

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 In Re: Petition by Metropolitan
 3 Fiber Systems of Florida, Inc. DOCKET NO. 960757-TP
 4 for arbitration with BellSouth
 5 Telecommunications, Inc.
 6 concerning interconnection rates,
 7 terms, and conditions, pursuant
 8 to the Federal Telecommunications
 9 Act of 1996.

10 /

11 In Re: Petition by Metropolitan
 12 Fiber Systems of Florida, Inc. DOCKET NO. 960838-TP
 13 for arbitration of certain terms
 14 and conditions of a proposed
 15 agreement with Central Telephone
 16 Company of Florida and United
 17 Telephone Company of Florida
 18 concerning interconnection and
 19 resale under the Telecommunications
 20 Act of 1996.

21 PROCEEDINGS: SPECIAL AGENDA

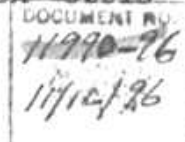
22 BEFORE: CHAIRMAN SUSAN F. CLARK
 23 COMMISSIONER J. TERRY DEASON
 24 COMMISSIONER JULIA L. JOHNSON
 25 COMMISSIONER DIANE KIESLING
 COMMISSIONER JOE GARCIA

26 PLACE: BETTY EASLEY CONFERENCE
 27 CENTER
 28 ROOM 148
 29 2540 SHUMARD OAK BOULEVARD
 30 TALLAHASSEE, FLORIDA

31 TIME: COMMENCED AT 9:30 A.M.
 32 CONCLUDED AT 11:10 A.M.

33 DATE: NOVEMBER 1, 1996

34 REPORTED BY: NANCY S. METZKE, RPR, CCR
 35 C & N REPORTERS
 POST OFFICE BOX 3093
 TALLAHASSEE, FLORIDA 32315



1 APPEARANCES:

2 DONNA CANZANO, ESQUIRE, CHARLIE PELLEGRINI,
3 ESQUIRE, and MARTHA CARTER BROWN, Florida Public Service
4 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
5 Florida 32399-0863.

6 ALSO PRESENT:

7 MIKE REITH, FPSC Staff.
8 ROBIN NORTON, FPSC Staff.
9 STAN GREER, FPSC Staff.
10 LANS CHASE, FPSC Staff.
11 ANN SHELFER, FPSC Staff.
12 SALLY SIMMONS, FPSC Staff.
13 WAYNE STAVANJA, FPSC Staff.
14 WALTER D'HAESELEER, FPSC Staff.

15 * * * *

16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN CLARK: Let's call the agenda to order. Commissioners, the staff has indicated to me that they would like to take up Docket 960757 first and to deal with the motion to strike initially and then move to the recommendation. Unless there is an objection to that, that's how we'll proceed. Okay?

MS. JOHNSON: Yes, ma'am. Thank you.

CHAIRMAN CLARK: All right. Commissioners, are there questions on the motion to strike?

COMMISSIONER KIESLING: I'm still reading it.

CHAIRMAN CLARK: And if there are no questions, is there a motion?

COMMISSIONER DEASON: I would move to approve staff's recommendation.

COMMISSIONER GARCIA: I'll second.

MR. PELLEGRINI: Chairman Clark, would you wish me to comment on the recommendation?

CHAIRMAN CLARK: No, really, we are just giving Commissioner Kiesling a minute to get through it.

COMMISSIONER KIESLING: Yeah, I didn't get it until it was handed to me this morning, so --

CHAIRMAN CLARK: That's fine.

COMMISSIONER KIESLING: Okay.

1 CHAIRMAN CLARK: All right. There has been a
2 motion -- Do you have any questions?

3 COMMISSIONER KIESLING: No.

4 CHAIRMAN CLARK: There has been a motion and a
5 second. All those in favor say eye.

6 (AFFIRMATIVE INDICATIONS)

7 CHAIRMAN CLARK: Opposed nay.

8 (NO RESPONSE)

9 CHAIRMAN CLARK: All right. Now we will move to
10 Docket Number -- well, we are in Docket Number 960757,
11 which is the arbitration between MFS and BellSouth.

12 MS. SHELFER: Commissioners, most of the issues
13 in this proceeding were resolved, and because the portions
14 of the FCC interconnection order that were stayed,
15 specifically the pricing guidelines in Section 252(i),
16 staff has -- some of the recommendations and some of the
17 issues are in two parts. Each recommendation will consider
18 both the Act and the FCC order, and we will go issue by
19 issue if that's your preference.

20 CHAIRMAN CLARK: Yes.

21 MS. BROWN: Commissioners, if I might just
22 interject something. I'm not sure you all are aware that
23 Justice Thomas denied the FCC's petition yesterday, so the
24 stay is in effect.

25 CHAIRMAN CLARK: I heard it on NPR. It did make

1 the national news fairly quickly.

2 MS. BROWN: Right, and how did they word it this
3 morning, Charlie, on CNN?

4 MR. PELLEGRINI: I think it was something to the
5 effect that the FCC took another hit, something like that,
6 on CNN.

7 COMMISSIONER JOHNSON: On that topic, although I
8 know it's not necessarily directly relevant, but what's the
9 process now? Did the FCC file with other supreme court
10 justices, and could it still be heard within the next
11 several weeks by the other justices?

12 MS. BROWN: I don't think so.

13 MR. PELLEGRINI: The CNN report said that it was
14 scheduled for a hearing in January before the full court.

15 COMMISSIONER JOHNSON: It just said the eight --

16 MS. BROWN: The 8th circuit.

17 MR. PELLEGRINI: No, before the supreme court.

18 MS. BROWN: Oh, the supreme court.

19 MR. PELLEGRINI: As I understood.

20 COMMISSIONER KIESLING: Yeah, that is what is
21 confusing me, is the message we got from Cindy Miller is
22 that --

23 CHAIRMAN CLARK: I'll bring it up again.

24 COMMISSIONER KIESLING: -- applications will now
25 be renewed with Justice Stevens and Justice Ginsberg.

1 COMMISSIONER JOHNSON: Yeah, and I had been
2 told --

3 COMMISSIONER KIESLING: And I don't understand
4 what that means. I mean --

5 COMMISSIONER JOHNSON: I had been told this
6 morning that AT&T filed with one of the justices, and the
7 FCC filed with another for them to take the whole matter up
8 and that they will be meeting, the supreme court will be
9 meeting today and they could decide to review the issue.

10 CHAIRMAN CLARK: You mean to take the whole case;
11 is that what you heard? I know they were considering a,
12 it's some extraordinary writ where they actually reach down
13 into the lower court and take the whole case.

14 COMMISSIONER KIESLING: And pull it up, yeah.

15 CHAIRMAN CLARK: Yes.

16 COMMISSIONER JOHNSON: And you know, I don't
17 know. I don't know if they meant reviewing the lifting of
18 the stay or if they meant reviewing the whole case and even
19 whether or not that was possible.

20 MS. BROWN: I don't know because I didn't watch
21 the news, and I haven't heard; but I had heard that there
22 was this possibility that they might -- or actually the FCC
23 was encouraging them to take the whole case to get it over
24 with.

25 CHAIRMAN CLARK: Well, Commissioners, I should

1 tell you when I had the opportunity to go up and meet with
2 the solicitor general with some other parties, they did
3 discuss that approach; and the solicitor general indicated
4 that -- he asked about the need to resolve this quickly,
5 and whichever way the circuit court went wasn't it likely
6 that it wind up in the supreme court. And the point made
7 to him was there are far more issues in the case than just
8 the one being brought to them, and that it is a bigger case
9 than just those issues, and it would be appropriate for it
10 to follow the regular appellate procedures and that the
11 eighth circuit was proceeding expeditiously.

12 I don't know if having lost on the stay that they
13 will then approach it through that avenue; that may be what
14 you're thinking about. He didn't seem that enamored with
15 that alternative because it was so extraordinary, and my
16 information was the last time they did it was with the
17 Nixon Watergate tapes, I think. So we have Issue 2 then.

