BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. [illegible]-TL

Notice of election of price regulation by BellSouth Telecommunications, Inc., (d/b/a Southern Bell Telephone and Telegraph :

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 14

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

DATE: Tuesday, March 18, 1997

TIME: Commenced at 9:30 a.m.

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

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

PARTICIPATING:

MARTHA CARTER BROWN, FPSC Division of Legal Services.

WALTER D'HAESELEER, Director, **VONNIE WIGGINS** and **ANN SHELFER**, FPSC Division of Communications.

PHILLIP CARVER and **NANCY SIMS**, BellSouth Telecommunication, Inc.

P R O C E E D I N G S

CHAIRMAN JOHNSON: Item 14.

MR. WIGGINS: Commissioners, Item 14 is a regrouping issue that originated in BellSouth's original election of price regulation. In that order the Commission required the company to roll back the rates in Holley-Navarre, Jensen Beach and West Palm Beach exchanges to eliminate rate increases stemming from regrouping.

The company filed a protest to this portion of the order. Staff and the parties agree since the issues in this case did not involve any contested factual matters, that we will present all arguments at agenda in lieu of an evidentiary proceeding.

Ms. Shelfer will present the primary and I will present the alternative. Staff is prepared to answer any questions.

CHAIRMAN JOHNSON: We'll allow the parties to make a presentation after you make your introductions.

MS. BROWN: Commissioners, that's your pleasure. If you would prefer to hear the oral argument from the parties, we recommend five minutes.

CHAIRMAN JOHNSON: For the parties. Okay. Go ahead then, present the issues, and then we'll take up the argument with BellSouth.

MS. SHELFER: Okay. Regarding the primary recommendation, Staff believes that regrouping is an increase in price based on the statute. The statute states that when the ILEC selects caps that the rates are capped. It doesn't distinguish whether it regroups. It says that the rates are capped. And that's Staff's position, that regrouping is an increase in rates.

CHAIRMAN JOHNSON: And the alternative?

MR. WIGGINS: Regarding the alternative, we believe that regrouping is not a price increase under the election of price regulation by BellSouth that's in violation of Section 364.051 Florida Statutes. We believe there's a change in the nature of the service because the customers in the exchange that are moving from one capped rate group to another capped rate group. And these rates were in effect on July 1st, 1995.

CHAIRMAN JOHNSON: Thank you. BellSouth.

MR. CARVER: Thank you, Madam Chairman. My name is Phillip Carver and I represent BellSouth.

Our position is pretty much consistent with the Staff's alternative rec and I don't know that I'll need the whole five minutes, but I do have four points that I would like to make.

Of course, the issue is whether regrouping constitutes a price increase.

First of all, I think what -- we have to begin with is how to define a price increase. And it seems to me that a price increase occurs when the price for a particular service is raised, and that's the only thing that truly constitutes a price increase. What we have here is something that's very different.

What we have here is a preexisting rate system under which there are different categories of local service, there are different rates associated with these categories, and there are different local calling scopes associated with each category. The categories have not been changed and the prices associated with the categories have not been changed. The only thing that has occurred is that some customers have moved from one category to another category. And again, I don't believe that that constitutes a price increase. Instead, what that constitutes is a change in the type of service. And what we've simply done is applied the historical distinction between service with a smaller calling scope and service with a larger calling scope and the price changed with that.

But there is not a particular type of service with a set calling scope or with a set pattern of attributes that has changed. Instead there's just a movement from one to the other.

The second point I want to make is that regrouping is not just something that BellSouth made up. It's not something that is unique in any way. This is something that not only is long-standing, it's specifically required by Commission rule. There is a Commission rule that dictates that when customers move into what should be a different rate group, that they be regrouped. And the Staff primary rec is in effect a recommendation that you find that when we follow your rule on this point, we're also violating the statute. And I'll come back to that in a minute, but I think there is an inherent difficulty in there in putting BellSouth or any local exchange company in a position where if we regroup according to the primary rec, we're violating the statute, and if we don't regroup we're violating the rules of the Commission. I think there needs to be a consistency there.

The third point that I want to make is that if you accept the Staff primary rec, I believe that you're creating a situation in which there will necessarily be price discrimination that will violate the statute.

