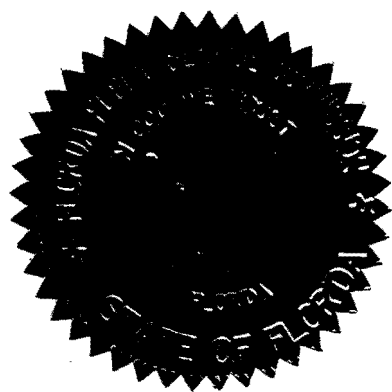


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
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Motions of AT&T Communications of :
the Southern States, Inc. and MCI :
Telecommunications Corporation and:
MCI Metro Access Transmission :
Services, Inc. to compel :
BellSouth Telecommunications, :
Inc. to comply with Order PSC- :
96-1579-FOF-TP and to set non- :
recurring charges for combinations:
of network elements with BellSouth:
Telecommunications, Inc. :
pursuant to their agreement :

DOCKET NO. 971140-TP



PROCEEDINGS: **SPECIAL AGENDA CONFERENCE**

BEFORE: CHAIRMAN JULIA L. JOHNSON
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER SUSAN F. CLARK
 COMMISSIONER JOE GARCIA
 COMMISSIONER E. LEON JACOBS, JR.

DATE: **Wednesday, May 14, 1998**

TIME: Commenced at 9:30 a.m.
 Concluded at 12:10 p.m.

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

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

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PARTICIPATING:

MARTHA BROWN and CHARLES PELLEGRINI, FPSC
Division of Legal Services.

WILLIAM D'HAESELEER, Director, and
WAYNE STAVANJA, VIC CORDIANO, MARYROSE SIRIANNI, FPSC
Division of Communications.

I N D E X

MISCELLANEOUS

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P R O C E E D I N G S

(Hearing convened at 9:40 a.m.)

CHAIRMAN JOHNSON: We're going to start the special agenda conference.

MR. PELLEGRINI: Commissioners, in Issues 1, 2, 3 and 9 concerned interpretations of the MCI-BellSouth Interconnection Agreement. Issues 1, 2 and 3 specifically concern whether their agreement establishes how prices with combined network element should be determined.

Issue 9 specifically concerns BellSouth's obligation under their agreement to provide MCI with call usage data.

Issues 4, 5, 6 and 10 concern similar interpretations of the AT&T-BellSouth Interconnection Agreement, and as for MCI and BellSouth in Issues 1, 2 and 3. Here at issues 4, 5 and 6, for AT&T and BellSouth, the issue specifically concerned whether their agreement establishes how prices for combined network element should be determined. And, again, as for MCI-BellSouth in Issue 9, here in Issue 10 for AT&T and BellSouth, Issue 10 specifically concerns BellSouth's obligation under their agreement to provide AT&T with call usage data.

Issue 7 addresses in the general sense what

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1 combinations of network elements, if any, recreate
2 existing retail services. And finally Issue 8
3 addresses the elimination of duplicate and unnecessary
4 charges for specific loop-port combinations as
5 required by BellSouth's interconnection agreements
6 with both MCI and AT&T. It's Staff's suggestion that
7 at this point we proceed issue-by-issue.

8 **COMMISSIONER GARCIA:** I met with Charlie
9 yesterday and he made that entire statement without
10 looking at his paper. (Laughter) So he's
11 impressively immersed in this.

12 **MR. PELLEGRINI:** In Issue 1 it is Staff's
13 recommendation that the MCI-BellSouth Interconnection
14 Agreement establishes the way in which prices for
15 combinations of network elements should be determined.

16 The key provisions are Section 2.2.15.3 of
17 Attachment 8, Section 8 of Attachment 1, and Sections
18 2.3 and 2.4 of Attachment 3.

19 **CHAIRMAN JOHNSON:** Are you finished
20 Mr. Pellegrini?

21 **MR. PELLEGRINI:** Yes.

22 **CHAIRMAN JOHNSON:** Any questions,
23 Commissioners? On Issue 1.

24 **COMMISSIONER CLARK:** Let me ask a question.
25 As I was going through this, there were certain things

1 that I felt maybe needed to be discussed on a broader
2 basis, and it may be well to talk about them and reach
3 a conclusion on them, that we could then turn to the
4 other issues. And let me be specific.