18 MS. NORTON: Commissioners, Issue 2 involves a
19 request by MFS for the handling of information services
20 traffic between MFS and information service providers where
21 BellSouth has a contract with an information service
22 provider but MFS does not. Staff has recommended approval
23 of MFS's proposal with one modification, and a slight
24 clarification in the recommendation language is being
25 suggested, and I would like to read that in if that's

1 okay. It's in the last paragraph -- last sentence of the
2 first paragraph so that starting from the comma it will
3 read, "Unless that --

4 COMMISSIONER DEASON: I'm sorry, which?

5 COMMISSIONER GARCIA: Page.

6 MS. NORTON: The last sentence of the first
7 paragraph of the recommendation statement.

8 COMMISSIONER JOHNSON: Page 5?

9 MS. NORTON: I'm sorry, it's page 5.

10 CHAIRMAN CLARK: Go ahead.

11 MS. NORTON: And picking it up from the comma,
12 that sentence should now read, "Unless that carrier and
13 that ISP have a signed agreement specifying the appropriate
14 charges." And it should not change the substance, just
15 make it a bit clearer.

16 CHAIRMAN CLARK: Questions, Commissioners?

17 COMMISSIONER KIESLING: No, I just would tell you
18 that that change was made at my suggestion because after
19 reviewing the substance of the recommendation, it seemed to
20 me that there were two things required to meet the
21 exception, one was that there be a signed agreement between
22 them, but the other was that the amount be contained in
23 that agreement, and so it doesn't change the -- it's not my
24 intention in any way to change the recommendation or the
25 outcome. It was just to make sure that that sentence was

1 clear as to what had to be there.

2 CHAIRMAN CLARK: I just want to make sure that
3 I'm clear on how this works. Suppose BellSouth has an
4 agreement with the ISP but MFS does not and a customer of
5 MFS makes the call to the ISP, what is going to happen?

6 MS. NORTON: MFS would send the call detail to
7 BellSouth who under their proposal would rate the call
8 under the terms specified in its own contract with the ISP,
9 send that back to MFS who would bill and collect that under
10 that -- collect that charge.

11 CHAIRMAN CLARK: Okay. And BellSouth would be
12 entitled to whatever they are entitled to based on their
13 agreement with the ISP?

14 MS. NORTON: There is nothing under MFS's
15 proposals that would spell that out. What we are saying is
16 that MFS should do that and Bell should do that; however,
17 MFS has proposed that it itself retain five cents a minute.

18 CHAIRMAN CLARK: The answer to my question is
19 yes, isn't it?

20 MS. NORTON: BellSouth has its own contract, and
21 whatever would apply under that I presume would apply. I'm
22 not making a specific recommendation how Bell would handle
23 that because it was not proposed. It was MFS's proposal to
24 piggyback on Bell's contract that I was addressing in this
25 recommendation.

1 COMMISSIONER DEASON: Well, I have a question.
2 You classify this as a network element and that, therefore,
3 it should be provided. My question is if you are going to
4 classify it as such, what is the cost of providing this
5 service, and what and how is the provider of the service
6 going to be paid for the provisioning of the service?

7 MS. NORTON: Commissioner, we recommended that it
8 be classified as a network element under the terms
9 specified in the Act. There was no specific cost data
10 provided and staff views this really as really working out
11 details in a contract. We believe that the appropriate
12 arrangement needs to be contract to contract with each
13 provider, but we also believe that the end user needs not
14 to be inconvenienced, or inconvenienced to the least amount
15 possible. So I can tell you that there is no cost data for
16 this, but we do know that the relationships exist with the
17 incumbent LEC. We are encouraging the new LECs to
18 establish those relationships. In the meantime --

19 COMMISSIONER DEASON: Don't you think that if the
20 new LEC tries to sign up a customer and they sign that
21 customer up and then that customer learns that they are not
22 able to call the information service provider, that would
23 be an extreme incentive for them to negotiate and sign
24 their own contract with the information service provider.

25 MS. NORTON: That suggestion was made by Bell to

1 the extent that the ALEC should be required to get their
2 own contracts, and MFS suggested that absent the contract
3 they would be required to block. Staff disagreed with
4 that. We believed that they didn't have to block it, they
5 could still provide it; but that is a way to go, yes. I
6 agree with you that it would be an incentive, but I think
7 that -- I didn't recommend that because I think that would
8 inconvenience the end user, and I didn't think that was
9 necessary.

10 CHAIRMAN CLARK. Well, it seems to me though
11 when -- getting back to my question with respect to when
12 it's an MFS customer and MFS does not have a relationship
13 with the ISP, what you described, would you answer my
14 question, then does BellSouth, because they have a
15 contract, are they able to keep some money from that as a
16 result of their contract with the ISP?

17 MS. NORTON: BellSouth would be able to charge
18 the ISP for its own part in that. The only reason I
19 hesitated at all is because this did involve a third, and I
20 don't know -- I'm not familiar with the specific contracts
21 as to whether there would be a problem. An educated guess
22 is Bell would do that.

23 CHAIRMAN CLARK: Well, it would seem to me that
24 at least with respect to the ISP they don't care. They are
25 getting their call, and they are going to get their money.

1 And to the extent MFS does not have a contract with them,
2 then BellSouth is going to get whatever money they are
3 entitled to because of their contract, and there isn't
4 incentive for MFS to contract directly with them so they
5 will be able to deduct their administrative costs. As I
6 understand it, you are recommending that they not be
7 allowed to do this unless they have a contract with them.

8 MS. NORTON: If I understood everything that you
9 said, I agree, that MFS is the one that has to go get a
10 contract before it gets to keep anything. Bell has one and
11 it can.

12 CHAIRMAN CLARK: Well, that addressed
13 Commissioner Deason's concern, that there be some incentive
14 for MFS to get its own contract because I think there
15 should be some incentive for them to get these
16 relationships developed.

17 MS. NORTON: It's staff's belief that requiring
18 MFS to send the calls through but not be allowed to keep
19 anything for itself until it gets a contract provides the
20 incentive, that was staff's view.

21 COMMISSIONER DEASON: But right now the way
22 the -- right now the incumbent LEC has a contractual
23 relationship with an information service provider, and that
24 was negotiated between them, and whatever they work out
25 seems to be appropriate. Now what you're asking the

1 incumbent LEC to do is be the intermediary, and it seems to
2 me, take on additional costs acting as an intermediary and
3 passing billing information with no more payment for that
4 service; but you classify it as an element, an unbundled --
5 it should be an unbundled element as such, but there is no
6 payment for that, and it looks to me like there are going
7 to be additional costs above what is now contemplated in
8 the contract between the incumbent LEC and the ISP.

9 MS. NORTON: I agree with you, and I think that
10 they should -- and the way I would look at that is I think
11 that when MFS enters into its contract with ISPs that will
12 no longer be an issue, and because they will contract and
13 bill and collect directly with the ISP once they have the
14 contract. Until that time, yes, the situation you
15 described will occur, and I think MFS and Bell can agree on
16 an amount for that. I believe they simply just have not
17 attempted to do that.

18 COMMISSIONER DEASON: I certainly agree. It
19 looks to me like this is something that could have been
20 worked out between the parties and did not need to be
21 brought to the Commission, I totally agree with you; but it
22 seems to me that we are being unfair to the incumbent LEC
23 placing additional cost, additional administrative burden
24 with no additional payment for the convenience of the --
25 now I agree for the convenience of the customer and for the

1. convenience of the ALEC, but it seems to me like the --
2 The ALEC has responsibility to provide quality service to
3 their customers when they sign them up, and if they don't
4 have a contractual relationship with the information
5 service providers, they need to tell their customers that
6 up front before they ever sign up instead of just
7 assuming -- or us requiring the incumbent LEC to act as
8 that intermediary with no payment from the ALEC, it seems
9 to me.

10 You're right that the ALEC will not be getting
11 any revenue as a result of this, but they are imposing a
12 cost on the ILEC, and they are not having to pay any cost
13 to them.

