But there's been general agreement throughout
23 this rec that there won't be competition under this
24 scenario today, and that was the main basis for the
25 decision.

1 The pricing flexibility, the zone density
2 pricing portion of it, does have some basis in cost.
3 The basis of it is spread across the different central
4 offices based upon the density of traffic in those
5 offices. So there is some cost basis for those. And
6 that was the reason for our recommendation.

7 The contractual service arrangements, on the
8 other hand, simply allow the parties to negotiate a
9 price without necessarily any basis other than that it
10 not go below cost.

11 In the Phase I portion, it is important to
12 note there was already CSA authority for special access
13 services because there was already competition. In
14 order to utilize the CSA, the LEC must demonstrate or
15 the party coming to the LEC for the CSA must demonstrate
16 they have a competitive offer from someone else before
17 the LEC can extend to them a contract service
18 arrangement and negotiate a price, and I think that's
19 really key to understanding why Staff can not recommend
20 it. Who would extend that offer if the the AAVs can not
21 compete. So we didn't believe there was a necessity for
22 CSA authority at this time.

23 The same kind of logic followed into the
24 switched access discount plan. Again, who would
25 compete? What is the need? There was no cost basis

1 demonstrated, the LECs couldn't say what the rates would
2 be. The tariffs filed were illustrative only. There
3 were no rates, no dollars, and they couldn't even answer
4 how they would derive the rates.

5 Based on all of the information in the record,
6 we believe it is simply a little too much too soon, it
7 just is not needed at this time, and so that was the
8 basis for our recommendation.

9 CHAIRMAN DEASON: So, your basis of the
10 recommendation on the CSAs is that it is not needed?

11 MS. MARSH: That's correct. Because without
12 being able to show that there is a competitive offer
13 from someone else, they could not use it anyway. That's
14 what this Commission requires in other services that
15 have CSA authority.

16 CHAIRMAN DEASON: But it is the general
17 consensus that at some point that competition is going
18 to develop, why should we go into this exercise? We all
19 have better things we could be doing, right?

20 MS. MARSH: That's correct. And if you
21 believed you wanted to go ahead and approve it now, you
22 know, seeing that coming down the road, you could do
23 that. But you don't know, as with previous discussions
24 about other issues, you don't know what form it is going
25 to take, what oversight you may have, or what you may

1 want to do at that time, or you may choose to do
2 something else.

3 CHAIRMAN DEASON: The biggest problem that I
4 have is with -- I agree with the zone density pricing, I
5 think that it is a step in the right direction. It does
6 allow some flexibility to help move rates closer to
7 cost. And I know Staff thinks it can be done on a
8 nondiscriminatory basis, but that's part of the problem
9 is that I don't want discriminatory rates, either, but
10 at the same time, every customer within that zone gets
11 that rate -- nothing higher, nothing lower.

12 And that restriction is not on the AAVs. We
13 have already decided they don't even have to file
14 tariffs, period. They're the ones that are free to go
15 out and fully compete, assuming that the law is changed
16 for them to offer the full array of services which they
17 would want to offer. And I just don't see how the LEC
18 is going to be able to compete with that if they do not
19 have the ability to look at a customer-specific rate.

20 And we all realize that, when we use the term
21 "customer" for these type of services, you're not
22 talking about thousands of customers, you're talking
23 about some rather large, sophisticated customers out
24 there who know the market. And if the LECs are not able
25 to try to address that competition, I just don't think

1 you're going to have the type competition that you want.

2 You're not going to drive costs -- I mean,
3 you're not going to drive prices to cost that you could
4 otherwise achieve if you did have that balanced
5 competition. And that's where the ultimate end-use
6 customer benefits, the person actually making the
7 telephone call, is if those prices are driven towards
8 cost and that there is competition so costs are
9 minimized as well. That's what my concern is.

10 MS. MARSH: Right. And I agree with your
11 concern. My analysis hinged on whether there was
12 competition now. I wasn't saying, "No, never." I was
13 saying, "No, not right now." I think what is contained
14 in the recommendation statement says they should not be
15 approved at this time.