5 It's the notion of what constitutes -- what
6 are the UNE's necessary to provide a complete service,
7 complete local service. I agree that it's not just
8 the loop and the port. I think somewhere in the
9 latter part of the recommendation the Staff does
10 indicate a listing of what it includes.

11 And for me, it would be helpful if we
12 determined what constitutes local service. What the
13 UNEs are. And do we -- what will our policy be with
14 respect to combining UNEs such that you are, in fact,
15 just reselling the service. What should the pricing
16 be?

17 I'm wondering if other Commissioners feel
18 that's appropriate to discuss and resolve before we go
19 through the issues. Because it has an impact on --
20 you know, it appeared to me one of the real issues
21 with respect to whether you call it an UNE or resale
22 has to do with who gets access charges. Is it clear
23 that there's no debate if you resell services that the
24 incumbent local exchange company keeps the access
25 charges? There's no debate about that? Staff.

1 **MR. STAVANJA:** Under resale, that's correct.

2 **MR. PELLEGRINI:** What you suggest,
3 Commissioner Clark -- that question is developed in
4 Issue 7.

5 **COMMISSIONER CLARK:** I'm throwing that out
6 as a suggestion, because I think it's Staff's position
7 it doesn't matter if it recreates a resold service,
8 they ought to be able to purchase that way and pay the
9 UNE prices. I'm not so sure I can agree with that.

10 **MR. STAVANJA:** Well, that recommendation
11 is --

12 **CHAIRMAN JOHNSON:** Then we'll go to Issue 7
13 and start there? Because that's basically --

14 **COMMISSIONER CLARK:** That's my suggestion.
15 I think if we can reach a consensus and conclusion on
16 that issue, then the others might go quickly.

17 **CHAIRMAN JOHNSON:** Okay.

18 **COMMISSIONER DEASON:** Well, I guess my
19 concern is that depending on how you vote on previous
20 issues, Issue 7 may not have much meaning at all.

21 **COMMISSIONER CLARK:** Explain that to me. I
22 knew that -- I guess I'm not asking it -- I'm wanting
23 to get your thoughts and thought process on it.

24 **COMMISSIONER DEASON:** Maybe Staff can
25 correct me, but my understanding of Staff's

1 recommendation, when you get down to the very essence
2 of it is, is that there's an obligation to provide the
3 element, and it doesn't really matter whether -- that
4 obligation to provide is there regardless of whether
5 it reconstitutes a service or not. And for MCI,
6 Staff's position is that the contract specifies the
7 prices and that we've got to abide by the contract.
8 And that for AT&T, that for one set of -- for
9 migrating customers it's clear, and that for new
10 customers there needs to be further negotiations. And
11 that Staff's recommendation really doesn't hinge upon
12 whether it does or does not reconstitute a service.

13 I don't mind debating Issue 7, but --

14 **COMMISSIONER CLARK:** Let me ask a question.
15 What is Staff saying about the pricing of it? The
16 pricing is that UNE, right? You just add it all up
17 and it's priced at UNE. Not at the resold.

18 **MR. PELLEGRINI:** Yes.

19 **COMMISSIONER CLARK:** At the retail price
20 less the discount.

21 **MR. PELLEGRINI:** I think there is a tension
22 now between the point that Commissioner Deason has
23 just made and the point Commissioner Clark just made.
24 The first six issues really ask for an interpretation
25 of the contract language which Staff believes to be

1 plain and unambiguous.

2 Issue 7 steps outside of the contract to
3 some extent and really addresses a general question.
4 I'm not so sure that it's necessary to address Issue 7
5 nor to address the first six issues. There's somewhat
6 of a tension there.

7 **CHAIRMAN JOHNSON:** Once we decide the
8 contractual language, then we may get to the pricing
9 issue.