14 MS. NORTON: I would say that we have not
15 approved -- it is not being brought before us. They have
16 not requested that element of the contract, but I don't
17 believe there is anything to prevent -- If you adopt
18 staff's recommendation approving that, I don't believe
19 there is anything to preclude Southern Bell, BellSouth from
20 going to MFS saying, if you want me to do this, rate these
21 calls for you because that is the element involved, if you
22 want me to rate these calls, this is what it's going to
23 cost you, and they can work that out. There is nothing to
24 stop that from happening, so I don't believe there has to
25 be unrecovered costs under staff's recommendation; I'm just

1 saying it hasn't been brought to us for a decision.

2 COMMISSIONER DEASON: But your recommendation
3 doesn't say that, that they would have that opportunity to
4 do that.

5 MS. NORTON: Honestly, I didn't believe that it
6 was something that this Commission needed to address, but
7 we can certainly add that sentence in there, that Bell can
8 seek to recover those costs from --

9 COMMISSIONER DEASON: Yeah, before Bell would be
10 required to act as that intermediary and pass that billing
11 information along and carry that traffic, that there would
12 have to be an agreement as to a payment from the ALEC to
13 the ILEC, or in this case, from MFS to Bell.

14 MS. NORTON: I would suggest wording to the
15 effect that there is nothing to preclude Bell. I don't
16 know that it should be our role to --

17 COMMISSIONER DEASON: To mandate there would be a
18 charge?

19 MS. NORTON: That's right.

20 COMMISSIONER DEASON: But that Bell would be
21 within its rights to expect a charge that would cover the
22 cost, and I would think it would be very minimal, but
23 nevertheless, the cost of providing -- because it's a
24 service there; basically they are providing a service to
25 MFS.

1 MS. NORTON: That's correct. I believe that the
2 amount of traffic is going to be very, very minimal, and
3 Bell may elect the option not to worry about it at this
4 point or not until it grows, they may well want to. I
5 believe they can.

6 CHAIRMAN CLARK: I'm confused. I thought the
7 issue was what are the appropriate rates, terms and
8 conditions if any for billing, collection, and rating
9 information service traffic between MFS and BellSouth; I
10 thought we were supposed to include any rate. I thought
11 that was the issue.

12 MS. NORTON: Commissioner, it was just not part
13 of the specific proposal that MFS put to us for
14 determination.

15 CHAIRMAN CLARK: Well, let me ask you this, did
16 they submit to us and for arbitration any general billing
17 and collection? Because there will be other billing and
18 collection that the ILEC will have to do for MFS, won't
19 there be, or am I completely mistaken?

20 MS. NORTON: I don't know that you're mistaken,
21 but nothing jumps to mind immediately.

22 MR. REITH: Commissioner, if you remember, a lot
23 of these issues were negotiated out at the last minute and
24 withdrawn from the petition; so therefore, the associated
25 record with those issues were withdrawn. There were some

1 other issues that dealt with billing and collection, and
2 yeah, you are correct.

3 CHAIRMAN CLARK: Well, and wouldn't that go in
4 part of their billing and collection? We are just telling
5 them that this is one call that they are also going to have
6 to rate for.

7 MR. REITH: We would expect it probably would be
8 something incremental.

9 COMMISSIONER KIESLING: If I understand correctly
10 what you said earlier, it's staff's -- and this is kind of
11 a putting together several things -- it would be staff's
12 recommendation that it is a better approach for us to do
13 this through an incentive as opposed to a requirement that
14 they have a signed agreement?

15 MS. NORTON: Yes.

16 COMMISSIONER KIESLING: Okay.

17 MS. NORTON: Yes, and your question goes to the
18 basic, you know, do they -- you know, encouraging them to
19 get a signed agreement so that the whole issue goes away.
20 I believe Commissioner Deason's concern was with before
21 that occurs what happens.

22 COMMISSIONER KIESLING: Okay.

23 COMMISSIONER DEASON: There is no issue if they
24 have their own signed agreement.

25 MS. NORTON: Correct.

1 COMMISSIONER DEASON: If MFS has a signed
2 agreement with all the information service providers, there
3 is no issue.

4 MS. NORTON: Correct.

5 COMMISSIONER JOHNSON: I think that with respect
6 to the issue that Commissioner Deason raised about the ILEC
7 serving as the intermediary, rating the calls, or whatever
8 the jargon is that you all use, as I read this, I didn't,
9 and I didn't -- well, I know I worked on the prehearing,
10 and I didn't think it was an issue, but I didn't believe
11 that staff intended that to the extent that Bell incurs
12 costs in providing that service, that that wouldn't be
13 something that they and MFS couldn't go back to the table
14 and negotiate out what the price should be for providing
15 that particular service.

16 MS. NORTON: Correct.

17 COMMISSIONER JOHNSON: And I don't know if it
18 would be worth it or not; that is kind of how I looked at
19 it. I didn't know how this actual service would work its
20 way out but that it wouldn't be something that Bell would
21 have to say, oh, reading this order, to the extent we serve
22 as an intermediary and you don't have a contract and you
23 don't have your own arrangements set up, we have to do this
24 for you at no charge.

25 MS. NORTON: There is nothing in this

1 recommendation that would preclude them from seeking
2 recovery of those costs for rating those calls, and we can
3 put that language into the recommendation statement and,
4 hence, into the order if you believe that that would make
5 this clearer or more complete.

6 COMMISSIONER JOHNSON: And to the extent that we
7 had this as an issue, how would we have determined the cost
8 anyway? I mean did we have enough information to determine
9 what the charge or the rate should be?

10 MS. NORTON: No, ma'am, not in this record; it
11 was not an issue raised.

12 COMMISSIONER JOHNSON: Okay.

13 MS. NORTON: But we believe that they can -- if
14 they want us to, you know, to determine that, they can
15 bring it in and ask us; we hoped that they could handle
16 this.

17 COMMISSIONER JOHNSON: Let's not encourage them.
18 Let's not encourage them.

19 CHAIRMAN CLARK: Further questions on Issue 2?

20 (NO RESPONSE)

21 CHAIRMAN CLARK: Is there a motion?

22 COMMISSIONER KIESLING: I move staff.

23 COMMISSIONER JOHNSON: Second, with the
24 understanding that the language will be clarified, at least
25 as it relates to the ILEC kind of serving as the

1 intermediary, to the extent that they do have the ability
2 to charge if there are costs incurred.

3 MS. NORTON: Can I suggest a sentence?

4 COMMISSIONER JOHNSON: Yeah.

5 MS. NORTON: There is nothing here to prevent
6 BellSouth from seeking recovery of costs for rating call
7 detail for MFS.

8 COMMISSIONER JOHNSON: That sounds wonderful.

9 COMMISSIONER DEASON: Now let me ask a question.
10 What if -- I mean both MFS and Bell had plenty of
11 opportunity to negotiate this before, apparently there was
12 some impasse. What if this is our decision, we issue this
13 as our order and they can't agree on what the appropriate
14 charge is, then is BellSouth still required to carry the
15 traffic and act as the intermediary? Because if that is
16 the case, then there is no incentive for MFS to negotiate
17 because then they are going to get it anyway.

18 MS. NORTON: The only thing left for them to
19 negotiate would be the actual rate that BellSouth would
20 charge for rating, charge for rating the call detail to
21 MFS. Everything else is clear. They may not block it;
22 they must carry the call. Bell must provide it, provide
23 the rating. MFS must bill and collect it, remit the full
24 amount to BellSouth to send to the information service
25 provider. If they cannot agree, the only thing left that

1 they have to disagree on is just what does BellSouth get
2 for putting the rates on to the MAG tape.

3 COMMISSIONER JOHNSON: And if they can't agree on
4 that, do they bring that back to the Commission?

5 MS. NORTON: Yes.

6 COMMISSIONER JOHNSON: And what happens in the
7 meantime? That is a good question.

8 MS. NORTON: It would be staff's recommendation
9 that absent that agreement for that element, that that
10 should not hold them up.

11 COMMISSIONER DEASON: See, I think that makes a
12 difference, a big difference.

13 MS. NORTON: Staff believes there will be very
14 minimal traffic.

15 COMMISSIONER JOHNSON: And that sort of puts the
16 burden on the incumbent to the extent that they can't agree
17 on a price or a rate. I guess we are saying that the
18 service must be provided anyway but then the incumbent
19 would have the burden to come forward to the Commission to
20 say, This is the rate we should be charging, and then we
21 would have to resolve that particular issue.