16 COMMISSIONER CLARK: Mr. Chairman, I'm
17 prepared to move Staff on this issue. And I think it
18 should be made clear that this is one of the additional
19 flexibilities we may use; and if a local exchange
20 company feels it needs the ability to do something like
21 a CSA or something like that, it can file a tariff,
22 particularly if and when the change is made to the law
23 with respect to AAVs.

24 With that understanding, I move Issue 18.

25 COMMISSIONER JOHNSON: Second.

1 **CHAIRMAN DEASON:** Let me ask the question.
2 You're saying that we're making the decision that the
3 LECs should not be allowed any additional pricing
4 flexibility; that if they want or need additional
5 pricing flexibility and can demonstrate that to the
6 satisfaction of the Commission, all they have to do is
7 file a tariff and make that showing and then you would
8 be inclined to grant them that authority?

9 **COMMISSIONER CLARK:** Yeah, depending on the
10 showing. But I would anticipate it would be after some
11 change is made with respect to providing access to
12 nonaffiliated companies. But if the --

13 **CHAIRMAN DEASON:** So you're saying given the
14 status quo, there's going to be a prohibition against
15 the CSAs for switched interconnect? Is that what you
16 are saying?

17 **COMMISSIONER CLARK:** No. Let me be more
18 clear.

19 **CHAIRMAN DEASON:** Okay.

20 **COMMISSIONER CLARK:** What I'm suggesting at
21 this time is we approve Staff recommendation on Issue
22 18, that the pricing flexibility be zone density, and
23 that they would file a tariff to that effect and we
24 would review it.

25 With respect to CSAs, if they at a later date

1 feel they need the CSAs to meet competition, they are
2 free to come in and demonstrate that need. But it is my
3 thinking that it wouldn't -- that need wouldn't occur
4 until after full implementation of this decision is
5 allowed by a change in the statute. But it is still up
6 to them. There's no prohibition with respect to this --

7 CHAIRMAN DEASON: But right now we're just
8 basically -- your making the finding in response to
9 Issue 18 is that they should be allowed to file --

10 COMMISSIONER CLARK: At least that.

11 CHAIRMAN DEASON: -- at least the zone density
12 pricing.

13 COMMISSIONER CLARK: Yes.

14 CHAIRMAN DEASON: And to the extent we're
15 addressing CSAs, we're just saying that we're making no
16 finding on those except that we just don't think they're
17 needed right now, but that the companies are free to
18 make a filing if and when they think it necessary.

19 COMMISSIONER CLARK: That's my motion,
20 Mr. Chairman.

21 CHAIRMAN DEASON: All right, that's the motion
22 and that is the second. With that understanding, I can
23 vote to adopt that motion, and that would address
24 Issue 18.

25 Issue 15?

1 COMMISSIONER CLARK: I need to be clear as to
2 the time frame for closing out Phase I of this
3 proceeding. I mean, we're leaving it pending, when are
4 we going to get it finished?

5 MS. CANZANO: Our plans had been to deal with
6 Phase II first, including reconsideration if there is
7 any; and once Phase II --

8 COMMISSIONER CLARK: Wait a minute, deal with
9 Phase II or Phase I?

10 MS. CANZANO: Phase II.

11 COMMISSIONER CLARK: Reverse direction on
12 Phase II.

13 MS. CANZANO: Yes, and then revisit Phase I
14 after Phase II is final.

15 COMMISSIONER CLARK: Why do we have to do
16 that?

17 MS. CANZANO: Because of the virtual
18 collocation and how we're just switching our gears here
19 in Phase II. I don't think it would make sense to go
20 ahead and have the Commission relook at Phase I if Phase
21 II decision is 180 degrees different and not final.

22 COMMISSIONER CLARK: And it turns on the
23 virtual versus physical collocation?

24 MS. CANZANO: Yes.

25 COMMISSIONER CLARK: Has anyone appealed the

1 FCC order, the change? Is that still pending?

2 MR. REITH: On the virtual? Not to my
3 knowledge.

4 COMMISSIONER CLARK: I'm comfortable with the
5 recommendation on 15 but I'm not sure you need to wait
6 until after reconsideration, particularly if there is
7 not a reconsideration requested on virtual or physical,
8 the change on the collocation. I guess I'm comfortable
9 with moving Staff, you need to know that I think we need
10 to move and get Phase I finished.

