BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Resolution of petition(s) to establish nondiscriminatory rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, F.S.

DOCKET NO. 950985-TP

ORIGINAL FILE COPY

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BEFORE:	CHAIRMAN SUSAN F. CLARK COMMISSIONER J. TERRY DEASON COMMISSIONER JULIA L. JOHNSON COMMISSIONER DIANE K. KIESLING COMMISSIONER JOE GARCIA
PROCEEDING:	AGENDA CONFERENCE
ITEM NUMBER:	12
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PLACE:	4075 Esplanade Way, Room 148 Tallahassee, Florida
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STAFF RECOMMENDATIONS

<u>Issue 1:</u> What are the appropriate rate structures, interconnection rates, or other compensation arrangements for the exchange of local and toll traffic between the respective ALECs and BellSouth?

<u>Issue 2:</u> If the Commission sets rates, terms, and conditions for interconnection between the respective ALECs and BellSouth, should BellSouth tariff the interconnection rate(s) or other arrangements?

<u>Issue 3:</u> What are the appropriate technical and financial arrangements which should govern interconnection between the respective ALECs and BellSouth for the delivery of calls originated and/or terminated from carriers not directly connected to the respective ALECs' network?

<u>Issue 4:</u> What are the appropriate technical and financial requirements for the exchange of intraLATA 800 traffic which originates from the respective ALECs' customer and terminates to an 800 number served by or through BellSouth?

<u>Issue 5a:</u> What are the appropriate technical arrangements for the interconnection of the respective ALECs' network to BellSouth's 911 provisioning network such that the respective ALECs' customers are ensured the same level of 911 service as they would receive as a customer of BellSouth?

<u>Issue 5b:</u> What procedures should be in place for the timely exchange and updating of the respective ALEC's customer information for inclusion in appropriate E911 databases?

<u>Issue 6:</u> What are the appropriate technical and financial requirements for operator-handled traffic flowing between the respective ALECs and BellSouth including busy line verification and emergency interrupt services?

<u>Issue 7:</u> What are the appropriate arrangements for the provision of directory assistance services and data between the respective ALECs and BellSouth?

<u>Issue 8:</u> Under what terms and conditions should BellSouth be required to list the respective ALECs' customers in its white and yellow pages directories and to publish and distribute these directories to the respective ALECs' customers?

<u>Issue 9:</u> What are the appropriate arrangements for the provision of billing and collection services between the respective ALECs and BellSouth, including billing and clearing credit card, collect, third party and audiotext calls?

<u>Issue 10:</u> What arrangements are necessary to ensure the provision of CLASS/LASS services between the respective ALEC's and BellSouth's networks?

<u>Issue 11:</u> What are the appropriate arrangements for physical interconnection between the respective ALECs and

BellSouth, including trunking and signalling arrangements?

<u>Issue 12:</u> To the extent not addressed in the number portability docket, Docket No. 950737-TP, what are the appropriate financial and operational arrangements for interexchange calls terminated to a number that has been "ported" to the respective ALECs?

<u>Issue 13:</u> What arrangements, if any, are necessary to address other operational issues?

<u>Issue 14:</u> What arrangements, if any, are appropriate for the assignment of NXX codes to the respective ALECs?

<u>Issue 15:</u> Should this docket be closed?

P R O C E E D I N G S

CHAIRMAN CLARK: We will reconvene the agenda and we will take up with Item Number 12.

COMMISSIONER JOHNSON: Could we go issue-by-issue?

CHAIRMAN CLARK: Yes. You need to turn your mike on.

COMMISSION STAFF: Back on Item Number 11, I might have made a connotation that BellSouth was delinquent in filing cost studies for the case. I didn't mean to say they were delinquent in filing cost studies for the case. The cost studies just came in too late for us to analyze them. I didn't want to make any sort of reference that BellSouth was stalling or something like that to intentionally preclude us from looking at them. I just wanted to make that clear.

COMMISSIONER DEASON: I think we were all operating under short time frames.

CHAIRMAN CLARK: Mr. Long or Ms. Chase -- who is taking up -- I'm sorry, Item Number 1. Item 12, Issue 1.

MR. DREW: Commissioners, Issue 1 asks what the appropriate rate structures, interconnection rates, and other compensation arrangements are for the exchange of local and toll traffic between respective ALECs and BellSouth. Staff is offering two recommendations. In the primary recommendation, staff is offering the arrangement that is documented in the stipulation between BellSouth and other ALECs. Basically, in the stipulation, BellSouth -- well, the stipulation was proposed that a rate of 1.05 cents be charged, a switched access rate be charged on a permanent basis, and that there be a cap of 105 percent on the total minutes of use of the local exchange provider with the lower minutes of use in the same month.

In the alternative recommendation, staff is recommending the mutual exchange method. The other term for this method is bill and keep. Under this method there is no exchange of cash, payment is made with the receipt and transmittal of in-kind services.

COMMISSIONER JOHNSON: I have some questions on this one. In the first part of staff's primary recommendation, you state that ideally the rates charged will be based on incremental cost and some contribution based on joint and common costs. But, again, given the fact that the process was shortened and you got the information late, I'm assuming that you, therefore, just decided to look at the settlement language. One of my concerns is at least with respect to the other proceeding, you all felt concerned enough about those unbundled elements and how important that was to competition that you kind of wanted to get the numbers right. But with respect to this issue it seems as if you decided to take numbers out of a comprehensive settlement package that was based on who knows what, but the intentions of the parties, and apply that for something that we should apply on a forward basis. I wanted you to kind of respond to that, and also respond to whether or not you think it would be helpful for us to get the numbers right with respect to the rate and should it be based more closely to cost.

MR. DREW: To the second part of your question, yes, it does not hurt to get your numbers right.

COMMISSIONER JOHNSON: No, does it help, would it help us?

MR. DREW: Yes, it would.

COMMISSIONER JOHNSON: Why wasn't that your recommendation?

MR. DREW: Well, I'm going to give my answer and one follow-up.

COMMISSIONER JOHNSON: You did primary and he did alternative?

COMMISSION STAFF: That's correct.

COMMISSIONER JOHNSON: Well, he wants to talk about primary.

MR. LONG: No, I just wanted to talk about the supporting cost number, that's all.

COMMISSIONER JOHNSON: Yes, I'm kidding.

MR. DREW: We based the 1 cent rate, the 1.05 cent rate -- well, we looked at that rate. We also looked at the cost, the switched access cost information that the company provided. In that rate, they are excluding the RIC and the CCL, so when I looked at the cost figures, I excluded the RIC and the CCL, which was easy because those two elements aren't cost-based, so there were no cost numbers to consider. So I just considered the other elements to determine, based on what they provided, what the costs were. As to why, specifically as to why the 1 cent rate is used, quite frankly, the stipulation is in the record, that rate was there, and that's why we decided to use that one.

COMMISSIONER JOHNSON: I think I understand what you're saying, but I just have some concerns. And I know you all were limited with respect to time and evidence and all of that stuff, but I have some concern with us taking a switched access rate, although I understand we pulled out the CCL and the RIC, but using that as our interconnection rate. I mean, to the extent -- and when you suggest that, boy, we wish we would have had data where we could look at the incremental cost and some of the contribution based on joint and common costs, when you say that's the preferred method, why would you not want to then, as you did in the others, say let's go back. Let's see if we can get this number right. Let's look at the incremental cost numbers, get that. Sure, there is a certain amount of contribution that we may want to put on top of that, but let's use that number as the starting point. What's wrong with that, and what is so right about this stipulation, and what is the magic behind using the .0102?

One other thought. With respect to me reading the record, and I know there is confidential information with respect to the cost numbers that were filed, but there is a big difference in the number that we are using from the stipulation and some of the numbers that were filed. And for me it's very hard for me to see how we could set a rate based upon the cost that we used.

MR. DREW: Well, with the 1 cent rate, there was no magic involved. It was either that rate or as opposed to the 4-1/2 cent rate that BellSouth --

COMMISSIONER JOHNSON: Or why didn't you -- there is another one. And we're saying in the record, but just like you did in the other when the record wasn't complete, and I just want to understand, because there may be some rationale for this.

MR. DREW: Well, I guess in my mind, I thought I had enough cost information, and I would argue -- and I would agree that based on that cost information maybe that rate could have been moved closer to cost. I mean, there is room there to do that.

COMMISSIONER JOHNSON: Mark, did you want to add something?