Now certainly with a rewrite of 364 there are a lot of different changes, but some things didn't change. For example, the provisions of 364.08, .09 and .10 did not change, and collectively what these provide is that there cannot be any undue discrimination in the treatment of customers, either in the services that they are provided or the prices that they pay, so that similarly situated customers have to be treated the same.

Now, in saying that I'm not suggesting that all customers have to be charged the same price. There are some rational reasons why they could be charged different prices. And I guess the easiest example of that is that basic local service for businesses is charged at one rate and basic local service for residential customers is at a different rate. And that's perfectly acceptable under the statute, even though the line that is used to provide these two types of service functionally is the same. The reason it's acceptable is because there's a rational basis for making that distinction. And I think that's really the test and that's really the distinction between an acceptable distinction and a form of undue discrimination and that's whether there is a true basis to distinguish between the customers.

Now, if you accept the primary rec, what's going to happen here is in some instances customers with the same calling scope will be charged different prices. In other instances customers with different calling scope will be charged the same price. So you're going to have differing treatment among similarly situated customers. And I think the question is whether that's permissible.

Our position is that it would only be permissible, that is, it would be something other than undue discrimination only if there was some rational policy-based reason to draw that distinction. And you just don't have that here. What you have basically is historical happenstance. That if one group of customers is regrouped a little before 1995 and another should be regrouped a little bit afterward, if you accept the primary rec, they would be treated differently and they would pay different rates. And again, I don't think that there is enough of a justification there to make that distinction appropriate under the statute.

And the last point that I want to make is a --

COMMISSIONER GARCIA: What would be the distinction? I mean I lose you there. What change could occur that would be unreasonable or unfair in the inverse? In other words, you're not going to regroup someone downward, are you?

MR. CARVER: Under the current Commission rules, yes, we do regroup downward, and we're required to regroup downward. So that, for example, if there's population moving out of an area and the calling scope shrinks, then they would be moved downward. And we apply that consistently. If the population increases and the calling scope increases then they are moved up or they are moved down.

And what we propose, and what we believe is appropriate under our view here, is to apply that consistently. If you accept a primary rec then you're going to have the regrouping structure as it has been for years applying to some customers, but those who should have been regrouped under the Commission's rule within the last year or two would not be regrouped.

So in other words, you would have customers who are going to be paying different prices for the same calling scope in some instances, and in other instances you're going to have customers paying -- I guess -- I'm getting confused here as I go through it.

There are two possibilities. One is the same price, different calling scopes. The other is different prices for the same calling scope and that will happen necessarily if you have a situation where some are regrouped and others aren't regrouped. And the more time that goes on without regrouping, the more you'll have that conflict arise. And again it would be permissible if there were a basis for it. Like for example, the basis for distinguishing between residential customers and business customers. But in this instance there's no reason to make that distinction. There's nothing policy-based or otherwise --

COMMISSIONER GARCIA: Has Southern Bell ever regrouped downward?

MR. CARVER: Pardon me?

COMMISSIONER GARCIA: Have you ever -- when you regrouped, have you ever gone downward?

MR. CARVER: Personally I don't know the answer to that question. I could get an answer for you, though. Be happy to do that.

COMMISSIONER GARCIA: I'd like that.

MR. CARVER: Okay.

I may have to supply that to you later but I will certainly investigate that.

The last point I want to make is just a practical one. As I understand the primary rec, it's really premised on the idea that rate regrouping is an anachronism and it is something that should no longer exist. I don't necessarily subscribe to that viewpoint. I don't think the time has come to do away with it. But even if one were inclined to do that, there are ways to approach that.

For example, have a generic docket to investigate the Commission's rule on regrouping and to look at whether it should be changed now or whether it should be changed in the future. I think that would be the appropriate action. Instead, the primary rec simply said in effect leave the rule as it is but tell parties they can't follow it because regrouping is now in violation of the statute. I don't think that's appropriate. And I also don't think it's appropriate to flash cut so that there's no more regrouping now, because for the reasons I've described, I think that necessarily creates dissimilar treatment among similarly situated customers. And I think we may have an answer to your question, Commissioner Garcia.

MS. SIMS: Commissioners, Nancy Sims with BellSouth.

We have not regrouped downward, but we would regroup downward if the situation would dictate, you know, a loss of subscribership in the area.