22 MS. NORTON: Yes, and I would hope we could do
23 that very quickly, we would need to. I don't expect that
24 they can't handle it, once they have gotten the word from
25 the Commission that this will, what the Commission expects

1 them to do.

2 CHAIRMAN CLARK: You think that the sticking
3 point was handling the traffic at all?

4 MS. NORTON: That's correct.

5 CHAIRMAN CLARK: Acting as the intermediary
6 rather than the billing and collection.

7 MS. NORTON: That's correct. This was one of
8 only four issues that was not settled, and I believe both
9 parties just wanted to -- you know, the LECs don't want to
10 do it, and the ALECs really want them to, and it's just
11 almost not even worth negotiating -- that is the impression
12 that I received -- and just leave it to the Commission to
13 decide.

14 COMMISSIONER JOHNSON: And this may be opening up
15 a can of worms, but to the extent that there is not
16 agreement and the service, this intermediary service is
17 being provided, if the incumbent LEC did come before the
18 Commission and we were to set a rate, would that rate be
19 retroactively applied? Could they be able to then go back
20 and recoup for the services that they have provided? That
21 would get rid of the incentive. I just don't know if that
22 would be impossible to do.

23 MS. NORTON: I don't know. If they wanted that,
24 they could ask for it, but I don't believe it would be the
25 incumbent LEC to come before the Commission; I believe ALEC

1 because they are saying the ILEC did not -- that Bell in
2 this case would not -- was proposing an unreasonable rate
3 and they couldn't agree. I believe it would be the ALEC
4 coming to us, but either way the amount of, you know,
5 whether there should be any back billing is something that
6 would have to be addressed based on the evidence in that.

7 COMMISSIONER JOHNSON: Okay. I guess maybe I am
8 still confused then. To the extent that there is a dispute
9 and they cannot reach an agreement on the rate that should
10 be charged, would -- Go ahead.

11 MS. NORTON: This is not -- my understanding of
12 what we are discussing here is simply the rate that Bell
13 would be able to charge MFS for putting rates on each of
14 the calls to give that back to MFS so that MFS could then
15 bill and collect from the customer. MFS does not share
16 in -- under my recommendation, MFS does not share in the
17 amounts involving the ISP until they have a contract so
18 that what we are discussing here is simply making sure that
19 Bell gets to recover its costs for providing the rating
20 information to MFS.

21 COMMISSIONER JOHNSON: And I think I understand
22 that part, but if I'm still confused, you can clarify this
23 for me. So to the extent that they are negotiating what
24 that simple rate may be based upon whatever BellSouth's
25 costs might be and they cannot reach agreement but MFS

1 still needs to have the service provided, would Bell have
2 to offer them -- provide that service and not be paid while
3 they still have this dispute?

4 MS. NORTON: If MFS could keep track and Bell
5 could keep track of the number of calls on the MAG tape, it
6 wouldn't be a difficult thing. I would think that that
7 wouldn't be an insurmountable problem. I do believe they
8 should be able to work it out.

9 CHAIRMAN CLARK: What is the additional cost to
10 BellSouth? Listening to you, it would seem to me that the
11 only additional cost is going to be sending the rating
12 information to MFS.

13 MS. NORTON: That is what we are discussing here.

14 CHAIRMAN CLARK: And I wouldn't imagine that
15 would be too significant.

16 MS. NORTON: I don't believe it would be.

17 COMMISSIONER DEASON: What about the revenue
18 stream itself, how does it flow? The billing information
19 is passed to MFS. MFS bills its customers, collects that
20 money from its customer, submits that to BellSouth, and
21 then BellSouth in turn submits that to the information
22 service provider and keeps whatever commission or
23 whatever --

24 MS. NORTON: Under the terms of the signed
25 agreement.

1 COMMISSIONER DEASON: -- is in the terms of their
2 contract?

3 MS. NORTON: Correct.

4 COMMISSIONER DEASON: So there is, not only just
5 sending of information, there is the receipt of revenue
6 from MFS?

7 MS. NORTON: That's correct.

8 COMMISSIONER DEASON: There could be
9 uncollectibles involved in that process as well,
10 potentially?

11 MS. NORTON: Yes, and that Bell's contract covers
12 that. MFS wanted to be able to deduct for uncollectibles,
13 but if we don't allow them to collect absent their own
14 contract, that issue goes away for that.

15 CHAIRMAN CLARK: You mean BellSouth will be able
16 to -- even if it is an MFS uncollectible, they would be
17 able to deduct for that based on their contract with the
18 ISP?

19 MS. NORTON: BellSouth's contract with the ISP
20 does not at this point contemplate that. They would have
21 to work that out, but I believe that --

22 CHAIRMAN CLARK: Robin, the reason I think it's
23 only the rating information that is being sent is because
24 once they send that rating information, MFS looks like any
25 other customer to them sending in money, I mean just like

1 an individual local exchange customer, and I don't see why
2 that -- because it's coming from MFS to BellSouth so
3 that -- and then once it gets there, it's the same to them
4 as if it had come from an end-use customer; so that is why
5 in my own mind I have concluded that the only incremental
6 cost to BellSouth is that sending that rating information
7 to MFS, which they wouldn't do to their own customers; is
8 that correct?

9 MS. NORTON: I didn't understand the last
10 sentence, which they wouldn't do to their own customer.

11 CHAIRMAN CLARK: Incremental cost for providing
12 the service to MFS is with rating it and sending it to MFS.

13 MS. NORTON: That's correct.

14 CHAIRMAN CLARK: Because if the particular
15 customer who made the call was BellSouth's customer, they
16 wouldn't be sending the rating information to them, they
17 would be billing them.

18 MS. NORTON: That's correct.

19 CHAIRMAN CLARK: There has been a motion and a
20 second.

21 COMMISSIONER JOHNSON: And a second.

22 CHAIRMAN CLARK: And you agree with that
23 explanation?

24 COMMISSIONER KIESLING: Yes.

25 CHAIRMAN CLARK: Okay. There has been a motion

1 and a second. All those in favor say eye.

2 (AFFIRMATIVE INDICATIONS)

3 CHAIRMAN CLARK: Opposed, nay.

4 COMMISSIONER DEASON: Nay.

5 CHAIRMAN CLARK: Issue Number 4.

6 MR. CHASE: Commissioner, Issue Number 4

7 addresses the prices for unbundled loops. The parties have
8 agreed to the type of loops; the only disagreement is what
9 shall be the prices. Because the pricing portions of the
10 FCC order is stayed, staff is presenting a two-part
11 recommendation, one based on the Act and one based on the
12 Order. Based on the Act, staff recommends setting
13 permanent loop rates that are based on BellSouth's TSLRIC
14 cost studies, and these include some contribution to joint
15 and common cost. On the other hand, if the stay is lifted,
16 we believe that we must follow the FCC's order and rules,
17 and we recommend interim loop rates based on the FCC's
18 proxy, and those rates should be deaveraged into geographic
19 zones. We recommend that these zones are the same zones
20 that are currently in BellSouth's special and switched
21 access tariffs; however, we are not recommending that the
22 actual rates differ in each zone because there is not
23 proper cost evidence in the record so that we could
24 properly do that, so we just propose that the rate is the
25 same in each zone. And that is under if the stay is

1 lifted, so there is the two parts. Do you have any
2 questions?

3 COMMISSIONER KIESLING: Where does this
4 additional sentence go?

5 MR. CHASE: Okay. Yes, we also want to clarify.
6 If the stay of the Order is lifted, since we are
7 recommending interim rates requiring BellSouth to file
8 TELRIC cost studies, so in the second paragraph under the
9 first set of rates, the next to the last sentence ends
10 with, "stay for evaluation by the Commission," if we could
11 insert the language that I've passed out, and I'll go ahead
12 and read it into the record. "BellSouth should provide
13 data with its TELRIC cost study that identifies the key
14 cost drivers, contains a description of the extent to which
15 each key cost driver varies by such factors as density and
16 distance and estimates how the incremental cost would vary
17 due to these factors." That is simply a clarification of
18 what we are looking for when they file these TELRIC cost
19 studies.