11 MR. REITH: Okay.

12 COMMISSIONER JOHNSON: Second.

13 CHAIRMAN DEASON: Moved and seconded. Show
14 that the recommendation is approved.

15 Issue 23A?

16 MR. DREW: 16, I believe.

17 CHAIRMAN DEASON: I'm sorry, I did, I skipped
18 Issue 16.

19 COMMISSIONER CLARK: I move Staff on 16.

20 COMMISSIONER JOHNSON: Second.

21 CHAIRMAN DEASON: Without objection, Issue 16
22 is approved.

23 Now we're at 23A? Yes. 23A.

24 COMMISSIONER CLARK: I move Staff.

25 COMMISSIONER JOHNSON: Second.

1 **CHAIRMAN DEASON:** Show Staff's recommendation
2 on 23A is approved.

3 **Issue 19?**

4 **MS. NORTON:** Commissioners, this phase of the
5 proceeding involves the restructure of the LECs' local
6 transport offering. To focus you on what this part is
7 about, on Page 107 of the recommendation is a diagram of
8 the provision of switched access. The rate elements
9 involved in the provision of switched access are the
10 carrier common line, local switching and local transport
11 as shown on the diagram.

12 What you have addressed until now is the
13 emerging competitive provision of that local transport
14 piece. Until now, it is pretty much provided solely by
15 the LEC, and it is the potential of allow AAVs to come
16 in and provide that local transport piece that you have
17 addressed.

18 What this part of the docket is now is the
19 LEC's competitive response to that. Local transport has
20 traditionally been priced at a single rate of minute of
21 use. It is not provisioned really that way. It is
22 provisioned through use of dedicated facilities to
23 various switches. What the proposal is on the part of
24 the LECs is to restructure the rates and the rate levels
25 to reflect the way the service is actually provided.

1 The diagram on Page 109 shows that in a little
2 bit more detail, and I would be happy to go through it
3 issue by issue, or as you wish.

4 **CHAIRMAN DEASON:** Issue 19 just addresses
5 whether we should restructure regardless of what we do
6 with the expanded interconnection. The interconnection
7 is to restructure.

8 **MS. NORTON:** That's correct. My
9 recommendation is to restructure whether or not you have
10 approved it, but you have approved it.

11 **COMMISSIONER JOHNSON:** I move Staff.

12 **COMMISSIONER CLARK:** Second.

13 **CHAIRMAN DEASON:** Moved and seconded. Show
14 that Staff's recommendation on Issue 19 is approved.

15 Issue 20?

16 **MS. NORTON:** Issue 20 involves the policy
17 approach which the Commission should take to the pricing
18 and restructure, given its decision to go ahead with it.

19 **COMMISSIONER CLARK:** I move Staff.

20 **COMMISSIONER JOHNSON:** Second.

21 **CHAIRMAN DEASON:** I just want to make a
22 comment that I think you all did an outstanding job of
23 listing the items that needed to be considered and I
24 would think that that was good. I did note that the
25 very last one you were saying there's no need to mirror

1 the interstate rate level; but it is your recommendation
2 that the structure of the rates, that we follow the FCC
3 structure but that the rate levels obviously would be
4 different.

5 MS. NORTON: That's exactly correct.

6 CHAIRMAN DEASON: Okay. Show that
7 recommendation on Issue 20 is approved.

8 MS. NORTON: Issue 21 addresses the actual
9 tariffs proposed by the LECs.

10 COMMISSIONER CLARK: Move Staff.

11 COMMISSIONER JOHNSON: Second.

12 CHAIRMAN DEASON: Show that Staff
13 recommendation is approved on Issue 21.

14 Issue 22?

15 MS. NORTON: Issue 22 addresses a little bit,
16 it is not directly on point to the rest of the case.
17 The modified access based compensation plan is the plan
18 that this Commission put in place in the arena of
19 intraLATA LEC toll, that is, toll services between two
20 LECs within the LATA. We set up the system by which the
21 LECs can compensate each other for terminating each
22 other's traffic. Those rate levels we put in place have
23 matched the switched access rates that the LECs charge
24 their own IXC customers. This recommendation is simply
25 saying that if we restructured local transport that that

1 restructuring those rates should also be made to the
2 rates involved in the MABC plan.