MR. LONG: No, I just -- you had mentioned earlier about getting the rate right or getting the cost right. I just wanted to add that there were switched cost information provided in this docket that provided an incremental cost for terminating local traffic that was brought in as a confidential number. That number was -- and we did not have time to scrutinize the veracity of that number, either -- but that number is so low that even if you take 25 percent out of it, the incremental difference is so small it's probably not worth the time you take and hearings you go through and the arguments you make in doing it. So we did not feel that the benefit of attacking that particular cost study would be worth the cost involved in doing it. And that's why we are not asking for that to be further studied.

COMMISSIONER JOHNSON: That's an interesting point then. Why didn't we -- if it's so clear and whether or not it's completely accurate wouldn't matter because it's so close, why didn't we use that number?

MR. LONG: I believe we did use that number as a cost basis. The primary rate is not set at cost, but I believe we did as analyzing contribution levels and other kinds of things did use the cost provided by BellSouth as the underlying cost.

COMMISSIONER JOHNSON: So what you're saying to me is that you all looked at that cost number and you looked at the rate that was in the settlement and determined that assuming these numbers are right, the cost numbers are right, the settlement number is here, and that whatever contribution was in there that was okay. That's what I hear you saying.

COMMISSION STAFF: Well, I wouldn't say that we -- I wouldn't say that we concluded that it was okay or not okay, we just identified what that level of contribution is.

COMMISSIONER JOHNSON: Well, didn't you have to reach a conclusion in order to use the rate that you used, if you knew the cost, to somehow make a determination that the contribution was okay? Or what if it had been way apart, would you have said, "Whoa, this cost number means something, and maybe it should impact what rate we allow them to charge."

MR. DREW: Well, the first criteria, of course, is whether or not that rate covered the cost, and it does. Then you have to get into the determination, and I would submit, or this may differ, that that determination is going to be subjective. With X level of contribution, what makes that right versus Y level of contribution.

We have seen on different services, whether they are call waiting, call forwarding, other type of services contribution levels ranging from 5 percent to 2500 percent. And in some instances where it has been that high, it has been allowed because of the type of service and because demand for the service hasn't been adversely affected one way or the other because of the contribution level. And for the other, let's say, universal policy goals that we may have been trying to achieve by allowing as high a contribution as possible.

I guess for -- I can only speak for myself, or for some staffers, when you have been exposed to different levels of contribution, after awhile you look at things in relative terms versus, "Wow, that's astonishing," you know. But after awhile it's, "Well, we have seen this level of contribution before and it has been accepted."

But going back to your original question, no, we didn't make a determination as to that level is okay versus it is not okay. We just said, "Obviously because of the contribution level it does cover cost."

COMMISSIONER JOHNSON: Okay. And with respect to that kind of an analysis, let me ask you, did you factor in -- and I agree with you, there are a lot of services, particularly when we were in a rate of return regulation, where there was a whole bunch of contributions; 1,000 times, 800,000 times, you know, and that didn't bother us so much because there was a greater goal, and there was a package, and the way we were trying to deal with things. And there was a guaranteed rate of return. There were those kind of issues that we had to deal with.

MR. DREW: Right.

COMMISSIONER JOHNSON: But as we enter into this market that we're calling a -- we're trying to become more competitive, we're trying to reduce the barriers to competition, and on an issue like interconnection that will be so vital and critical with respect to the issue of competition and getting people into the marketplace, I'm wondering if that was one of the things that you factored in and you saw it as yes, there is contribution here, but so what, there is a lot of contribution elsewhere, too, so let's not start getting rid of contribution.

MR. DREW: There was a concern among definitely -- well, among some members of staff that since we are treading into quote, unquote, unchartered territory with the hopeful advent of meaningful competition that we should take it slow by going with a rate that we can identify in the record. So based on that, yes, we factored that into our decision. I understand the concern, of course, as to, well, okay, we have got this rate, there is this cost out there, and what is the level of contribution. How significant is it, is it very significant, is it something we can live with. But, yes, we did factor that into our decision.

COMMISSIONER JOHNSON: And on staff's -- and in staff's determination at least with respect to primary, as you looked at the cost and you looked at the rate, you determined that it was -- the level of contribution was something that you could live with, and that that would not serve as a barrier to competition with respect to the interconnection rates?

MR. DREW: Yes, staff can live with it. But I would also like to note that there is room because of the level of contribution where that rate could be moved closer to cost without adversely impacting the local exchange company.

COMMISSIONER JOHNSON: Madam Chair, could I ask one more question? And I'm going to leave that a little bit, but it's somewhat related in my mind. As I look at the other part of your analysis, you seem to suggest, and I don't know if this was factored into the rate or not, but as you looked at the issue of whether or not the termination of calls would be in balance or not in balance. You determined that because -- I'm assuming the primary thought, that this would not be in balance that you needed to impose -- we already got your rates, but you needed to impose a cap. As if to suggest that that cap somehow would make things -- would put things in balance. And I don't see how that would put things in balance. It seems to just shift the risk and the liability, but it doesn't necessarily seem to put things in balance.

COMMISSION STAFF: Well, one, I agree that the mechanism does not totally address the problem of imbalanced traffic and does not totally address any adverse impact that that may have. For example, you know, with an imbalance in traffic, if you have an entrant that finds itself terminating more calls to the incumbent LEC than the incumbent LEC is terminating to that entrant, the entrant's liability because of the cap is reduced. So in that narrow aspect --

COMMISSIONER JOHNSON: Could you say that again, I'm sorry.

MR. DREW: With an imbalance in traffic, with the traffic not being in balance, if you have an entrant and you are an ALEC and it's terminating more calls to the incumbent versus the incumbent terminating more calls to it, the entrant.

COMMISSIONER JOHNSON: Let's use some numbers. Let's say the entrant had 1,000 calls.

MR. DREW: Yes, let's say BellSouth is terminating --

COMMISSIONER JOHNSON: 1,000. No, the entrant. You started off with the entrant. Say the entrant has more, say the entrant has 1,000.

MR. DREW: Okay. The entrant is terminating let's say 1,000 minutes to BellSouth.

COMMISSIONER JOHNSON: And give Bell 100. Yes, and give Bell going the other way 100.

MR. DREW: Okay. In that instance with the cap, the entrant would have to pay Bell for 100 minutes of use times 105 percent, so that would be --

COMMISSIONER JOHNSON: $105.

MR. DREW: And Bell would pay the entrant $100.

COMMISSIONER JOHNSON: What happens to the 855 terminating calls, does someone eat that? Does the person with the 1,000 calls -- does Bell eat those costs?

MR. DREW: Yes. BellSouth, if they terminated those calls, yes, they would eat that. So, versus a bill and keep, where they would eat the entire 1,000 minutes of use, they would only eat 800-plus minutes of use.

COMMISSIONER JOHNSON: I understand what would happen on the mutual traffic exchange, but under your scenario, what would happen is those costs would not be recovered through rates, or at least they would be --

MR. DREW: Through the direct rates that you would charge for interconnection.

COMMISSIONER JOHNSON: Or it would be priced at a discount, because I guess you would say that 5 percent, if you spread it over all of those costs, because -- I don't know. But someone, there would be an imbalance with respect to Bell, in our example, would actually have to incur the cost of terminating those calls, but they could only be compensated up to 105 minutes.

MR. DREW: Correct.

COMMISSIONER JOHNSON: And explain to me why that is balanced or that makes us more balanced.

MR. DREW: Well, in that narrow frame for an ALEC they would not be paying out as much if a cap did not exist.

COMMISSIONER JOHNSON: Well, what about the person who was what we just dubbed eating the cost, what about Bell? And it doesn't matter either way. It could be an ALEC or it could be the LEC, but what about that party that doesn't get compensated for those terminating -- the costs incurred from terminating those calls, how are we addressing that?

MR. DREW: Well, one, we hope that there is sufficient enough contribution in the --

COMMISSIONER JOHNSON: See, I knew you were tying those together. Okay, go ahead.

MR. DREW: -- in the access rate charge to make up for that, for those lost minutes.

COMMISSIONER JOHNSON: I thought that's what you were doing. And this is just to throw out for the other Commissioners, and for you all to respond to, too. Why wouldn't it be more appropriate to perhaps set the rate closer to cost and you don't necessarily need what the alternative is suggesting, either, the in-kind, because you still have the imbalance problem, but just set it closer to cost and then people pay for what they use. And if you terminate a call, that's what you pay for based on that rate with less contribution. What would be wrong with establishing something like that?