CHAIRMAN JOHNSON: On the last point that you raised, Mr. Carver you stated -- or maybe I was a little confused, do you believe we have the legal authority to stop this regrouping methodology and this regrouping process?

MR. CARVER: Legally I think you can. And I'm giving you my own interpretation here.

I think that the points Staff is making is that regrouping is a creature of rate of return regulation and it really has no place in a price regulation environment. And I think if you accept that, then the next step is to open a docket and to investigate how to wind it down in a way that doesn't entail discrimination toward anyone. Unfortunately -- and I think it would necessarily require a rule change. And looking at that prospectively is certainly an option. And that's a process that we would be pleased to participate in. The thing that we really object to is leaving the rule as it is but telling us to ignore it and at the same time simply instantly terminating regrouping while leaving the regrouping system that's been there historically in place, because that's what creates a differing treatment among the customers, and that's also what creates a statutory problem.

CHAIRMAN JOHNSON: So right now is it your position that although we have the legal authority to not have regrouping, we are somehow obligated anyway under the law to continue to regroup, and is that regrouping -- do we have to do that in perpetuity until we change the rule?

MR. CARVER: I think the law is that we have to regroup, so my first point is that we shouldn't be put in a position where we either abide by the statute or abide by the rule. I think there should be a consistency. But do you have to allow regrouping in perpetuity? No, I don't think so. But I think if you want to do away with regrouping, then it needs to be done on some prospective basis that ensures that all customers are created equally, and that there is no undue discrimination. And leaving the customers who have been regrouped historically where they are and abruptly stopping regrouping now I think does create that distinction.

So, again, on a going-forward basis if you want to have a docket to look at the ways in which you could do away with regrouping or restructure rates otherwise without undue discrimination I think that would be permissible. But I think the particular way that Staff has recommended you go about it, which is to simply tell us tha we can't regroup anymore regardless of the fact that it's been done up to now, that's what causes the legal problem.

CHAIRMAN JOHNSON: If we were to make a determination that the law did not allow regrouping any more, the law that was passed in '95, but we had a rule that was counter to the law, what would we do? Is the rule preempted and would we have to follow the law, or do we say, "Huh-oh, we have a rule that violates the law but we've got to apply this law anyway?"

MR. CARVER: I think you change your rule.

CHAIRMAN JOHNSON: In the interim what do we do? If there's a law out there that is in effect, and that our rule violates the law, what would we do in the interim? Do we keep applying it or do we --

MR. CARVER: I think if at some point you determine that your rule violates the law, that they are in conflict, then I think you have to follow the statute and I think you have to do away with your rule as quickly as you can if it's the view of the Commission that it conflicts with the overriding statutory authority. So if that's the view, then I think you should move through that process quickly.

But the other thing I also want to emphasize is that there's also a statutory mandate not to unduly discriminate. And I think if you're going to do away with regrouping in the future, you have to do it in some ways so that all the customers who have been regrouped are going to be treated the same as everyone else.

COMMISSIONER GARCIA: I thought the law, in terms of discriminate, was between the carriers?

MR. CARVER: No. 364.8, .9 and .10 basically say that similarly situated customers have to be treated the same in terms of the services that they are offered and the prices that they are charged. So I believe that if they are treated differently, to go back to my earlier example with residential and business customers, there has to be a determination by the Commission that there is a rational basis for that distinction. Because if customers are indeed similarly situated then they can't be charged different prices.

COMMISSIONER GARCIA: Could Staff address that?

MS. BROWN: Yes, Commissioner. The primary recommendation doesn't agree with that perspective.

First of all, we don't interpret those three sections of the statute to mean that all similarly situated customers have to be treated the same. Those sections of the statute as we interpret them today, considering that the law has changed, say that similarly situated customers cannot be unduly discriminated against, and then it becomes a question of what is undue discrimination. We don't believe that it is undue discrimination when a statute changes and says rates don't go up after this point, that the effect of that is that customers who were regrouped earlier than the effective date of the statute, then are being charged a higher price. We don't consider that to be undue discrimination since it is the statute and the law that created that price descrepancy.

Eventually when rate regrouping goes away all together, which we think it should do now, there will be many customers who will be similarly situated who will be paying different prices.

So we think the focus of the analysis of undue discrimination in this competitive world is different than it was for us when we were dealing with the regulatory environment, where in a complete monopoly situation, then customers who were in the same place had to pay the same. In this environment that's not necessarily true. And I guess the key for me is that it is not unreasonable discrimination when the statute is what has required this discrepancy.