3 CHAIRMAN DEASON: Let me ask a question, and
4 this may be the wrong reference. But, I recall Ms.
5 Eudy's testimony from ALLTEL; and she was making some
6 reference to the fact that, "Let's don't change
7 something now and go through a lot of administrative
8 costs which could be burdensome on small companies until
9 we're sure what structure we're going to have, because
10 there's no need to do something twice if you can wait
11 and do it once and do it right the one time."

12 Is this the subject she was talking about?

13 MS. NORTON: Yes, sir, it was. The LECs
14 proposed that the Commission mirror not only the
15 structure but the rate levels approved by the FCC. The
16 FCC's rates are considered interim in nature because
17 they are going to revisit them. Apparently, they have
18 not specified exactly how, but it is an interim rates
19 and rate structure.

20 Since the LECs proposed mirroring, Ms. Eudy
21 said, "Well, don't make us do it until they go
22 permanent like the FCC."

23 What we're saying is, we're recommending the
24 LECs refile. This is not an interim structure; this is
25 not an interim set of rates that we are planning to have

1 the LECs file; it is permanent.

2 It is not to say they won't change, because
3 Staff contemplates that this will be an evolutionary
4 process: the RIC will go down, it will be competitive
5 eventually, and the LECs can always file tariffs to
6 modify their rates. But it is not an interim structure
7 and there's no reason in our opinion that the MABC can't
8 go ahead.

9 CHAIRMAN DEASON: Okay. I was sensitive to
10 her argument; it made a lot of sense to me, there's no
11 need in imposing, especially on the small companies,
12 when it could be burdensome. What you're saying is that
13 this structure is not interim in nature, this is a
14 change we are committed to making. Rate levels could
15 change over time but that's just part of any type of
16 tariff structure, they're going to change over time.

17 MS. NORTON: Yes. There's no future time that
18 would be better than now to make those changes.

19 COMMISSIONER CLARK: I guess I'm not convinced
20 of that. I mean, she -- are you discounting her
21 testimony, then? You don't --

22 MS. NORTON: No, ma'am. I think it was just
23 put -- I believe that her testimony was predicated on
24 the assumption of mirroring the FCC, which is what the
25 LECs proposed. And since the FCC had said that their

1 tariff was interim, and she said, "Well, let's wait
2 until the FCC goes permanent, and then make us do it."

3 COMMISSIONER CLARK: And you're saying the FCC
4 has --

5 MS. NORTON: No, what we're recommending is
6 not interim.

7 CHAIRMAN DEASON: And it's not an exact mirror
8 of the FCC, either.

9 MS. NORTON: Correct. The structure, yes;
10 the rate levels, no. There's no decision --

11 COMMISSIONER CLARK: Wait, when is the FCC's
12 not going to be interim?

13 MS. NORTON: They're going to revisit in 1996.

14 COMMISSIONER CLARK: I thought what she was
15 suggesting is, let's just make all the changes at one
16 time. And what's wrong with that?

17 MS. NORTON: Well, I think that there's, I
18 mean of what, I don't see this as something --

19 COMMISSIONER CLARK: All right. If we make
20 the changes and ours are not interim, they have to make
21 some changes to their software in their system. And
22 then they're going to have to make changes again when
23 the FCC becomes permanent.

24 MS. NORTON: The FCC rates, yes. But we're
25 not recommending that the FCC --

1 **CHAIRMAN DEASON:** But our rates are going to
2 be different than the FCC's regardless, that's what
3 she's saying.

4 **MS. NORTON:** Yes. There's programming changes
5 and all kind of changes that will have to be made.

6 **COMMISSIONER CLARK:** We may be talking past
7 each other but it seems to me to make all the changes
8 you have to make at one time is preferable to making --
9 I agree there are two different changes, but you want to
10 go in and do it at the same time?

11 **MR. HATCH:** I think we are talking past each
12 other.

13 The rate structure we are adopting here, I do
14 not believe the FCC is contemplating changing their
15 structure. So the rate structure itself will be the
16 same starting now or whenever we implement it next year.

17 The individual rate levels between the
18 jurisdictions will change over time, as they will in any
19 event under any circumstance.

20 **COMMISSIONER CLARK:** You're saying the interim
21 rate structure the FCC has is permanent, the rates may
22 change?