10 **COMMISSIONER DEASON:** I'm a little sensitive
11 about Issue 7 too. I know it was an issue that was
12 debated whether it should or should not be an issue
13 and it was an issue. But we're here to settle
14 specific complaints concerning specific contracts.
15 And I think there were other parties that wanted to
16 get into this debate, and we said no, this is a
17 dispute between two parties and their contract. And
18 Issue 7 does tend to wander a little bit into that
19 area. Mr. Pellegrini just indicated it was more of a
20 general issue -- he didn't use the term generic --

21 **MR. PELLEGRINI:** I didn't.

22 **COMMISSIONER DEASON:** But it was more of a
23 general issue. But we -- it may be that we don't even
24 have to address Issue 7 at all.

25 You know, if the desire of the Commission is

1 to go ahead and jump right into Issue 7, I'm not going
2 to object to that. But it could be depending on what
3 we do with the previous issues, Issue 7 may not even
4 have to be addressed. Am I reading that incorrectly?

5 **MR. STAVANJA:** Commissioners, Issue 7 is not
6 a pricing issue. We're only talking about -- you
7 know, what standard. How are we going to define what
8 recreates a service? What combined -- what elements
9 combined will recreate a service.

10 And really whether that needs to be
11 addressed, as you said, I think you really said the
12 right thing, because I'm not sure this really should
13 have even been an issue in this proceeding. And the
14 reason why is because the 8th Circuit is very clear
15 that the ALECs have the right to go in and provide,
16 you know, any kind of service using unbundled elements
17 through the access provision in the Act.

18 And that's why we came out with the
19 conclusion that we really don't need to go in and
20 define exactly all of what elements it takes to
21 recreate any particular type of service or one
22 specific service.

23 **CHAIRMAN JOHNSON:** Wayne, let me ask you a
24 question on that same point. I know that the 8th
25 Circuit Order was as you stated. But as we kind of

1 debated this particular issue, there's almost a
2 jurisdictional struggle. Because even though they
3 were saying you can unbundle these things and sell
4 them and then you can rebundle them. One of the
5 arguments that we were making -- maybe the
6 Commissioners were saying, "Well, yeah, but if you
7 rebundle it in such a way it constitutes R-1, then it
8 should be priced, maybe, like resale." It's hard to
9 separate the two.

10 So if we, in this instance, said that we
11 could delineate some services, and said, "Well, if you
12 package them this way, you're over into the resale
13 business because this is a R-1 service. And if it's
14 resale, then it's going to be priced differently."
15 Did you follow that?

16 **MR. STAVANJA:** Yeah. But he -- and, again,
17 the 8th Circuit said you've got two provisions -- in
18 the Act you've got two pricing provisions. One that
19 says here's how you price for resale; here's how you
20 price for UNEs. And the 8th Circuit court said if
21 you're going to use UNEs to create a service, you can
22 do that; you can use them all and recreate a service.
23 Well, what standard is used for UNEs? The UNE
24 standard. There's no discussion by anybody anywhere
25 that says once you've recreated a service, via UNEs,

1 you have to jump from the pricing standard of UNEs
2 over to the resale standard.

3 **CHAIRMAN JOHNSON:** So you're saying even if
4 it did, even if you could reconfigure this and you all
5 did think it was R-1, it wouldn't matter. We would
6 still have to offer --

7 **MR. STAVANJA:** Because we're only talking
8 about the UNEs only. We're only talking about
9 physical elements to recreate the service. There's a
10 lot more that goes on in recreating a service than
11 just what physical elements are used.

12 **COMMISSIONER CLARK:** Well, that depends
13 on --

14 **CHAIRMAN JOHNSON:** We don't want to address
15 it --

16 **COMMISSIONER CLARK:** -- if they agree with
17 you.

18 **MR. STAVANJA:** That's true, Commissioner
19 Clark.

20 **COMMISSIONER JACOBS:** Did I read the --
21 correct me if my interpretation of the recommendation
22 is correct -- that when that issue was brought out,
23 when the Commission considered that issue previously,
24 it recognized the tension between -- going between --
25 allowing basically the resale rate to be undercut by

1 the unbundling, but recognized also there was a FCC
2 issue there, i.e. a preemption issue there, and chose
3 to defer. And then after the 8th Circuit decision was
4 rendered, chose to abide by the 8th Circuit. Is that
5 a correct --

6 **COMMISSIONER GARCIA:** You made a leap. I
7 don't think we made it. They made it. They made the
8 leap for us.