MR. DREW: On the surface, I don't see anything wrong with that. I'm not opposed to the entities paying for what has been used. I'm not opposed to the entities paying for what is being used as long as that rate covers cost. The cap, again, was a mechanism thrown in there that would hopefully address the imbalance. And, again, I admit that it just narrowly addresses that. Where if the ALEC is on the side where it would get the most benefit then it may benefit, depending on how the traffic flows. If it flows the other way then they may not benefit.

COMMISSIONER JOHNSON: Yes. It just seems to me that perhaps we should -- I understand you're directionally going toward a usage-based formula, and I understand the cap when you have so much contribution, it's kind of like, "Whoa, we don't want to charge them that much. Geez, that's really outrageous. We will give them a little discount here." But if we got the rate closer to cost, and I don't just mean long-run incremental cost, but perhaps contribution, I believe whoever's service is being used that they should be compensated fully for that and not just the incremental costs, joint and common costs, and perhaps some profit, because actually this person is just a customer. But getting those closer so we won't have to manipulate the system with caps, but we can use a pure system where people are being charged for what they are using. Now, would that be a barrier to competition, or am I missing something here, because no one recommended it.

MR. DREW: I would conclude that that sounds more market driven, which is what I would think is the goal that we are heading toward. That's the only conclusion I can draw on that. And that's why I would not be adversely opposed to that.

COMMISSIONER JOHNSON: Mark.

MR. LONG: If I were convinced that the traffic were going to be out of balance in the short run or that it was going to make that much of a difference, my alternative recommendation would have been exactly that. It would have been a cost-based rate somewhere around a quarter of a cent a minute, and there would be no cap on the number of minutes going either way, so that --

COMMISSIONER JOHNSON: Talk a little louder.

MR. LONG: So that whoever terminated the most minutes would get the monetary benefit from terminating the most minutes. I just personally don't think that we should create such a mechanism until it's proven there needs to be one. And there is no proof that there needs to be one so far.

COMMISSIONER JOHNSON: That's a good point, and as I looked at your analysis something still made me feel uncomfortable. But I understand where you're coming from. And where you start off is that you believe the traffic is going to be balanced. And the problem that I have is there didn't appear to be enough evidence in the record one way or the other. And to the extent that they are out of balance, I don't think that this in-kind mechanism would cure the problem, and then you might have someone offering a service below cost for some period of time. So, I understand your point, and it's kind of one that I'm still balancing in my head.

MR. LONG: Right. And that's what I did not do in the alternative is take the extra step and say I don't know if it's going to be balanced or out of balance. I think it's going to be relatively balanced. It seems logical that it would be. And there is no sense in creating a mechanism for it to be out of balance until one is needed. However, if one is needed, I didn't do that. If one is needed in the future, then it should be based on cost, it should be .2 cents a minute, it should no be cap, it should be -- I did not make that recommendation. I believe that that recommendation could be make if a carrier though the traffic was out of balance, came in here and requested that the mutual traffic exchange be abandoned for some compensation mechanism, then I could make that recommendation at this time, but I could have made it.

COMMISSIONER JOHNSON: You also put a year. You said, you know, you've got to wait a year before you can come in. That seemed to me a little harsh if, indeed, facts were to demonstrate in eight months that there was a big problem. How would we get around that?

MR. LONG: Well, the year was an arbitrary time period that I thought would be a minimum time period for someone to be able to provide patterns that had some sort of pattern to them to figure out whether traffic was going more in one direction than another. But certainly a year is not etched in stone, nor does it have to take a year. And under the statute if they believe that they are providing it below their cost, they can certainly come in at any time and ask the Commission to make that right.

COMMISSIONER JOHNSON: Okay. Irregardless of if that's what the order said.

MR. LONG: Right. But the year is not something that I'm particularly wed to.

COMMISSIONER JOHNSON: I don't know, just as I read this I felt very uncomfortable with the primary and a little uncomfortable with the alternative. And as I sat down this weekend it just -- to me, and I would like to hear from the other Commissioners, their thoughts on it, but to me a usage-based rate without a cap seemed to be the most appropriate rate with respect to removing barriers to competition and with respect to just getting this right and making it where the market is working and not the Commission setting artificial barriers.

And I felt that with the numbers that I had seen, both the confidential numbers and the rate that we got out of the stipulation, that certainly -- and I understand contribution, and I understand how staff would be more comfortable with it, because, you know, in our previous lives we dealt with that a lot, but I feel that there is this push toward lessening contribution, especially in areas where we have determined that this is critical to opening our market and getting competition rolling. Interconnection is one of the most vital things that we need to try to get right in my mind.

COMMISSIONER KIESLING: I have a couple of questions. On the alternate rec, did I understand the examples that you gave on Page 27 correctly, that the imbalance between one LEC and another would have to be at least a million calls a month to just make up the administrative costs that it would take to bill each other as opposed to keeping --

MR. LONG: I do not know what the administrative costs are for setting up and keeping it. I used $10,000 a month as just trying to imagine if I were in the business what would all of this be worth to me or not. I mean, if there is not an exchange of $10,000 -- I mean, we're talking about big companies here -- if there is not an exchange back and forth of $10,000 a month, it seems to me that it might not be worth setting up this mechanism. Maybe not. Maybe $1,000 a month is worth it to them, I don't know. But I just used the $10,000 a month exchange as my minimum for whether this whole thing would be worth it or not. There is no basis for that in the record or anything, I just --

COMMISSIONER KIESLING: That's what I was trying to understand.

CHAIRMAN CLARK: What do you mean whether this whole thing would be worth it?

MR. LONG: Well, measuring the traffic, me paying you a check, you giving me a check --

CHAIRMAN CLARK: The administrative cost of actually measuring the traffic and exchanging money, you think --

MR. LONG: And auditing each other in case, you know --

CHAIRMAN CLARK: -- needs to be around $10,000 to make it worthwhile?

MR. LONG: It just seems like it to me. I don't know.

COMMISSIONER KIESLING: And there is nothing in the record from which we could even guess at what that cost would be.

MR. LONG: No. As to what the cost would be or at what the minimum exchange of money would be to make it worth it.

CHAIRMAN CLARK: Mark, given that sort of basis, do you think the notion of mutual exchange of traffic that you're suggesting is only temporary, then? That at some point you ought to be billing for it.

MR. LONG: I really kind of look at every decision implementing local competition as a temporary one, since is hasn't happened yet. I mean, whether they are called interim or not called interim because --

CHAIRMAN CLARK: It seems to me we are always going to have the issue of interconnection, the terms and conditions and the rates.

MR. LONG: That is correct.

CHAIRMAN CLARK: Are you suggesting that mutual exchange of traffic is a temporary solution and that at some point you will want to set a rate?

MR. LONG: I am recommending that mutual exchange of traffic should be the starting point that everyone goes down the road on. If someone believes it is their financial disadvantage to stay on that, they can come in and say, "We have experience that we are terminating more minutes than the other guy is, and we don't think we are making up our cost by providing a service to him and terminating his minutes because we are terminating more than he is, we should be compensated for it."

CHAIRMAN CLARK: Let me ask you this. By providing mutual exchange of traffic, do you incent people to increase their costs?

MR. LONG: No, you would incent people to reduce their costs.

CHAIRMAN CLARK: Because they could get what?

MR. LONG: Because the benefit you would get from the other guy would increase as your cost to provide him the same benefit decreased, okay. So if we are exchanging -- we breed dogs, and you breed male dogs and I breed female dogs.

CHAIRMAN CLARK: Let's use another example. Not breeding.

MR. LONG: Okay. We'll do the trusty Walter D'Haeseleer hamburger example in that we both have hamburger franchises.

CHAIRMAN CLARK: Better.

MR. LONG: And we exchange something. You have a hard time getting wheat buns and I have a hard time getting white buns. They cost the same, but you have a hard time getting yours, I have a hard time getting mine. I can pay you a dime for each, and you could pay me a dime for each, and we end up giving each other a check for $100 at the end of the month or we can just exchange buns, okay. I didn't do that on purpose.

CHAIRMAN CLARK: I've got to think about that, Mark.

MR. LONG: Anytime you want to go back to the dogs, let me know. So my incentive would be to decrease my costs in that exchange, therefore, the benefit I'm receiving from you is greater. That's kind of the whole idea behind --

COMMISSIONER DEASON: The concept is your profitability is not based upon somebody else's costs. You minimize your costs, your profits go up.

MR. LONG: That is correct.