I have a couple of other comments to make if --

COMMISSIONER GARCIA: I'd love to hear them, Ms. Brown.

MS. BROWN: All right. Let me see. The conflict between the statute and the rule. Clearly the statute controls in that circumstance. We are in a situation in communications where we are changing a lot of our rules, and revising and revamping them in order to be consistent with the new law. That's been going on for some time.

COMMISSIONER GARCIA: Just for my understanding, though, these rate groupings -- obviously they were but I just want to do it -- were created under a rate of return regulation.

MS. BROWN: Yes.

COMMISSIONER GARCIA: And were they part of a whole proceeding, rate proceeding, or were they created after and added into rates? How precisely were they created and how were those distinctions -- and what was the last --

MR. BROWN: I'll let the local historian answer that question for you.

COMMISSIONER GARCIA: Mr. Graham Bell.

(Laughter)

I also wanted to add to that, when was the last time we looked at these groupings?

MR. D'HAESELEER: The answer to the last question is many years ago at one time the Commission investigated the feasibility of having an uniform rate grouping system throughout the state, and it turns out that at that time they were concerned about revenue requirements and we never could design a statewide system that would produce the revenues that were needed and at the same time have a grouping plan that made sense.

Historically it's interesting that this is a discrimination issue because I thought when it was proposed it was a revenue enhancement type of argument. But it was done in a generic proceeding to adopt the grouping rules.

Now each company has a different grouping plan. They are not all the same.

COMMISSIONER GARCIA: When was the last time we looked at them for Southern Bell?

MR. D'HAESELEER: It has to be in the

early -- well, no, I guess it would be in the '80s; probably mid '80s.

What's interesting about all of this argument is that they didn't say anything about Miami, and that's top of the rate groups and it's capped. Now, Miami could triple in population, theoretically, and they couldn't increase the rates.

COMMISSIONER GARCIA: Walter, don't make me vote against it because of Miami, it creates problems for me.

MS. BROWN: Commissioners, if I might just go back to the question of statute versus rule. Where the rule was created in a different regulatory environment than the statute that exists now, we must apply the statute and then either not apply the rule if it's not applicable anymore, or go through our procedure that we're going through to weed out the rules that are no longer necessary, no longer applicable.

I don't think that we need to open up a big generic investigatory docket about whether we need to keep rate regrouping now that the law has changed and we're into this different environment, but it could be that we would need to do something.

COMMISSIONER GARCIA: Is that what

Mr. Carver was asking for? That if we didn't vote -- that if we went with primary that's what we have to do?

MR. CARVER: No, not at all. What I was trying to say is I think the primary seems to be premised on the notion that rate grouping has no place in the current environment. And I disagree with that, by the way. I was just saying that if you accept that, the appropriate way to deal with it would be prospectively in a generic proceeding as opposed to having the sort of flash cut that's been recommended in the primary. But I would not advocate that because I believe at this time the rate grouping structure continues to make sense and we should be allowed to regroup.

CHAIRMAN JOHNSON: Could you expound upon that? Why do you believe in the current environment rate regrouping is still a good idea?

MR. CARVER: I think a lot of it has to do -- there's on historical concept there of value and the notion is the larger the calling scope the more valuable the service, and, therefore, the higher price. So customers in larger areas pay more; customers in smaller areas pay less.

And again, it kind of loops back to the

discrimination point I made early. There may be some point in the future at which BellSouth or other companies under price regulation will want to redo the rates and charge more consistent rates. But we can't do that now. And to the extent that we have this historical structure in place where people pay according to a notion of benefit that's been endorsed by the Commission, I think it's appropriate to apply that consistently.

COMMISSIONER GARCIA: Mr. Carver, what would happen if tomorrow AT&T decided to provide local service in Dade County and you lost half your customers? Would thereby your rate grouping, you'd be forced to drop rates for everyone in the Dade County area which have the higher rates?

MR. CARVER: Well, that's a tough question to answer off the top of my head.

I think competitively, yeah, we probably would have to drop rates. But I think if we thought that at that point -- well, if at that point we needed to do away with the rate regrouping structure and there was a Commission rule that prohibited it then we would need to come back to the Commission and ask us for relief that would allow us to make that decision.