23 **MR. HATCH:** That's my understanding, that the
24 rate levels may change. Since we are not mirroring
25 their rate levels, then ours are going to be as they're

1 going to be until they're changed for whatever
2 subsequent reason. But the rate levels themselves have
3 always been independent and will remain --

4 CHAIRMAN DEASON: What you are saying is there
5 will not be any savings achieved by waiting and to see
6 what the feds are going to do.

7 MR. HATCH: Yes.

8 MS. NORTON: Yeah. And I don't believe our
9 rates are going to be static at any rate. They will
10 propose changes. There is no -- I mean, the
11 recommendations we've made, in my opinion, have built in
12 sufficient time for the LECs to get the local transport
13 restructure in place and then prepare it and file their
14 MABC rate changes. It's not that it's one on top of the
15 other; it's a matter of months to let all the steps and
16 all the programming changes; and if there's something
17 that Staff has overlooked, they can raise it on
18 reconsideration. My only point in this was that I
19 didn't see that there was anything to be gained by
20 waiting until 1996 for MABC to be brought into line with
21 the local transport decisions this Commission has made.

22 CHAIRMAN DEASON: Okay. Do we have a motion
23 then for Issue 22?

24 COMMISSIONER JOHNSON: I move.

25 COMMISSIONER CLARK: I will second it if in

1 fact -- I mean, I'm still concerned with respect to that
2 there may be cost savings to doing it at one time if it
3 is a different rate structure. I agree with you if it
4 is a different rate level, that's one thing, you would
5 still be doing that over time. If that is the case,
6 then I will agree with Staff. If it turns out not to be
7 the case, then we should revisit it.

8 COMMISSIONER CLARK: I would second that.

9 CHAIRMAN DEASON: Okay. I have a motion to
10 second. Show that Staff's recommendation is approved
11 then for Issue 22.

12 Issue 23?

13 MS. NORTON: Issue 23 has to do with LEC toll
14 rates.

15 COMMISSIONER CLARK: I move Staff.

16 COMMISSIONER JOHNSON: Second.

17 CHAIRMAN DEASON: Moved and seconded. Show
18 that Staff recommendation on 23 is approved.

19 Issue 24?

20 COMMISSIONER CLARK: Move Staff.

21 COMMISSIONER JOHNSON: Second?

22 CHAIRMAN DEASON: Show that Staff's
23 recommendation is approved on Issue 24.

24 Anything else to come before the Commission at
25 this time?

1 STATE OF FLORIDA)
2 :
3 COUNTY OF LEON)

CERTIFICATE OF REPORTERS

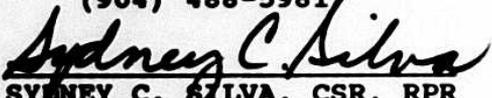
4 We, JOY KELLY, CSR, RPR, and SYDNEY C. SILVA,
5 CSR, RPR, Official Commission Reporters,

6 DO HEREBY CERTIFY that the Special Agenda in
7 Docket Nos. 921074-TP, 930955-TL, 940014-TL, 940020-TL,
8 931196-TL, and 940190-TL was heard by the Florida Public
9 Service Commission at the time and place herein stated;
10 it is further

11 CERTIFIED that we stenographically reported
12 the said proceedings; that the same has been transcribed
13 under our direct supervision; and that this transcript,
14 consisting of 99 pages, constitutes a true transcription
15 of our notes of said proceedings.

16 DATED this 7th day of December, 1994.

17
18 
19 _____
20 JOY KELLY, CSR, RPR
21 Chief, Bureau of Reporting
22 (904) 488-5981

23 
24 _____
25 SYDNEY C. SILVA, CSR, RPR
Official Commission Reporter
(904) 488-5981

18 STATE OF FLORIDA)
19 :
20 COUNTY OF LEON)

21 The foregoing certificate was acknowledged
22 before me this 7th day of December, 1994, by JOY KELLY
23 and SYDNEY C. SILVA, who are personally known to me.

24 
25 _____
PATRICIA A. CHURCH
Notary Public - State of Florida
My Commission No. CC-90785
Notary Public, State of Florida
My Commission Expires April 20, 1995
Bonded thru Troy Jan - Insurance Co.