COMMISSIONER KIESLING: And then if I can just understand further on --

CHAIRMAN CLARK: But isn't that only true assuming you're not terminating more of their traffic?

COMMISSIONER KIESLING: Yes, but it seems to me that -- I think that's a factor, but it seems to me that going with the alternate rec would end up being that if somebody thinks they are not getting a fair deal, then they are going to have to come in and show us what their administrative costs would be so that we can compare that to the differential that there is and figure out what is the better thing.

CHAIRMAN CLARK: Well, but then that gives them the incentive to show that their administrative costs are more.

COMMISSIONER KIESLING: Yes.

CHAIRMAN CLARK: And if you set it at a price, then they know what it is, and if they can get their costs below that they get to keep it, and they don't have to come in and show that, you know, in effect increase their costs in order to get more money.

COMMISSIONER DEASON: Well, the administrative costs are a cost for both parties. It's not just on one party. And to the extent the administrative costs can be eliminated, the service for both companies --

the costs to both companies is minimized, which you think if we have a competitive market means the price for all customers of both LECs are going to be minimized.

MR. LONG: Hopefully, yes.

COMMISSIONER DEASON: But as I understand what you're saying, Commissioner Kiesling, you would be more comfortable with a demonstration that the flow of traffic is so much out of balance for there to be equity that it more than outweighs any administrative costs of accurately measuring those flows and auditing those results.

COMMISSIONER KIESLING: Yes. But I also have to say I'm so uncomfortable with the number in the primary recommendation that if I have to pick between primary and alternate, I'm going to go with alternate, and let the proof come out at some later point if the imbalance is so great that we have to revisit this.

COMMISSIONER JOHNSON: So, doing it the way that the alternative recommends, we don't have to deal with the rate right now, because we are going to do this in-kind kind of a situation. And that was a good point that Mark raised, and I know the Witness Cornell (phonetic) had raised it with respect to the mutual exchange of traffic, if I remember her testimony correctly, would cost both industries to be more efficient. And even when you're looking at an ALEC -- you're looking at the dominant provider, who is going to kind of price it for us, it's going to be like a price cap. They aren't going to make their money charging more than the dominant provider, so the only way they are going to make their money is by charging less and getting the costs down. So if we're using the in-kind mutual exchange of traffic, perhaps that is an incentive for those parties to get their costs down in order to increase their profitability.

COMMISSIONER KIESLING: Yes, if I understand what you just said, that's what I think. I mean --

COMMISSIONER JOHNSON: Mark, did you understand that statement? Well, it doesn't matter.

CHAIRMAN CLARK: Other questions? Commissioner Deason, did you have any questions?

COMMISSIONER DEASON: No.

CHAIRMAN CLARK: No, I have questions. Commissioner Garcia.

COMMISSIONER GARCIA: No.

CHAIRMAN CLARK: Mark, I wanted to understand something, your comment with respect to the interconnection charge of 1.05 cents. And you had indicated that -- did you think that was reasonable or unreasonable?

MR. LONG: Well, I did make a statement to open the recommendation that if traffic is out of balance that might be appropriate. Really, if I were king and I were setting the rate, it would be far less than 1.05 cents. It would be around a quarter of a cent. But I would also not have a cap on the liability for the minutes. So that however many minutes it is out of balance, each minute is compensated at a cost-based rate of somewhere around .2 to .25 cents a minute.

CHAIRMAN CLARK: Maybe I should back up. If you could, enumerate why you think mutual exchange of traffic is the right way to go. And in your answer will you explain to me why you think -- how is it equivalent to bill and keep when you have parties actually interconnecting as opposed to where you had local companies. I guess I'm trying to distinguish in this case where you have an actual interconnection. When you had bill and keep, when we first went to bill and keep, that was among local exchange companies, correct?

MR. LONG: Correct.

CHAIRMAN CLARK: And that was for they would bill and keep their originating and terminating access minutes and that was something paid by the long distance carrier as part of the cost of doing that service.

MR. LONG: Actually, as I remember it they would bill the customer for the call and keep the revenues from the call, and then pay terminating access to wherever the call terminated.

CHAIRMAN CLARK: Right. Okay.

MR. LONG: That is how I believe that was set up.

CHAIRMAN CLARK: I guess what is concerning me is where you have people interconnecting, we haven't done bill and keep, have we? And so why is it appropriate in this case?

MR. HATCH: We have done bill and keep, and there is different scenarios that you may recall. The first one was for access charges, and that's when we did away with the old intercompany pooling arrangement in going to a competitive toll environment. Companies that originated and terminated toll calls in the context of an IXC, they bill and keep whatever access charges -- for any originating access minutes, they billed and kept those, for any terminating, they billed and kept those. Then there were some subsidy mechanisms built in that were eventually phased out to handle companies going to a stand-alone access provision basis.

CHAIRMAN CLARK: I understand that.

MR. HATCH: We have also done bill and keep for intraLATA toll. That's the old LEC toll bill and keep proceeding that we did. And in that case if they originated the long distance call, and there were no IXCs involved in this, you understand, they bill the originating toll revenues, if that company -- or if the call terminated within that same company, they just billed and kept the toll revenue. If that call terminated in another LEC, they paid that LEC terminating access revenue and billed and collected the originating toll revenue. For an intermediate LEC that was between the two that just sort of carried it from one point to another point, that didn't originate or terminate it, then they paid them a local transport rate.

CHAIRMAN CLARK: Yes. And I guess my concern is I didn't get the analogy to bill and keep here, because it didn't seem to me there was an analogy. Given that scenario where you have interconnection, you are, in fact, paying whoever you are interconnecting with a cost they incur.

MR. HATCH: But you also have to remember this is not in a toll context. In the local context, companies have an interconnection arrangement and they terminate traffic and they do not pay any separate terminating charge for exchange of local traffic. For example, intercompany EAS, things of that nature. There is a scenario now where you get that flat rate local EAS, and there may be an additive or something like that, but you don't pay a terminating charge to the other company when it terminates that call. That's the analogy that is being used here.

CHAIRMAN CLARK: There is no exchange, there is no comparison of what it costs in the local exchange to what it -- they just mutually exchange.

MR. HATCH: For local traffic, one originates it and the other one terminates it and vice versa.

CHAIRMAN CLARK: Okay. Mark, let me get back to the 1 cent. I thought I heard you say that you didn't think that was way out of whack, because you didn't think the contribution was extreme. Did I misinterpret what you said?

MR. LONG: Well, sort of. I did write in the recommendation that the primary recommendation may be appropriate if traffic is out of balance. And I guess if I can't do anything else, I would have to retract that statement right now. Because if I were going to make -- someone were asking me to make a recommendation for a compensation mechanism based on minutes of use that would be reciprocal, I would not recommend 1.0502 cents a minute. I would recommend around .25 cents a minute, or .2 cents a minute. But I would not impose any cap of 5 percent, 105 percent, or 10 or 20 percent. I would say that however many minutes you terminate more than the other company terminates, you get .2 cents a minute for each one of those minutes. That is what I would recommend if I were recommending a usage-based compensation mechanism.

CHAIRMAN CLARK: And the advantage of your suggestion is that if you don't gain that much more under the scenario of compensation with a cap because of the administrative costs, it just doesn't make sense to do that unless it's way out of balance and it's more appropriate for somebody to get more money.

MR. LONG: I believe that if the traffic is out of balance, significantly out of balance, the company should be properly compensated for that. I believe the compensation should be a cost-based rate. It should not be a rate that is so far above cost that you can put a cap at 5 percent and a difference of minutes and it would still cover their costs if it were 25 or 30 percent out of balance, because the money they made on the first 5 percent would cover far more minutes. I personally don't think that's the right way of going about making a compensation mechanism. I believe that if the traffic is relatively in balance then no money should be exchanged because that just saves everybody cost. If the traffic is significantly out of balance, then a rate should be implemented that is based on the underlying cost for providing the service. And the underlying costs we have are BellSouth's costs for providing that service and the rates should be based on those costs, close to those costs, but perhaps not at those costs, and the rate should be exactly the same for one company as it is for the other.

COMMISSIONER JOHNSON: And that is -- your recommendation is based on your fundamental belief and from the evidence in the record that it will not be out of balance. So that's why you can support this alternative. You're kind of assuming -- or it won't be out of balance enough to support those administrative costs.

MR. LONG: Correct. And because there is no empirical evidence one way or the other, I like to assume the least cost method. And right now the least cost method is to exchange traffic in-kind until someone has some demonstrable belief that they are losing money as a result of that.