20 CHAIRMAN CLARK: Questions, Commissioners.

21 COMMISSIONER JOHNSON: I had some questions
22 starting at the last of that, the recommendation on the
23 geographic deaveraging. Staff states that the federal law,
24 and I guess the FCC rule would provide for, or would allow
25 for geographic deaveraging, but in our recommendation we

1 state that there wasn't enough evidence in which to -- or
2 to determine what the deaveraged rates would be. My
3 concern or my question is what if there had been? What if
4 the evidence was clear and what if we did have it in the
5 record, would we be recommending that we deaverage the
6 rates?

7 MR. CHASE: Under -- if the Order is continued
8 stayed, we would be under our interpretation of the Act,
9 and I believe that if we had the appropriate information,
10 we could recommend deaveraging, but I really haven't --
11 There was testimony where BellSouth argued against it
12 because of other reasons, such as how the, they
13 currently -- the pricing for their retail customers and
14 some other concerns, so those would have to have been taken
15 into consideration more if we believe we had the proper
16 information to deaverage.

17 COMMISSIONER JOHNSON: And I was just wondering
18 directionally where we were going with this because I know
19 you stated that under the law or under the FCC rules we
20 could deaverage the loop prices, but if we were to do that,
21 I was very sensitive to BellSouth's argument with respect
22 to the retail pricing practices.

23 MR. CHASE: Right.

24 COMMISSIONER JOHNSON: And I understand -- in
25 our, I think in that same section, we stated that Bell tied

1 their argument to the fact that we have price caps, and
2 they would want to do some rate rebalancing if we were to
3 decide to use a geographic deaveraging; and I understand
4 our response was that, sure, there are price caps but you
5 all could come back to us, and if you could demonstrate
6 that there were some negative impacts, that perhaps the
7 Commission could do something about those price caps. That
8 was kind of said pretty casually to me, and I didn't know
9 if directionally that is where you all were headed, if it
10 was something that you thought, well, if there was enough
11 evidence in the record, we would support deaveraging,
12 geographic deaveraging just as a concept, or if it was --
13 and that we weren't sensitive to the other arguments or
14 what. I just wanted a little discussion on that point.

15 MR. CHASE: Yes, we did discuss that section of
16 the Florida statute that allows the local exchange
17 companies to come back if they believe there has been
18 changed circumstances, so that they would be able to modify
19 their rates that are currently capped. And the reason I
20 believe we brought that up was because -- I mean I think
21 generally we believe that all the rates should be based on
22 costs, and if there is evidence that shows us that costs
23 differ per geographic zone, then that would lead us to
24 believe that we need to base the rates on that; and then,
25 you know, we come in -- and then we come into the problem,

1 well, they are capped; and so we wanted to say, well, it's
2 not just a done deal that, well, if we did this, then
3 BellSouth would not be able to do anything because they're
4 currently under a price cap regulation. And we just merely
5 wanted to say, well, there is some type of out for them to
6 bring and show that there are changed circumstances.

7 MR. D'HAESELEER: Commissioners, we have had no
8 meetings and discussions that I would be in a position to
9 tell you that staff has formulated some kind of policy on
10 this deaveraging. There are a lot of things to consider,
11 but philosophically, if you believe in economic conditions
12 driving markets, then eventually it makes sense; it's a
13 question of timing and all the other factors. So I
14 couldn't tell you right now that we have formulated a
15 position staff wise on what direction we would recommend.

16 CHAIRMAN CLARK: Well, it may not be our decision
17 ultimately.

18 MR. D'HAESELEER: Right.

19 CHAIRMAN CLARK: I mean if the ALECs come in and
20 they are not restricted in any way and they deaverage, then
21 there is -- at some point we are not going to want to
22 impose a restriction on the ILEC that isn't on the ALEC,
23 and it seems to me the market will --

24 MR. D'HAESELEER: Right, but the point is we
25 haven't formulated any position on this topic. I mean I

1 would be lying if I said there wasn't any discussion, but
2 to say that the division has formulated a policy and this
3 is the way we are going to try to drive things, the answer
4 is we haven't done that.

5 COMMISSIONER JOHNSON: Okay. I think it is a
6 legitimate issue to start exploring and combined with the
7 issue of deaveraging the loop prices. I think there is
8 some merit, or at least some consideration should probably
9 be given to the retail pricing practices for the basic
10 local exchange services, so those two issues to me are
11 somewhat tied together and should be -- we should remain
12 mindful that that at least may be an issue that needs to be
13 explored.

14 MR. CHASE: Right. I think that we just -- since
15 the FCC order, you know, came out and really required it,
16 it just brought it to light that we had to address it and
17 we just, we really haven't been able to make a decision, or
18 there is just not enough evidence to do that at this time.

19 CHAIRMAN CLARK: I wanted to ask about the
20 difference between TELRIC and TSLRIC and what the FCC has
21 recommended and what we are recommending. Does it boil
22 down to the notion of whether you start with what they call
23 scorched node or not?

24 MR. CHASE: I believe that that is one of the
25 major differences that we see between the TELRIC and the

1 traditional TSLRIC type studies that we have looked at
2 because it just -- it just envisions that the wire centers
3 are in place, and then anything else could be changed,
4 including technologies, routes to the customers and
5 everything. Whereas, TSLRIC is looking more at the LECs,
6 the way they are currently employing their technology and
7 the way they would do it in the future with replacement
8 technology.

9 CHAIRMAN CLARK: Let me ask legal staff
10 something. Do you think that both the TELRIC, which the
11 FCC has recommended, and the TSLRIC in fact comply with the
12 law? I guess I don't really care if the TELRIC does right
13 at this point, I really care if the TS -- what we are
14 recommending complies with the federal law.

15 MS. BROWN: Yes.

16 CHAIRMAN CLARK: Okay. In my mind I've sort of
17 concluded that the difference is that staff's
18 recommendation sort of puts everybody on an equal footing
19 in terms of providing service to local exchange customers
20 so that their basic costs will be the same, whether the LEC
21 serves it or the ALEC serves it; there ought to be that
22 sort of symmetry I guess. And what the FCC's
23 recommendation does is sort of puts aside what exists
24 beyond the central offices.

25 MR. CHASE: Right.

1 CHAIRMAN CLARK: And says if you had to do it, if
2 you could do it again now, how would you do it? And to
3 that extent, it probably results in a lower rate. In fact,
4 it matches what any new entrant would incur in putting in
5 their system; and to that extent, what the FCC has done
6 does not encourage a facilities-based competition; is that
7 correct?

8 MR. CHASE: That could be -- I mean I could see
9 that argument.

10 CHAIRMAN CLARK: I mean don't be concerned that
11 you're disagreeing with me. I'm really trying to sort this
12 out and get a good handle on where we differ, why, and what
13 is going to be a good policy to follow to encourage both
14 resale and facilities-based competition.

15 MR. CHASE: I think if you look at the TELRIC
16 where you take the scorched node approach and it's looking
17 at, you know, how would anybody, the incumbent LEC or a new
18 entrant build their facilities today, and if that is a
19 lower cost than is currently out for the LEC's facilities,
20 then I could see that the -- if we went with the TELRIC,
21 then that might discourage the -- I mean I'll agree, I
22 think it would discourage facilities-based competition to a
23 degree, but I think it comes down to the new entrant making
24 that business decision. Does it cost me -- if I have to
25 buy it from the LEC at LEC's current, say, TSLRIC, the way

1 we have gone in the past, but I'm more efficient and I can
2 build it myself, then I might -- then I would provision the
3 facilities myself. Whereas, if the LEC is required to give
4 it to me under this TELRIC scorched node, then why -- that
5 would presumably be the same, that I could build it for
6 myself, then why would I want to build it.