COMMISSIONER GARCIA: Let's say we voted for the alternative today, and then tomorrow they started offering local service in Dade County.

MR. CARVER: Yes.

COMMISSIONER GARCIA: And 50% of the people went to AT&T. Would that mean that then the rate grouping that those people are at, the customers you kept, is incorrect?

MR. CARVER: I think I have a policy witness who wants to take that question.

MS. SIMS: Commissioners, the rate groupings are based on the total number of subscribers -- total number of people that the customer can call, so it wouldn't make any difference whether they were served by AT&T or by Bell, unless for some reason they determined that AT&T's customers were going to be long distance for some reason.

But it's the total number of telephone subscribers they can call, whether they be AT&T's, ours or MCI's; it's the whole local exchange area that's encompassed. It's not done by the total number of our subscribers, it's the total number they can contact.

MR. D'HAESELEER: I would disagree with that.

CHAIRMAN JOHNSON: Walter, hold on for a

second.

If it is, that raises an interesting point because I was thinking about the same thing in terms of the competitive market. But if it is based upon the total people, or the customers in that scope, are you -- and someone else actually would have those particular customers, why should you get paid more for a value of service and its somebody else's customer base?

You're saying look at the calling scope, here's the value that we have all of these customers and here's your calling range, why shouldn't AT&T get the benefit of that if they have 75% of your customers? Why should you be paid that extra incremental amount when you may have other providers actually providing the service.

COMMISSIONER DEASON: The same reason we've slaved over interconnection in arbitrations for the last six months, and that's because we've got an ubiquitous telephone network where everybody can call everybody else, and it would depend upon the way AT&T defined their local calling area. But if they mimicked BellSouth's and had the same local calling area, the customers would have the same base of people that they could call, the same number of customers they could call toll free, and that's the basis of the grouping. It doesn't matter if they are an AT&T customer or BellSouth customer, if they can call each other on a toll free basis they are considered part of that rate group, and that's how it would be based.

CHAIRMAN JOHNSON: But who should get the benefit of the $1.50? Should it be BellSouth? Because they're saying this argument --

COMMISSIONER DEASON: We don't set AT&T's rate, they'll set that rate themselves. We're talking about what rate BellSouth would be able to apply. And it seems to me under a rate group situation -- and we're doing this under a situation of capping and whether BellSouth has the authority when a group goes up to increase that, and whether there's any discrimination. It seems to me if they want to respond to competition, as long as there's not undue discrimination, and that's something as Ms. Brown indicated, something we'd have to define, they'd be free to lower rates in response to competition as long as there's not undue discrimination. The issue before us today is whether they can increase according to a regrouping plan, and whether that is consistent with the interpretation of the new law.

CHAIRMAN JOHNSON: Any other comments?

COMMISSIONER CLARK: Madam Chairman, I would just point out that at the time we voted on this I dissented because I thought this was a change in service, not in rates. And it seems to me that viewpoint has the added advantage of not raising the issues of whether the law results in discriminatory treatment of customers. Everybody who has the same calling scope will have the same rates, and it won't matter in terms of the timing of it.

MS. SHELFER: Commissioners, whenever you say "calling scope" I think there's a difference. The calling scopes will vary from exchange to exchange.

COMMISSIONER CLARK: Right. It's not calling scope, it's the number of customers --

(Simultaneous conversation)

MS. SHELFER: -- it's the number of access lines. And so Mr. Carver used that, too. The calling scopes are not the same. Miami certainly has a different calling scope than someone else in rate group 12 within Florida. They may can call the same number of access lines but the services vary, depending on your calling scope, from exchange to exchange and that would determine the regrouping.

The other thing I'd like to point out as far as discriminatory, the customers within the exchange all pay the same rate. There is no discrimination within the exchange. So if one exchange regrouped and the other didn't, discrimination would not occur among customers.

And one other thing I wanted to point out was that the statute also took away the Commission's authority to order EAS. One could argue that that would be discriminatory. There are customers now that cannot come to the Commission and asked for extended area service that used to could. We still have our rules that require -- that state that customers can come in and petition or either file a resolution requesting the Commission to investigate EAS. Well, that doesn't happen either but the rules are still there.