COMMISSIONER JOHNSON: There is some interesting language in the settlement that kind of goes to that issue, and, I guess, can they default out of the settlement if they determine that the administrative costs don't really support them doing their usage-based formula?

MR. LONG: Yes.

COMMISSIONER JOHNSON: So kind of your same concept just backwards.

MR. LONG: Yes. Except for they are starting at one extreme and working back towards the middle, and I'm starting in the middle and working towards an extreme if it's necessary.

COMMISSIONER JOHNSON: Okay.

CHAIRMAN CLARK: It's your view that the 1.05 cents is out of whack with the cost?

MR. LONG: Yes.

CHAIRMAN CLARK: Okay.

COMMISSIONER JOHNSON: Did we have any information in the record to suggest where the 1 cent compares to what other states are doing and what the interconnection rates are in other states, just for my edification. And if it's not in the record, fine.

MR. LONG: I don't know that off the top of my head. I do know that there was testimony that 1.05 cents would be the highest interconnection rate in the country, if it were approved.

COMMISSIONER JOHNSON: Say that again.

MR. LONG: It would be the highest per minute interconnection rate in the country if it were approved. That's all I can recollect.

MS. CANZANO: And, Commissioner Johnson, we also have taken official recognition of orders in other states in which they have set rates. But offhand I don't know what those rates are. But there are other factors going into their determination.

COMMISSIONER JOHNSON: Certainly. And that's one of the things we have to be cautious about with respect to what else was factored into their decision.

MS. CANZANO: Yes.

CHAIRMAN CLARK: Other questions, Commissioners, on this issue?

COMMISSIONER KIESLING: I'm willing to make a motion, if there aren't any.

CHAIRMAN CLARK: Any further discussion?

COMMISSIONER JOHNSON: One more question to Mark. And it's just my -- it's a balancing test, but trying to determine whether or not those administrative costs are worth setting this thing up on the front end, kind of assuming that it's not going to not be in balance. Just to talk about it. If we were to suggest that we start off with it being usage-based somewhere close to the cost, and if -- kind of like the language that the parties put in their stipulation, if it's not worth it from an administrative standpoint then they could opt for the in-kind. Would that cause problems, or how do you feel about that?

MR. LONG: Well, I think you could go either way. I mean, I think you could start off with that and then if it's not worth it in the end, go to in-kind exchange. Or you could start off with in-kind exchange and say, "If anyone believes that they are losing money, this is what the rate will be." It will be 1.0502 cents, it will be .2 cents, whatever it will be, and then they will know how much their administrative cost perhaps will be in implementing this mechanism. And if they are going to get .2 cents for every minute and it's 55/45, they may say that's not worth going to it. If it gets up to 65 or 70 percent then I will go after that .2 cents a minute or that 1.0502 cents a minute, but until then it's not worth it. So I think you could go either way by setting a rate and opting for mutual exchange or setting mutual exchange and actually setting a rate if one is needed in the future.

COMMISSIONER JOHNSON: Yes. It's almost like if we go with your analysis as it's stated, we never get into the rate issue unless they come back and say something is wrong. But in order for them to come back and say something is wrong, and that this isn't working, it seems like they might want to know what the rate is going to be. That's my only concern.

MR. LONG: Absolutely. I mean, that would factor into their decision. If the decision is made up front that I get mutual traffic exchange today, but if I'm terminating more minutes, I get a penny a minute. If I come back in, I may come in a lot sooner than if I'm only getting .2 cents a minute, certainly. I mean, that would factor into my business decision as to whether I come back in here and ask for the agreement to be changed.

CHAIRMAN CLARK: Mark, do you think -- I mean, is that an option we should pursue?

MR. LONG: I have no objection to pursuing that option. If I were going to make a recommendation to amend this mutual traffic exchange, I would recommend that if a company wants to go to a compensation mechanism, I would say that they can go to .2 cents a minute at any time upon notice to us if they are terminating more traffic and they think that it's worth it. I mean, I don't think that's inconsistent with saying that a mechanism is not needed, but if one is needed we have one already. I just didn't go that far in making that decision before we needed to make that decision, or I thought we needed to make that decision, that's all.

COMMISSIONER KIESLING: And that's one of my concerns. You know, having reviewed the confidential exhibit and the rest of the record, I don't know where to set that rate. All I know is I'm not comfortable with setting it at 1.05 cents a minute. I think that that in comparison to cost is just too high.

COMMISSIONER JOHNSON: I understand that. And, in fact, in the primary recommendation they state that they didn't have enough time to really analyze the information to come up with a rate. And they would have -- if they did a cost-based rate, there were certain things that they wanted to look at. I hear Mark saying he feels comfortable with the information, he could set it right now.

But I had that same concern, and I was wondering if we were going to establish a rate, we thought that it was very important in the other dockets to go back and get a rate and get it right. But, I mean, do we feel that same way here, or do we want to wait until a party comes in saying, "Oh, this is out of balance," then we go and try to set a rate. Those are procedural questions that kind of still bothered me, and that's why I wasn't comfortable saying, okay, the rate is right now, because staff seems to suggest that they need more time. And even we may need time to decide, well, how much contribution is enough. What do we really want in there. You know, do we need to promote competition, how far down do we go, what do we need to keep these carrier of last resorts whole? You know, there are a lot of factors to be balanced there.

COMMISSIONER KIESLING: And because I don't think there is enough in the record to do that, that's why I'm willing to move the alternate rec.

COMMISSIONER DEASON: Second.

CHAIRMAN CLARK: I guess I would feel more comfortable if we did something similar to what we did in the other case, and that is to come up with a rate that they could opt for if they feel that it's way out of balance. And I would like to see us pursuing setting a rate.

COMMISSIONER JOHNSON: I just feel the same way.

CHAIRMAN CLARK: I'm comfortable with the mutual exchange of traffic now, but I want to set a rate so that the debate is -- you know, it is something they can go to without coming to us to make sure they cover their costs.

COMMISSIONER DEASON: Well, now, are the parties free to negotiate whatever they want if they can agree to it even if a decision is made?

CHAIRMAN CLARK: I think they can.

COMMISSIONER DEASON: So why do we have to tell them what we would approve if they -- I mean, if they negotiate it, I don't see where we are gaining anything. Are you saying that we could lay down a framework where one party could impose it on the other party saying I'm exercising my right to terminate mutual traffic exchange and impose a termination rate of whatever we determine, and I think it's worth my administrative costs. I'm sorry about your administrative costs, but I'm imposing -- is it one-way or is it two-way? And if it is two-way, why are we even involved? If it's two-way, they can agree to that regardless.

CHAIRMAN CLARK: It would be one-way.

COMMISSIONER GARCIA: Just following that point, I think we may be losing perspective about -- and I thought that's what primary did, about stepping back here a little bit. And I think we are re-engaging ourselves in an area that I thought we wanted to allow the companies to sort of work it out. And if we do set the price, why would anyone negotiate if it's better than what they could get on their own.

MR. LONG: A couple of things. They are always free to negotiate anytime they see fit, and there are a lot of components to local interconnection and competition that are not addressed in this docket or the other docket. And so there are a lot of all-encompassing kinds of things that they may be able to give up some money on to get some money in others. We certainly don't want to discourage that. As far as the agreement goes, the parties in this docket did not agree to the rate in the primary recommendation. That is why they are here. They did not sign the stipulation for interconnection resale. They did not agree to the terms of the stipulation. That is why they filed the petition. That is why they asked us to set the rate. So, personally, using the rate from the stipulation, depending on your philosophy may or may not be a good idea. It should not be construed that because people have agreed to it, it's okay, because the people in this docket have not agreed to it.

CHAIRMAN CLARK: And I guess my concern would be if we do it based on mutual exchange of traffic and don't set a rate based on what we think the costs may be that, in fact, if they are -- we could have set a rate that does not cover their costs.

MR. LONG: That is possible, yes.

CHAIRMAN CLARK: And by setting the rate, when they find it doesn't cover their costs because it's out of balance, then they can move to that cost. And we will have fulfilled our obligation to settle a dispute between the two parties and set an interconnect rate when they failed to do it. I guess, Commissioner Deason, in answering your question, I see it as something where the one party can opt for that situation based on the fact that they haven't agreed here. But I agree with you, they still have the opportunity to negotiate together.