7 CHAIRMAN CLARK: Take the risk?

8 MR. CHASE: Right, take the risk, so I can see
9 that. But I think it comes down to, you have to look at an
10 average situation where it's really like a purchase or
11 lease-type decision in the business market where, you know,
12 in some areas they would definitely say, well, maybe there
13 is only a hundred loops, but we definitely have some
14 customers out here. We might be able to build it ourself
15 cheaper than buying it from the LEC, but it just doesn't
16 make sense. It's just not -- and there is just not enough
17 numbers.

18 CHAIRMAN CLARK: You mean there may be other
19 considerations that even though that it may be cheaper to
20 get it from the LEC that there are long-term and other
21 considerations that tip that balance?

22 MR. CHASE: Yes.

23 CHAIRMAN CLARK: And have them believe that it
24 would be better to put in their facilities?

25 MR. REITH: I think it's definitely a long-term,

1 short-term issue also, yeah.

2 MR. D'HAESELEER: Commissioner, I want to make
3 sure that we -- at least that you know where I'm coming
4 from. TSLRIC and TELRIC are different concepts, but I can
5 get you to the same place by the percent of joint and
6 common costs I'm going to add onto it for pricing. So what
7 it really always amounts to is the bottom line, and that is
8 the pricing.

9 CHAIRMAN CLARK: Well, let me ask you this, TS
10 and TELRIC are not really different concepts, I mean isn't
11 that what the order said? It's just that in fashioning
12 what they thought TELRIC was that you should use the --
13 The real difference is scorched node variable.

14 MR. CHASE: Yes, it's really the difference in
15 the inputs, you know, what exactly are you putting into
16 that cost study.

17 CHAIRMAN CLARK: I see your point, Walter; I
18 don't take issue with that.

19 COMMISSIONER DEASON: Well, that brings me to the
20 question that I have, and I'm looking at page 14 of the
21 recommendation, the first full paragraph under the heading
22 there and the last sentence, it says that BellSouth asserts
23 that shared and common costs are not included in the cost
24 studies. Now that's Bell's TSLRIC cost studies?

25 MR. CHASE: Yes.

1 CHAIRMAN CLARK: Now in your recommendation,
2 though, you are -- the rates you are recommending are based
3 upon that cost study, but you indicate that your rates do
4 include contribution towards joint and common. Now how is
5 that? If you're recommendation, based upon their study,
6 and they say their study doesn't include that --

7 MR. CHASE: That's the difference in rate and
8 cost. That statement I believe on 14 is saying that their
9 cost numbers do not include shared and common costs, where
10 what I'm recommending is base our rate or price on that
11 cost number and put it above cost so that you can capture
12 some of those shared and common costs that are not included
13 in their cost number.

14 COMMISSIONER DEASON: So your rate is above what
15 their cost study says but your rate is lower than what they
16 recommended based upon their cost study?

17 MR. CHASE: Exactly.

18 COMMISSIONER DEASON: So you are recommending
19 less contribution than what they were suggesting?

20 MR. CHASE: Yes.

21 COMMISSIONER DEASON: I have another question,
22 and that pertains to the scenario that you presented if the
23 stay is lifted, and I'm basically looking at the rates that
24 are shown on page 8.

25 MR. CHASE: Okay.

1 COMMISSIONER DEASON: And it's basically 13.68
2 which is the proxy across the board regardless of the type
3 loop which is being provisioned?

4 MR. CHASE: Yes.

5 COMMISSIONER DEASON: And we know that based upon
6 the TSLRIC cost studies that there is a magnitude of
7 difference in cost from one type loop to another. How do
8 we justify that?

9 MR. CHASE: That basically when -- under the
10 13.68, it's if the order is in effect; and the order is
11 clear that if you don't have TELRIC cost studies, then you
12 go with the FCC proxy of 13.68.

13 COMMISSIONER DEASON: Regardless of the type loop?

14 MR. CHASE: And there is language in the order
15 that discusses that these different types of loop, and that
16 the proxy should apply for these in the interim. But there
17 is also language in the Order that discusses that these
18 other types of loops, you have to do other things to make
19 them work and condition them, and that those costs should
20 be considered and paid for. and I believe that is more when
21 you are setting your final rates. But they acknowledge
22 that there are cost differences with the different types of
23 loops, it's just saying that in the interim all these types
24 of loops shall be at the FCC proxy of 13.68.

25 COMMISSIONER DEASON: Does staff think that is

1 fair? Are you saying that if the stay is lifted we have no
2 choice, we have no discretion to look at differences in
3 cost of various loops? We have no discretion other than to
4 utilize the 13.68 across the board?

5 MR. CHASE: Yes, in the interim that is our
6 interpretation of the order and the FCC rules, that we
7 don't have a choice; but we should take that in
8 consideration when developing the permanent rates.

9 MR. REITH: Commissioner, just to be clear, that
10 is if TELRIC studies are not supplied.

11 COMMISSIONER DEASON: Well, I assume that part of
12 the FCC's rationale is that it's an incentive to get the
13 studies in I suppose.

14 MR. CHASE: Yes.

15 MR. REITH: Yes.

16 COMMISSIONER DEASON: If you look at the
17 difference in the rates, I think it would be big incentive
18 to get the studies in, but some could argue that it's kind
19 of punitive too.

20 MR. REITH: I agree.

21 CHAIRMAN CLARK: I think they are arguing that.
22 Any more questions on Issue 4?

23 COMMISSIONER JOHNSON: I think I had a question.
24 Let me see if I can go back and find it. Commissioner
25 Deason might have addressed it. Let me think out loud.

1 With respect to the cost studies and going to page 14 where
2 BellSouth asserts that shared and common costs are not
3 included in the cost studies -- well, let me back way up
4 and ask the question, is shared the same as joint? Is that
5 inclusive of joint?

6 MR. CHASE: Yes. I mean I think these terms are
7 sort of tossed around loosely, so I mean I would assume
8 that, yes.

9 COMMISSIONER JOHNSON: Okay. And when we went to
10 set the price, it is consistent with both the Act and even
11 the FCC rules that when we set those prices that we can
12 include an element of joint and common costs, or I don't
13 know if you want to call it cost, but joint and -- yeah,
14 joint and common costs.

15 MS. CANZANO: Yes, and that the Act itself says
16 you may include a reasonable profit.

17 COMMISSIONER JOHNSON: That I was wondering now.
18 Is that what we did here in our calculations? Because I
19 get these terms somewhat confused. Joint and common costs
20 versus profit, I mean are those all the same thing, or did
21 we look at something and say this is a reasonable amount of
22 profit and include that, and then this is a reasonable
23 amount of joint and common costs and include that?

24 COMMISSIONER DEASON: The cost study itself has a
25 return on investment as part of -- it's classified as a

1 cost. It's like cost of capital, but --

2 COMMISSIONER JOHNSON: Oh, the cost of capital?

3 CHAIRMAN CLARK: Yeah.

4 COMMISSIONER DEASON: -- that is what profit is,
5 is cost of capital.

6 MR. CHASE: Exactly.

7 COMMISSIONER DEASON: So it's within the cost
8 study; is that correct?

9 MR. CHASE: Yes.

10 COMMISSIONER JOHNSON: Okay. Well, that helped.
11 Okay. Now on the joint and common, how do we determine
12 that contribution? And I'm just wondering that, is it
13 something that we are consistently applying? How do we
14 determine what that should be?

15 MR. CHASE: I don't think we have like a set
16 method that we put it in some kind of formula and a
17 percentage comes out, but in the past we -- in setting
18 these, like when we were here for these cases under the
19 state proceedings, we tended to include just some amount
20 above their stated cost that we believed was reasonable,
21 but there is really -- in the record and throughout the
22 proceeding, we attempted to ask the parties, you know, what
23 they believed was the reasonable amount of contribution;
24 and even they admitted that there is really no way to
25 pinpoint the exact amount for each and every service. So

1 its real discretionary in that manner, and so we just tried
2 to include enough that made us comfortable. So I mean
3 that's based on this, you know, based on this record. I
4 mean nobody was able to supply us with, that this loop,
5 should have 13.7 percent contribution or something.