COMMISSIONER GARCIA: Let me bring that -- and maybe, Martha, you can address this point. That's the one problem I have with this. Is that the legislature did not directly address this. In EAS they did. They basically said we're going to put the rates at a certain level and they didn't address this grouping issue which already existed, which I think lends some credence to Mr. Carver's argument saying it was there, it should stay there. It was built into the system. And we're just simply accessing that.

In terms of EAS it said to us that's not in. That's not part of what the Commission can do from now on. However, the rate regrouping it could.

And I wanted to -- tell me why I'm wrong or why Mr. Carver's wrong specifically to that. Because had the legislature believed it wanted to freeze rates and not include the regrouping concept, wouldn't they have addressed it?

MS. BROWN: I wasn't there, and have not looked a lot at the legislative history.

The way I would interpret the fact that they don't specifically mention it is that they assumed they did not need to. In the section that they used on -- when they said rates will be capped, they meant all rates. And if they had meant -- except not rates that are established by regrouping, they would have put it in. But that's about the best that I can tell you. Maybe Walter can --

MR. D'HAESELEER: Commissioner, being perfectly blunt, there was a big issue with the LECs EAS, historically, so, you know, it was an issue that legislators were even aware of and had been involved in, where regrouping was never that big a deal. So it would surprise me that legislators were even aware of it unless somebody pointed it out to them. Where EAS

I'm sure a lot of them were familiar with the problems.

CHAIRMAN JOHNSON: Walter, I interrupted you a little earlier. You were going to respond to -- I think Bell's argument that this is measured by number of customers.

MR. D'HAESELEER: Right. You have to remember it's not in the rules the grouping bands; that is in the individual company's tariffs and they were approved for Southern Bell. So I don't think it makes any difference how many customers AT&T has, what matters is the number of customers that BellSouth or Southern Bell has. And I guess in your example, if they lost 50% of the subscribers in Miami and you follow this thing to its logical conclusion they would probably have to reduce rates because they would be in a different grouping band.

COMMISSIONER DEASON: I think we're raising an issue now that's not before us as to whether if we're going to keep -- allow grouping and whether we're going to -- how we're going to determine when a company loses enough customer base that would otherwise fall in a lower group, how we're going to apply that. I think we've probably got a difference of opinion.

The issue in front of us today as to whether the company -- if they are inclined, if they can increase rates -- and I don't want to label that increasing rates because I don't think it's a rate increase. I think it's applying the appropriate rate to a customer who is in a different rate class and rates are not being increased and is not in violation of a statute. But that is the limited issue in front of us. I don't think it's a question of whether we need to retain groupings and regroup or it's a question of how we respond to competition if there is competition in an area, and that question is not in front of us about an a company losing enough customer share that their own subscribers would otherwise fall in a different rate group. I think the question is more limited than that. I think that's what we have to answer.

MR. D'HAESELEER: And I agree with you. The rest is probably rhetoric, that, you know, through out.

COMMISSIONER GARCIA: I brought it up. Clearly Walter is not doing it for the benefit of his argument. I'm the one that brought up the issue.

CHAIRMAN JOHNSON: Let me ask Ms. Shelfer another question. With the respect to the way that

Issue 1 is framed, it's my understanding, or at least the analysis -- when I read your analysis I hear you saying that rate regrouping should be a thing of the past and that the issue we're addressing now is whether or not under the new law we should be regrouping at all. Is that -- whether legal or Staff's analysis? Either legal or technical Staff.

MS. SHELFER: I'm not sure I understand your question. Could you repeat it, please?

CHAIRMAN JOHNSON: A question of whether or not we should be regrouping -- your question or your issue seems to me to suggest that we should not do rate regrouping under the new law, period. Is that true?

MS. SHELFER: I would say based on the statute when it says that the rates are capped they are capped, so regrouping -- they are there. The prices are capped, but as far as being able to regroup I think it's a violation of the statute. The price increase, the customer sees the price increase.

CHAIRMAN JOHNSON: So you think our rule violates the statute and that the rule should be either changed, or omitted or revised?

MS. SHELFER: The rule would only violate it for price cap LECs. You still have some rate of return LECs.

CHAIRMAN JOHNSON: I see. So it at least should be revised as it relates to price cap LECs, and you get there under your interpretation of what the law requires.

MS. SHELFER: Yes, ma'am.