MR. LONG: And I don't have an answer to the is it a one-party deal. I mean, theoretically, it would be a one-party option. Because obviously if one party thinks it is to their detriment, the other party thinks it's to their benefit, so they are not going to agree to come in and go to a mechanism if one company is going to be losing money. So it would be one party driving it. But whether they would just simply say because I want to, I'm going over to this, or whether there would be some burden that they actually are terminating more minutes or incurring costs that they would have to prove to the Commission to do, I have not rendered an opinion on that.

COMMISSIONER JOHNSON: What did you say, and refresh my recollection with respect to us -- your primary as stated and as moved as compared to having staff go back and come up with a rate. Now, you would suggest that that would not --

MR. LONG: Would not be inconsistent.

COMMISSIONER JOHNSON: No, would it be feasible.

MR. LONG: I believe it could be feasible and it would not be inconsistent with that. The application of it could be determined in the future after you review the proposals for the rate, then you can go back and include additional requirements that you may elect this under these circumstances, you may elect it whenever you choose. We would want to see it if you would elect it, you would have some burden to elect it, or we like this rate and now we want to default back to it. I mean, you could make any of those decisions after you review the alternatives for the rates. I do not believe it would be inconsistent with implementing mutual traffic exchange for now.

CHAIRMAN CLARK: And could you, Commissioner Deason, again explain to me your concerns, because I just missed it. But I do want to know so I can kind of gauge -- directionally we are headed in the same direction, but I just want to better gauge why we might not want to have staff get that cost information and set a rate up front.

COMMISSIONER DEASON: My concern with doing that is that, first of all, the parties are free to negotiate and they can agree to what they want to agree. If we basically give one party to the negotiation a unilateral right to exercise and say, "Well, I'm going to choose to terminate mutual traffic exchange and I'm going to choose to apply the rate," whatever, if we choose to designate a rate today, "I choose to apply that rate," to me that's not fair negotiating. I mean, somebody has got essentially a fallback position that concerns me.

It also concerns me that they would have a unilateral right to exercise that without coming forward with any demonstration to the Commission that it is justified, that it exceeds the administrative costs involved, that this is a fair and equitable thing to do. I'm just not comfortable with giving one party that unilateral right without some type of demonstration that it is needed. That it is the correct thing to do from a public interest standpoint. That the overall cost to all customers regardless of which LEC they subscribe to are going to be kept at a minimum, and that's what my concern is.

COMMISSIONER JOHNSON: Okay.

COMMISSIONER KIESLING: And let me just throw in one more thing in support of my motion, also. It seems to me that if I'm going to set a number, I want to at least have some sense that I've come close to the right number. And that the distance between cost and 1.05 cents a minute is so large that I'm not comfortable trying to pick something in the middle of that without more information.

CHAIRMAN CLARK: I agree with that.

COMMISSIONER JOHNSON: And you would rather that more information come after a party requests it as opposed to us going ahead and saying, "Staff, get us that more information now."

COMMISSIONER KIESLING: Right.

CHAIRMAN CLARK: Let me ask a question. Would you preclude them -- would you say it has to be after a year? Isn't that what staff said, you set a year date to see how this --

MR. LONG: And, again, like the other docket, that was merely because I thought that was the minimum time period to determine any patterns.

CHAIRMAN CLARK: Would that be part of your motion or would they be allowed to come in at any time?

COMMISSIONER KIESLING: Well, I'm comfortable with a year, but I could be dissuaded, or I could be persuaded to accept a friendly amendment if I could understand the basis for the time period. I think there has to be some time period.

COMMISSIONER JOHNSON: Well, what I understand, Mark, and I don't know -- I guess Donna may agree -- that we could set the year, but if they really thought it was out of balance then they could come in anyway. So that doesn't bother me.

CHAIRMAN CLARK: Then let me be clear. What is the year designed to do? They can --

MR. LONG: The year is merely designed to give them practical experience with interconnecting and to develop some traffic patterns. You come in and in one month you terminated 60 percent and they terminated 40, doesn't tell me nearly as much as if you had done it six months in a row.

CHAIRMAN CLARK: Let me ask you, point to me where in the recommendation you discuss that.

MR. LONG: I'm not sure I do. I mean, I may just make the statement that requests should not be made until after at least one year of practical experience with local interconnection.

CHAIRMAN CLARK: Well, see, is it should? I mean, what are we putting in the order. Do we mean that they can't come in or do we mean that they can?

MR. LONG: I mean, you may want to say sufficient practical experience.

COMMISSIONER CLARK: But they are still going to have to prove their case. I don't see any reason to put an artificial limitation on it. If they think they can prove their case, let them come in when they want to.

COMMISSIONER JOHNSON: And they can come in when they want to anyway under the law, so why bother. Maybe just to encourage them not to come in.

MR. LONG: I mean, it just seemed to me a good indication to them of what I thought was a reasonable time period. So that if they came in in three months and we came back to sorry, it hasn't been enough time, they wouldn't be surprised. That's all. I mean, like I said, I'm not wed to a year. As long as it takes to provide --

CHAIRMAN CLARK: I don't think we should put a limitation on it. They are going to have to prove their case.

COMMISSIONER KIESLING: If you propose that as a friendly amendment, I will accept it.

CHAIRMAN CLARK: Do you still second that?

COMMISSIONER DEASON: Yes.

COMMISSIONER GARCIA: Before we vote, I would like to ask -- this is the second time where I felt relatively comfortable with primary and it seems to have evaporated.

CHAIRMAN CLARK: Your comfort or --

COMMISSIONER GARCIA: No, the primary position, which has sort of disappeared from the table. And the last time I got a response it was an estimated guess, now this time -- I mean, I think we are making certain assumptions. I assume that most of the traffic is going to go one way. I mean, you're saying we don't know that, but isn't that a given?

MR. LONG: What, that most of the traffic is going to go one way?

COMMISSIONER KIESLING: You know, I started from that position, but when I went back and looked at the record in this, there was a lot of information. For example, while I wasn't totally comfortable with the Manhattan information, in the Manhattan information it, in fact, was the other way.

COMMISSIONER JOHNSON: Yes, I agree.

CHAIRMAN CLARK: I thought that was surprising, too.

COMMISSIONER KIESLING: And so I became uncomfortable enough with what had started out as what I thought was a reasonable assumption, that I could no longer embrace that assumption. And that was my problem, because there was too much testimony and too many discussions in here about what could happen and what the factors would be that would influence --

CHAIRMAN CLARK: And if I recall, and, in fact, the information -- some of the testimony indicated it's more likely that it will be in balance.

COMMISSIONER JOHNSON: It's likely that it will not be in balance?

CHAIRMAN CLARK: That it will be in balance. Wasn't it Doctor Cornell that talked about that?

MR. LONG: She believed that for a short period of time it might be imbalanced.

CHAIRMAN CLARK: Might be what?

MR. LONG: It might be out of balance, but in the long run should be balanced.

COMMISSIONER KIESLING: And that was why I originally supported the year was because I know there is going to have to be a transition period in which the ALECs are out signing up customers. And so it would seem to me that in the first month it's going to be way out of balance, and hopefully there will be a pattern that shows it coming closer to the middle.

CHAIRMAN CLARK: Well, but I still --

COMMISSIONER KIESLING: I have accepted your friendly amendment.

CHAIRMAN CLARK: Yes, you have, and we don't need to debate this. Commissioner Garcia.

COMMISSIONER GARCIA: I just wanted to ask staff, those who had prepared primary, if they have anything to add to this. Because, again, I looked at it and I seem to have wholeheartedly embraced primary and I don't -- from my perspective now, it's almost a toss-up. And so I wanted to ask staff if you wanted to add anything to the discussion that has come from there.

MR. DREW: First, my esteemed colleagues who are attorneys will disagree with my quote, unquote, interpretation of the statute, but it says in print that the Commission should set a rate. Mutual exchange traffic is not setting a rate. And that's the end of my legal interpretation, I'm not a JD.

Two, I don't believe that the traffic is going to be in balance. There was not enough evidence in the record, and I agree, that would lead you to conclude one way or the other. All we have is the experience in the Board of Manhattan where there is imbalance in traffic.

I believe that every individual, every corporation has different calling patterns, and because of that difference in calling patterns we are going to have imbalance of traffic.

Your ALECs, as initial customers, may have travel agencies or answering services and these entities receive more calls than they make. Again, you know, this is just speculation based on experience, but my personal experience and the experience of other staffers, and, again, there was not enough support in the record to back this up. The bottom line is it's just my common sense speculation that there is going to be imbalance based on the differences of calling patterns between parties.

COMMISSIONER GARCIA: Walter, why don't you go ahead and thoroughly confuse me.