6 COMMISSIONER JOHNSON: Sure. Robin, did you --
7 To the extent that, not that it has any direct bearing on
8 this particular proceeding, but as we go forward, and
9 perhaps there is nothing we can do about it, but I was
10 wondering if there was some methodology, if there was some
11 consistency to which we could apply and determine the
12 adequacy of the contribution or what portion of joint and
13 common costs should be included when we set the price or
14 rate.

15 MR. D'HAESELEER: I wish there were a formula
16 that we could apply, but this is a can of worms and really
17 has to be done almost on a case-by-case basis. Say, for
18 example, in my opinion anyway, if there were a service that
19 resellers needed, I probably would put that contribution
20 level less than another monopoly service or what have you,
21 so they are all different. So to -- you just can't apply a
22 formula and really be equitable.

23 COMMISSIONER JOHNSON: Okay.

24 MR. GREER: Commissioner, one of the problems we
25 had in the state proceedings is that if we came up with,

1 say, 10 percent across the board then you can back out that
2 from your rates and come up with your confidential cost
3 information.

4 COMMISSIONER JOHNSON: Exactly.

5 MS. NORTON: I would just add that the LECs take
6 the same approach that we do, at least to the extent that
7 it's not uniform, there is no systematized approach to it;
8 and our efforts at trying to pin them down result in about
9 the same answers we have been giving you.

10 COMMISSIONER JOHNSON: Okay. Thanks.

11 CHAIRMAN CLARK: Walter, just so I'm sure, what
12 you're saying is if there is an essential customer a
13 competitor has to have, you would put it lower?

14 MR. D'HAESELEER: Yes.

15 CHAIRMAN CLARK: Okay. Any other questions on
16 Issue 4?

17 (NO RESPONSE)

18 CHAIRMAN CLARK: Is there a motion?

19 COMMISSIONER DEASON: I move staff.

20 COMMISSIONER JOHNSON: Second.

21 CHAIRMAN CLARK: Without objection.

22 COMMISSIONER KIESLING: That was with the
23 amendment?

24 COMMISSIONER DEASON: Yes, that's the motion.

25 CHAIRMAN CLARK: Without objection.

1 MR. REITH: Commissioner, Issue 5. Staff would
2 recommend the same modification with respect to geographic
3 deaveraging when filing the cost study.

4 CHAIRMAN CLARK: Questions, Commissioners, on
5 this issue?

6 COMMISSIONER JOHNSON: Move it.

7 COMMISSIONER KIESLING: Second.

8 CHAIRMAN CLARK: Without objection, Issue 5 as
9 amended is approved.

10 Issue 16, questions on Issue 16?

11 (NO RESPONSE)

12 CHAIRMAN CLARK: Is there a motion?

13 COMMISSIONER JOHNSON: Move it.

14 CHAIRMAN CLARK: Without objection Issue 16 is
15 approved.

16 Issue 18.

17 MS. BROWN: Commissioners, Issue 18 is staff's
18 recommendation that the arbitration decisions you've made
19 here today are consistent with the terms of the
20 Telecommunications Act, and it's also designed to offer
21 suggestions for a post arbitration procedure for the
22 parties to bring to the Commission their understanding of,
23 and written memorialization of the decisions that you've
24 made here today.

25 CHAIRMAN CLARK: Questions, Commissioners?

1 COMMISSIONER DEASON: I move staff.

2 COMMISSIONER JOHNSON: Second.

3 CHAIRMAN CLARK: Without objection Issue 18 is
4 approved.

5 Issue 19.

6 COMMISSIONER DEASON: Move staff.

7 COMMISSIONER JOHNSON: Move it.

8 CHAIRMAN CLARK: Without objection Issue 19 is
9 approved.

10 Now we are on Docket 960838.

11 MS. SHELFER: Commissioners, I would like to
12 point out that we have addressed the recommendation the
13 same way we did the previous dockets regarding the Act and
14 the Order.

15 CHAIRMAN CLARK: Questions on Issue 2?

16 MS. SHELFER: Commissioners, the only portion of
17 Issue 2 that was unresolved was whether or not MFS could
18 charge Sprint for transport, and it's staff's belief that
19 they cannot because they don't actually perform this
20 function.

21 CHAIRMAN CLARK: Questions, Commissioners?

22 COMMISSIONER DEASON: I move staff.

23 COMMISSIONER JOHNSON: Second.

24 CHAIRMAN CLARK: Without objection Issue 2 is
25 approved.

1 Issue 3.

2 MR. CHASE: Commissioners, Issue 3, again,
3 addresses the prices for unbundled loops as well as the
4 cross-connect element. The parties have agreed in this
5 case to use the FCC's proxy of \$13.68 in the interim until
6 Sprint/United-Centel files appropriate TELRIC cost
7 studies. The only dispute is if the \$13.68 rate should be
8 geographically deaveraged. And the other issue is what
9 should be the interim rate for the cross connect.

10 Staff recommends that the \$13.68 rate, interim
11 rate not be geographically deaveraged for the same reasons
12 as I've discussed before. We believe that there is not
13 enough cost evidence to -- in the record to appropriately
14 deaverage this \$13.68 interim rate. We also recommend
15 cross-connect rates in the interim that are based on some
16 preliminary information that Sprint provided in the record,
17 preliminary TELRIC, and we have chosen -- they gave us a
18 range, and we chose the middle ground to set as interim
19 rates until they file their TELRIC cost studies, and those
20 are on page 9 of the rec., in the rec. statement. And
21 Sprint proposed to do a true-up once these TELRIC cost
22 studies, the final ones are filed so that if the rates were
23 too high or too low that either party would make up the
24 difference.

25 Now the second part, again, is if the stay of the

1 order is lifted, then we must follow the FCC order and
2 rules, and so we recommend the \$13.68 FCC proxy for the
3 loops and that it be deaveraged, but we say that it should
4 be the same rate in each zone, and the zone should be the
5 same as, which are currently tariffed in
6 Sprint/United-Centel's switched and special access
7 tariffs.

8 Do you have any questions?

9 COMMISSIONER DEASON: Well, I guess this is kind
10 of an obvious question, is that if the order -- stay is
11 lifted the order becomes effective, we are required to
12 deaverage, and we say we are deaveraging, but the rates are
13 the same, and so the effect is not deaveraging. How is
14 that going to be contemplated as being in compliance?

15 MR. CHASE: In the order, and the rules I
16 believe, the language on the deaveraging -- Let me see if
17 I can -- I think I have it exactly. It says that we allow
18 states to determine the number of zones within the state
19 provided that they designate at least three zones, and
20 that's the three that are currently in the special access
21 tariffs. But it says, "But we require that in all cases
22 the weighted average of the unbundled loop prices with
23 weights equal to the number of loops in each zone should be
24 less than the proxy ceiling set for the statewide average
25 loop cost," the 13.68. And I think that the weighted

1 average of 13.68 across the board, it fits that --

2 COMMISSIONER DEASON: Mathematically it is in
3 agreement?

4 MR. CHASE: Mathematically it does, but we don't
5 have the evidence to properly divide it out and to get the
6 proper weighted average, so we just decided to
7 mathematically make it equal across each zone.

8 CHAIRMAN CLARK: Commissioner Deason, are you
9 sort of concerned that that is sort of saying we are
10 complying when we are really not?

11 COMMISSIONER DEASON: Well, it concerns me. I
12 agree that we do not need to start deaveraging until we are
13 absolutely sure that we have correct information and we
14 have a policy developed and we know what the path that we
15 are going down, so I don't agree that we should deaverage
16 willy-nilly; and if we have to say we are deaveraging to be
17 in compliance, so be it, because I don't think it's
18 appropriate, at this point anyway. I think there is going
19 to be ramifications that we need to study and contemplate
20 before we take such a tion, so I guess I'm in agreement
21 with the bottom line effect of the recommendation. It does
22 concern me to some extent, though, that we are trying to
23 comply and we say we are complying and it could be
24 interpreted that it is an insincere attempt.

25 MR. CHASE: Right. Well, actually in this case,

1 there is more -- there was actually more evidence presented
2 on a way to deaverage that \$13.68 rate, and that was
3 presented by MFS; and they went through a process, a
4 methodology of determining a deaveraged rate based on
5 average loop length per wire center; and they went through
6 and came out and put all of Sprint-United/Centel's wire
7 centers into three different zones, and it resulted in
8 three different rates.