MR. CARVER: If I could just add one thing on the increase issue, I think we spent a lot of time talking about the issue, too, in the docket which is the discrimination issue. And I just want to go back to the increase issue because I think that's really the threshold issue and probably the most important one; the question of whether changing a customer's rate as a result of moving from one group to another is a price increase.

And I think, again, there is a historical structure in place whereby the Commission has recognized that different rate groups have different charges associated with them. So when a customer moves from one rate group to another rate group, the nature of their service changes. By the Commission rules that is enhanced version of the service and they are moving from a a less valuable version of the service to a more valuable version of the service. And I think by definition that can't be a price increase. Again, I believe that a price increase is when you have a particular service and the service does not change at all but the price associated with that service increases.

Now, to apply that to our situation, let's say if you had five rate groups and we raised the price for each of those five rate groups, then that would certainly be a prohibitive price increase but that's not what we have here. We have rate groups that are defined the way they've always been defined; the scope hasn't changed, the price that it is associated with has not changed. Customers have simply moved from one to the other. And I think to argue that that's a price increase, is necessarily to argue that the Commission is wrong in approving the rate regrouping structure that's always been there. But the point is that exists, and a determination has been made in the past that that's based on value and therefore those constitute different categories of service.

And if you accept that, then it's just not a price increase because it's not an increase in a given service; instead it's a change from one variation of local service to another variation.

MS. BROWN: Commissioner, if I might address that point, it isn't that the Commission has been wrong in establishing rate regrouping or in determining that there is an increased value of service in being able to call more access lines in order to protect the revenue situation of regulated monopoly companies, it's just that the world has changed and the old -- I think it's difficult, probably, to put -- to put ourselves in that perspective a little bit because they are so used to the old ways of looking at things. But a price increase in a competitive world is a price increase, however you call it, and value of service is maybe not the key anymore; cost of service is the key. And these are the phrases and the ways of thinking that the statute was trying to get at when it established the rate cap. That's all.

CHAIRMAN JOHNSON: Thank you.

COMMISSIONER DEASON: I'd like to make a motion.

CHAIRMAN JOHNSON: Are we all finished? Vonnie, did you have something you wanted to say. You looked like you did.

MR. WIGGINS: I just tend to disagree. And I disagree because until rate groups as a whole, the system that we're using, goes away, and we do not know what competition is going to bring, I think it's a change in the nature of the service. Because you're going from one capped rate group to another capped rate group. The rates for these groups have not changed since July 1st of 1995.

CHAIRMAN JOHNSON: Thank you.

COMMISSIONER DEASON: Are there other questions. I move we approve Staff alternative to Issues 1 and 2.

COMMISSIONER CLARK: Second.

CHAIRMAN JOHNSON: There's been a motion and a second. Any further discussion? Seeing none, all of those in favor signify by saying "aye."

COMMISSIONER CLARK: Aye.

COMMISSIONER GARCIA: Aye.

COMMISSIONER DEASON: Aye.

COMMISSIONER KIESLING: Aye.

CHAIRMAN JOHNSON: Opposed "nay."

CHAIRMAN JOHNSON: Is there another recommendation?

COMMISSIONER KIESLING: I move Staff primary.

CHAIRMAN JOHNSON: Is there a second?

COMMISSIONER GARCIA: I'll second.

CHAIRMAN JOHNSON: Any discussion? Seeing none, all those in favor signify by saying "aye." Aye.

COMMISSIONER GARCIA: Aye.

COMMISSIONER KIESLING: Aye.

CHAIRMAN JOHNSON: Opposed, "nay."

COMMISSIONER DEASON: Nay.

COMMISSIONER CLARK: Nay.

CHAIRMAN JOHNSON: Show the primary approved on a three-to-two vote. Thank you very much.

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JOY KELLY, CSR, RPR, Chief, Bureau of Reporting, Official Commission Reporter,

DO HEREBY CERTIFY that the tape of the Agenda Conference on March 18, 1997 was supplied by the Staff of the Public Service Commission, consisting of Item 14 on the agenda, Docket No. 951354-TL, and that said item was heard by the Florida Public Service Commission at the time and place herein stated; it is further

CERTIFIED that I transcribed the tape on this date; and that this transcript, consisting of 35 pages, constitutes a true transcription of the tape provided.

DATED this August 8th, 1997.

Joy Kelly

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Official Commission Reporter
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