MR. D'HAESELEER: Well, I did not read the record completely. I read part of some testimony. I didn't look at the cost study. But my support for the primary is a little different, and that is this. I am very concerned about our piecemeal approach, and I understand why we are doing it, but there are these common and joint costs that are going to have to be recovered somewhere. So I'm a little concerned when I hear all of this discussion that every competitive service has to be priced at cost.

COMMISSIONER JOHNSON: But no one has said that.

No one on this side of the bench has said that.

MR. D'HAESELEER: Okay. And then I've heard that 200 or 300 percent may be exorbitant, you know, that it has to be some other number. What you need to be concerned about is that there are these heavy contributions in a lot of these services, whether they are interconnection rates or whatever, and you have to be conscious of what you're doing. And, unfortunately, part of the blame I really place on me is I haven't given you what you really need and that is these contributions for these various services and what happens when you take those contributions away. And I have been thinking about it, and I need to really do that for the next time we have these kind of discussions so that when -- you will get a better picture of what these overheads or joint costs or contribution levels are. The second part about it was however you want to characterize it, Teleport did do it in New York. They have had some experience there. And based on that experience, I thought there would be an imbalance. On top of that, some people who I feel are very competent negotiated a settlement and in there was this number and this protection.

COMMISSIONER GARCIA: Stop right there. Essentially that's one of the problems I have with going the other way. And perhaps some of the Commissioners can clarify. Here we have companies going into an agreement, which is, I think, the thrust and basis of this legislation to get us out of it. And we seem to be slipping back, and I don't mean it in anyway disparaging to staff, I think they have done a magnificent job on both recommendations. But why are we slipping back into where we were when we are giving them almost a better deal than they could have gotten at the table? And this was about bringing people to the table and letting them negotiate. Either plan they can still negotiate, but my point is why are we stepping back into it? Why are we complicating the thing when initially, I think, they have agreed to something, it seems to be acceptable to --

COMMISSIONER DEASON: I think you have hit the nail right on the head, is that we have got parties that did not agree.

COMMISSIONER GARCIA: I understand. I understand that there are parties that haven't agreed, but that doesn't necessarily --

COMMISSIONER DEASON: We can't bind them to something they weren't willing to agree with before unless we think that is the appropriate position.

COMMISSIONER GARCIA: And why would I be bound if

I had always known that the Commission is going to come in. Why would I not step up to the table and solve the problem if I know that the PSC is going to come in and do this. And my only thinking on this was these are parties that have negotiated something, staff who wrote primary is shaking their heads, so maybe you can tell me what you're shaking your head about and then we can move from there.

COMMISSIONER JOHNSON: Let me just say one thing.

COMMISSIONER GARCIA: You were saying something. Excuse me. You were shaking your head for a second. On this, what did you want to say so that I can --

MS. CANZANO: Specifically, that these parties did not agree and that is why we are here. They tried to negotiate, as did BellSouth, both of them worked hard at trying to reach an agreement and they failed. And that is why we are addressing it now.

COMMISSIONER JOHNSON: The same point as Donna just made. As I look at the statute and what it wanted to promote, and the procedure that it tried to lay out was very clear, that we do allow the parties the first opportunity to negotiate these agreements. And to the extent that they cannot reach agreement, then it's up to the Commission to, as Donna suggested, to set a rate. And in this instance it's very hard for me to look at a comprehensive settlement. And Southern Bell had suggested this in their testimony, and just extract something out and say, "Oh, okay, this number is right in the abstract," when the parties negotiated a lot of different things. They negotiated universal service, they negotiated all sorts of other factors that might have influenced them getting to that number.

And for that reason I felt uncomfortable just saying, "Oh, some people agreed to it, these people should have agreed to it, too, so we are going to apply that to them." On the issue that Walter raised with respect to he needs to educate us more with respect to the contribution and he has a big concern about joint and common costs, I don't think any of us would disagree with you that that is something that needs to be addressed.

I know some of the parties indicated that the thing you should look at is long-run incremental costs, but no one has suggested that that's all that we look at and that we don't look at the common costs. Now, if you're suggesting that the contribution is more like universal service, or making sure that the carrier of last resort obligations are taken care of, or putting the companies in a situation where they are being treated as if they were a rate of return, guaranteed rate of return kind of a company, then that's something else. But with respect to looking at those elements and making sure everyone is being treated fairly and that all of their costs are covered, not just long-run incremental costs, I think that that is something we are all suggesting needs to be considered.

MR. D'HAESELEER: All I'm doing is pointing out some pitfalls. I haven't offered you a solution, but you have to recognize that there are these costs that are going to have to be recovered somewhere. And that, you know, my problem is I can just about be as flexible as anybody and I can go in any direction, and if our end result is increasing local rates for residential users, that's fine. If that's what we are going for and setting all rates at cost, I can live with that.

COMMISSIONER JOHNSON: Well, that's something that you just made up, no one on this side even suggested that.

COMMISSIONER GARCIA: Walter does point out a significant point, which is are we taking these things into account here, and I don't think the other side is. I mean, I'm not arguing that what has been said from the bench is correct, and I'm not arguing that Walter is sort of shooting from the hip here, to some degree, in the longer view picture. And I don't mean it in a negative way, Walter. I'm sort of bothered by the fact that parties sit down and negotiate something. I think we have cloaked it in the effect of some public interest. I know that there are parties here that this is being decided for parties that didn't. But why are we moving away from that when --

CHAIRMAN CLARK: I think if I could restate what you're saying, I think what staff is responding is that they have failed to negotiate, that's why we have stepped in. And your concern is by our decision here we will influence future negotiations.

COMMISSIONER GARCIA: That's true. I mean, why would I sit down through this complex process if I know that the PSC is going to step up to the plate and give me a better deal.

CHAIRMAN CLARK: But you can't ever assume that you're going to get a better deal.

MR. LONG: I mean, you may get a better deal today, you may not get a better deal tomorrow. I mean, I think local exchange companies --

COMMISSIONER GARCIA: Here we are, the first serious series of implications of incredible proportions for this state, and in all honesty that's why I like primary, because I don't think these are guys making this up. I mean, obviously if you have sat down and gone through this experience before and here they come up with a number. It takes into account some of the factors that I think Walter is very correct in pointing out. And then suddenly right before we are going to bat it out, here we have an alternative which is very sensible if we were the PSC last year doing this. And that's where my problem comes in, because we are re-engaging ourselves in the process when instead of looking at this as a process that is ongoing, that parties can still keep working with each other and making it serious and binding and either you're at the table, or you let us do it. That's how I see it.

CHAIRMAN CLARK: I think if I'm starting to understand exactly what you're saying, you're saying that --

COMMISSIONER GARCIA: Forgive my lack of eloquence on this.

CHAIRMAN CLARK: I'm trying to understand how you think it impacts future negotiations. What you're saying is that you view the mutual exchange of traffic as being a better deal for people other than BellSouth, and, therefore, people will -- because of this decision they will not come forward and negotiate with BellSouth because they will count on a better deal from us, particularly because we have done mutual exchange traffic. I guess what you need to factor in, it seems to me, is that the agreement itself provides that if they determine the administrative costs are not worth it in the agreement, they can simply go to mutual exchange of traffic. And what we have said is if you show that it's way out of balance you can come in and have a specific rate set so the equity will be achieved both ways. I don't think you can say -- I mean, if you, in fact, set a rate you are still going to have, you know, BellSouth has to pay ACME ALEC and ACME ALEC has to pay BellSouth. And you can't conclude that it's not going to be the wash, in effect, that we are saying with mutual exchange traffic. And, in fact, that agreement recognizes that it may be a wash and it's not worth pursuing --

COMMISSIONER GARCIA: Help me, Walter.

MR. D'HAESELEER: What, one against four and I'm with you?

COMMISSIONER GARCIA: Minorities make history.

MR. D'HAESELEER: I think you have a valid point that others are going to look at this and say, "Can I cut a better deal negotiating or relying on the Commission?" Now, I have to tell you because of the way I think you're headed, when I see the next recommendation and it has a cost element in there, I'm going to be very concerned about that contribution level and whether we, with our discussion here, have set some kind of tone that we are very concerned about cost-based rates for competitive and interconnect services.

CHAIRMAN CLARK: That's a good thing to say.

COMMISSIONER DEASON: Walter, in this discussion where have we talked about cost in the sense -- if the motion is mutual traffic exchange, that is not a cost-based concept?