9 COMMISSIONER DEASON: About 80, 90 percent of the
10 rate centers -- or wire centers, rather, were in zone 3; is
11 that right?

12 MR. CHASE: Right, and we found that just the
13 results of their attempt were observed and that we are not
14 comfortable with setting it on that, so that's another
15 reason that we recommended that.

16 MR. GREER: Commissioner, I think there is
17 language in the order that, essentially, tries to deaverage
18 based on cost; and since we don't have it here, we figured
19 this is incompliant but, you know, we may take some flack
20 over it, I don't know, but we think it's the best way to go
21 right now.

22 COMMISSIONER DEASON: Of course all of this is if
23 the stay is lifted?

24 MR. GREER: If the stay is lifted, and so we
25 should, hopefully, have information if we want to deaverage

1 fairly quick.

2 CHAIRMAN CLARK: But we would have the same
3 problem in the other docket too, wouldn't we?

4 MR. GREER: Yes. I mean the appearance could be
5 that, you know, they really haven't deaveraged, and we may
6 get something filed at the FCC saying that you all didn't
7 do what you are supposed to do, assuming the stay is
8 lifted. But I hate to do that without the cost
9 information, which I think we could argue is the way you
10 are supposed to deaverage, based on the cost.

11 MR. CHASE: And Sprint did indicate in the record
12 that, when we filed their TELRIC cost studies, that they
13 were going to have a proposal for deaveraging of the
14 unbundled loop rate.

15 COMMISSIONER DEASON: And another question I have
16 is that the cross connect, the final cross-connect rates,
17 there is going to be a true up?

18 MR. CHASE: Yes.

19 COMMISSIONER DEASON: Okay. Is there any type of
20 true up contemplated for the interim, for the loop rates?

21 MR. CHASE: No.

22 COMMISSIONER DEASON: If there are no other
23 questions, I can move staff.

24 CHAIRMAN CLARK: Well, Commissioner, I guess I
25 agree with you, but I have some concerns about what you

1 characterize as an insincere compliance.

2 COMMISSIONER DEASON: I'm not characterizing it.
3 I'm saying that someone else outside looking in could
4 characterize it such.

5 CHAIRMAN CLARK: And I would say with some
6 justification, and I'm concerned that -- is there a way
7 to -- at least in the BellSouth, if the stay is lifted, we
8 have said to them you've got to file something within 60
9 days, is that right, the TELRIC? So it would be clear that
10 it would be an interim?

11 MR. CHASE: Right.

12 CHAIRMAN CLARK: And would we require them to
13 give us a basis on which to deaverage?

14 MR. CHASE: Sprint/United-Centel in this case has
15 indicated that they would, but if we -- We would be more
16 comfortable maybe putting some similar language that was
17 added to the other rec. here so that we were assured that
18 they gave us information that we could investigate that.

19 CHAIRMAN CLARK: I guess I don't have as much of
20 a concern if it is only temporary, and that if we were
21 forced to, that we would give a good consideration to how
22 there should be a differentiation in rates.

23 COMMISSIONER DEASON: See, I'm comforted with
24 apparently there is language which requires the deaveraging
25 to be based upon cost, and if we have inadequate

1 information, cost information on the appropriate
2 deaveraging rate, deaveraged rates, you know, we can't do
3 that which we do not have information to do, so that gives
4 me some comfort.

5 CHAIRMAN CLARK: Okay. Any other questions on
6 Issue 3?

7 (NO RESPONSE)

8 CHAIRMAN CLARK: Without objection Issue 3 is
9 approved.

10 Issue 5.

11 MS. NORTON: Commissioners, Issue 5 is the
12 information services issue again. Staff's recommendation
13 is the same, and I would like to insert the changes that we
14 made in Docket Number 950757 (sic) in here and make one
15 minor change. With your permission, I'll read that.

16 CHAIRMAN CLARK: Go ahead.

17 MS. NORTON: At the last sentence of the first
18 paragraph of the recommendation statement on Page 15,
19 following the comma, the language should read, "unless that
20 carrier and the ISP have a signed agreement specifying the
21 appropriate charges." In addition, the first sentence of
22 the second paragraph, replace the first phrase, beginning
23 at the beginning of the sentence, "all local carriers who
24 have entered into arrangements with ISPs," strike that and
25 say "both Sprint and MFS."

1 CHAIRMAN CLARK: Questions, Commissioners?

2 COMMISSIONER DEASON: This is the same debate we
3 had before, and I'm not going to go over it again, but I do
4 have one question, and that was, it was in Sprint's
5 position on this issue that nothing has changed since the
6 Commission's prior decision to require any revision. I
7 just wanted to know what staff's comments were on that.

8 MS. NORTON: It's staff's opinion that the
9 Commission did not in fact rule that way in that order. We
10 did not address MFS's -- or an information service
11 provider's relationship with a LEC, or with an ALEC.

12 CHAIRMAN CLARK: Is there a motion on Issue 5?

13 COMMISSIONER KIESLING: Move it as amended.

14 COMMISSIONER JOHNSON: Second.

15 CHAIRMAN CLARK: As amended the same way the
16 other -- well, wait a minute. You've amended it -- they
17 have amended it according to the other amendments, but --

18 COMMISSIONER KIESLING: They also made one other
19 amendment.

20 CHAIRMAN CLARK: And that's with respect to the
21 rates, the rating?

22 MS. NORTON: I'm sorry, I would like to read in,
23 "In addition, there is nothing here to prevent Sprint from
24 seeking recovery of costs for rating call detail for MFS."

25 CHAIRMAN CLARK: Okay. Is there a motion?

1 COMMISSIONER JOHNSON: Yes.

2 CHAIRMAN CLARK: And a second.

3 COMMISSIONER JOHNSON: Uh-huh.

4 CHAIRMAN CLARK: All those in favor say aye.,
5 (AFFIRMATIVE INDICATIONS)

6 CHAIRMAN CLARK: Opposed, nay.

7 COMMISSIONER DEASON: Nay.

8 CHAIRMAN CLARK: Issue 14.

9 MS. BROWN: Commissioners, Issue 14 is the same
10 as the previous case.

11 CHAIRMAN CLARK: Can I get a motion on Issue 14
12 and 15?

13 COMMISSIONER KIESLING: Move them both.

14 COMMISSIONER JOHNSON: Second, both.

15 CHAIRMAN CLARK: Without objection 14 and 15 are
16 approved.

17 Thank you all very much.

18 COMMISSIONER JOHNSON: Are we finished?

19 CHAIRMAN CLARK: Agenda is adjourned.

20 COMMISSIONER JOHNSON: I did want to thank
21 staff. I think you all did an excellent job on this
22 recommendation; it was succinctly provided. And the
23 analysis, going the extra step and doing the stay, what
24 would happen if the stay was lifted or if it stayed, I
25 thought you did an excellent job. It was one of the

1 easiest and best recommendations that I've had an
2 opportunity to read and work with. And I understand that
3 the pressures that you all are under and still be able to
4 produce a work product like this is just kudos to you all.

5 COMMISSIONER KIESLING: And I would like to add
6 to that. I mean I was -- you made it easy, and I can't
7 give you a better compliment. The writing was good, clear,
8 succinct and, you know, I just want you to know that your
9 efforts are recognized and appreciated.

10 CHAIRMAN CLARK: Thank you.

11 COMMISSIONER DEASON: I would note that Walter's
12 initials are not on this recommendation.

13 MR. D'HAESELEER: On one of them.

14 COMMISSIONER DEASON: Oh, on one of them, okay.
15 50 percent is not bad.

16 CHAIRMAN CLARK: Is everybody done talking so I
17 can turn this off?

18 (WHEREUPON, THE HEARING WAS ADJOURNED)

19

20

21 * * * *

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
CERTIFICATE

STATE OF FLORIDA)
COUNTY OF LEON)

I, NANCY S. METZKE, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 6th day of November, 1996.



NANCY S. METZKE, CCR, RPR