MR. D'HAESELEER: No, I'm talking about the other one, where you set a rate for the unbundling and now there was a rate here, the one --

COMMISSIONER DEASON: And that was based upon cost information. Our staff advised us that we could go as low as 16. There was a number of 18. We set a rate of 17 to be conservative to be sure that, based upon the evidence in the record, it covered cost. And I don't understand what the problem is.

MR. D'HAESELEER: There is a problem with definition of costs, and there are some that will tell you that for long-run incremental cost or even short-term, you don't have a contribution element in there. And there are others that would argue that there should. Well, I not only think that there should, but there should be a substantial contribution.

COMMISSIONER DEASON: And a dollar over a base cost of 16, that's not a substantial contribution?

MR. D'HAESELEER: I don't know. That's the problem with these numbers. We really need to sit down and play with them and see what the impact is.

CHAIRMAN CLARK: Walter, let me be clear. Isn't that only an issue with regard to covering costs if the traffic back and forth is substantially out of balance? Because if I terminate 100 minutes of your traffic and you terminate 100 minutes of mine, why do we bother paying each other?

MR. D'HAESELEER: You're right.

MR. LONG: And also, I just wanted to -- the concern about the unwillingness to negotiate is a very valid one, and it's one that we are worried about, too. First of all, I can't tell you who gets a better deal with mutual traffic exchange. If this were implemented in the Manhattan then the RBHC is getting a better deal than the ALEC is getting a better deal. So it's not a big, huge win for ALECs, a big, huge loss for LECs by doing this, because we don't know what the traffic patterns are going to be. Either side could win.

CHAIRMAN CLARK: It depends on their costs, too.

MR. LONG: Correct. And either side would win or lose as a result of it, and then if they do they can come in and ask for it to be changed. And I believe that that's part of BellSouth's motivations in negotiations. I mean, they have been a player at the PSC for a long time. They have won a few, they have lost a few. There is probably a minimum position that they have got in negotiations that they think if they go any lower they can get a better deal out of the Commission. I mean, everybody factors that in, but nobody can guarantee that when they come up here they are going to get what they want. I can't. Nobody can.

COMMISSIONER DEASON: That's the way the law was written. I mean, they were provided an opportunity to negotiate. Some people reached fruitful negotiations, some didn't. That's part of the negotiating process. And by law we have to make a decision, and we can't say, "Well, we are not going to make a decision because we think there still are some people out there negotiating and we don't want to influence their negotiations." That is not a luxury that we have.

CHAIRMAN CLARK: Mark, I'm still trying to decide if I want to exchange buns with you.

COMMISSIONER GARCIA: I want to go back to the breeding thing. But maybe staff on primary can elucidate a little bit more, or is that it from your side. I just don't think that -- and forgive me for being its defender, because I certainly didn't write it, but I felt more comfortable when I woke up this morning than I do now holding to that. Is there any argument that we haven't fleshed out that you think is essential with primary, or should I let them roll me here four-to-one?

MR. DREW: Other than the 105 percent cap was designed to protect both sides, I think we have adequately covered all the arguments.

COMMISSIONER DEASON: Madam Chairman, I know this is a very critical issue, but I think it's gotten ample discussion. We have had a motion and a second on the table at least for 15 or 20 minutes, and I would move the point.

COMMISSIONER GARCIA: I'm sorry, I wanted to be more comfortable.

COMMISSIONER DEASON: I'm not being critical, but I'm ready to get on down.

CHAIRMAN CLARK: Well, it is, it's Joe's fault.

COMMISSIONER GARCIA: It is my fault, and in all honesty I wanted to hear this because I still think that --

CHAIRMAN CLARK: I agree with you, I think it needed to be discussed.

COMMISSIONER GARCIA: This an essential vote, Commissioner Deason. I'm sorry I'm stealing your valuable time, but I do think that the issues that we are discussing here are going to set the tone from now on. And I think that while you view the legislation one way, I would tend to disagree with you completely with that statement you just made about how the legislation is. I know we have a responsibility, but that responsibility should not be to force the issue this way. And if we can -- what we should be trying to do at all lengths is to go with the business judgment of parties that sit down and negotiate, and it's my view that whenever that is possible we should go that way.

COMMISSIONER DEASON: Well, are you saying we have the option to say we are not going to make a decision today?

COMMISSIONER GARCIA: No, no, I didn't say that. But what I am saying, Commissioner, is that the intent of the legislation was to get us out of this business. It was not to put us back into the business in a different way. And what I want to try to do, and what I hope I've done in some small way, even by losing this is to get out the feeling that this is not about us, it's about them negotiating in a business environment without us. And that's where we are headed. And when we step back from this, when we say, "All right, this is what we are going to do," and not look at or give serious consideration to that which has been done by real players, I mean, if this were Southern Bell negotiating with itself as an ALEC in another territory and coming up with some kind of mishmash of nonentities here negotiating a settlement, then I would understand. This would be a hoax. But that isn't the case.

There are real players here who have sat down and made business decisions which will affect them for years to come on the profit line and they thought this was a good deal. More so than that, our Commission approved that deal, and our staff approved that negotiated settlement to some degree.

And so what I am saying to you is that the decision we make here today -- and, again, excuse me for stealing your time -- is essential in what message we send out to the players. Do we want them, as the legislation I believe intended, for them to negotiate it out or do we want to be the final arbiters on this thing? And I would tend to say that the legislation wanted the former rather than the latter, which I know you see in a different way.

COMMISSIONER DEASON: No, I totally agree with what you say. The legislation wanted the parties to negotiate. And I think this Commission did everything within its power to send those signals that we want you to negotiate and bring it to us. And, in fact, in this situation that it was done, what did we do, we approved it. I think that's being conducive to the negotiating process. But what we have here is a situation where it has failed. And I don't think that you can make the leap of faith that because one or two or three or four parties negotiated something then that makes it good for everybody. Because there are parties who entered into the negotiating process who said this is not good for us, Commission, and it is a total package, and we don't think you can extract one thing and say because that was negotiated as part of a total package that that makes that good public policy. And perhaps we are in a different situation, and we think we want you to determine it. That when they filed that, that's what they were saying. Commission, we want you to determine this for us because we can't do it.

COMMISSIONER GARCIA: I understand that they can make that argument. I just think that by stepping in as aggressively as we are doing with the alternative I think that we are going to end up here for a long time to come on these negotiations as opposed to looking at serious -- and, forgive me, I don't want to make a value judgment on what you have done. I think what you have done, what the alternative is is fine. But we are not allowing it to play out, and it's a tough world out there, and you can always come into the cold to the PSC, but I feel more comfortable that these parties negotiated in good faith. And are we stepping back from the judgment that we made that that negotiation was good, essentially? Yes, there are parties who feel differently, and that's fine. But that's why I felt I was more comfortable with the primary, because I think it kept it along those lines and it forced them back to the table in a more aggressive way, I think.

CHAIRMAN CLARK: Commissioner Garcia, I'm going to treat Commissioner Deason's request as a call for the question.

MS. CANZANO: Commissioners, may I quickly respond to a concern raised by primary staff. It is Legal's position that the mutual traffic exchange does meet the statutory requirements as discussed on Pages 29 and 30 of our recommendation. I just wanted to point that out.

CHAIRMAN CLARK: That was in the recommendation, as I recall. There has been a motion and a second to accept staff alternative recommendation on Issue 1 with the modification that they can come in at any time if this is not -- if they are terminating, or there is an imbalance of traffic between the two entities. All those in favor say aye.

COMMISSIONER KIESLING: Aye.

COMMISSIONER DEASON: Aye.

COMMISSIONER JOHNSON: Aye.

CHAIRMAN CLARK: Aye. Opposed, nay.

COMMISSIONER GARCIA: Nay.

CHAIRMAN CLARK: Issue 1 alternative passes on a four-to-one vote. Issue Number 2.

COMMISSIONER KIESLING: I move it.

CHAIRMAN CLARK: Any discussion? Without objection, Issue Number 2 is approved. Issue Number 3.

COMMISSIONER DEASON: Move staff.

CHAIRMAN CLARK: Let me ask this. Does anyone have any questions on the remaining issues, which I think includes Issue 15?

COMMISSIONER KIESLING: I move staff on wherever we are through 15.

COMMISSIONER DEASON: Second.

CHAIRMAN CLARK: Without objection, Issues 3 through 15 are approved.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was transcribed from cassette tape, and the foregoing pages numbered 1 through 69 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 12th day of March, 1996.

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