9 **COMMISSIONER JACOBS:** I'm sorry. Okay.

10 **COMMISSIONER GARCIA:** Our discussion was
11 precisely what I think Commissioner Johnson is
12 discussing.

13 Staff believes that after the 8th Circuit
14 decision that our discussion is moot. That the 8th
15 Circuit took that next step. Correct?

16 **MR. STAVANJA:** Yes.

17 **COMMISSIONER GARCIA:** That our argument
18 didn't hold water. At least, that's what you told me
19 yesterday.

20 **MR. STAVANJA:** Actually, the Commission's
21 position that came out of the arbitration was -- and
22 that was one of the issues -- was can the ALECs
23 combine elements in any way they chose, including
24 recreating service? And the Commission's decision was
25 yes, they can, but noted a concern that if the price

1 or the total cost was going to undercut resale, then
2 that was where you had a problem. Did it, in fact,
3 undercut resale?

4 **COMMISSIONER CLARK:** No, not undercut
5 retail. If it duplicated retail service. You should
6 call it what it is and if it's retail service then you
7 should price it that way.

8 Let me back up a minute, though. It seemed
9 to me maybe we don't have a problem because --
10 BellSouth premised their argument on just purchasing a
11 combined loop and port is local service. And I think
12 the testimony, at least to me, was clear it takes more
13 than that. And my question is if you -- if we add up
14 all of the elements we think constitutes local
15 service -- and by that I just mean residential, it
16 appeared that was the real issue. I think Staff
17 identified that as maybe local service.

18 **MR. STAVANJA:** Well, local service in
19 general.

20 **COMMISSIONER CLARK:** If you add up those
21 elements, don't you already exceed -- I mean, does the
22 problem go a way? You really don't have a issue of
23 pricing because it will -- if, in fact, it's their
24 goal really to resell local service, they won't be
25 buying the unbundled network elements because the

1 elements they will have to buy will result in a higher
2 price.

3 **COMMISSIONER DEASON:** But the key here is
4 access charges. That's what drives the decision.

5 **COMMISSIONER CLARK:** Yes, you're right, \$14,
6 or whatever it is, in access charges that makes a
7 difference.

8 **MR. PELLEGRINI:** The question is whether the
9 issue really is one of price or not. And the ALECs
10 argue that then the issue is not one of price at all,
11 but it's a question of their ability to operate as a
12 full-fledged telephone company.

13 **COMMISSIONER CLARK:** Let me ask another
14 question. Is it clear that if you're simply a
15 reseller, then the ILEC keeps the access charges.
16 There's no debate about that.

17 **MR. PELLEGRINI:** That's correct.

18 **MR. STAVANJA:** Yes.

19 **COMMISSIONER DEASON:** Let me ask this
20 question. Hypothetically, just for the sake of
21 argument, the Commission decides that if a combination
22 of unbundled network elements reconstitutes a service,
23 that that must be priced at resale -- priced at
24 resale -- who gets the access charges? Because we've
25 got a combination here. We've got unbundled network

1 elements, but we're saying we're pricing it at resale.
2 Is it resale or is it unbundled network elements? Who
3 gets the access charges?

4 **MS. SIRIANNI:** I just wanted to interject
5 something. Something to follow up on Commissioner
6 Clark's concern about having some discussion about
7 what elements do, in fact, recreate local service.

8 I would just say that I believe that
9 determining specifically what unbundled network
10 elements recreates local service in this proceeding
11 would be beyond the scope of what we're to do in this
12 proceeding.

13 And second, I'm not sure if we have all of
14 the evidence in the record to be able to do that
15 today; to determine exactly what unbundled network
16 elements, and the price of them, to add up to be able
17 to tell you exactly what constitutes local service.

18 **COMMISSIONER CLARK:** Do we have the issue
19 before us deciding that when you do purchase those
20 elements, whatever they may be that constitute resale
21 service, then you have to buy it as resold service?
22 Is that before us?

23 **MS. SIRIANNI:** No. It's just the issue as
24 to whether when you recombine -- you can recombine any
25 elements to recreate any service but there was never

1 anything -- you know, once you combined X number of
2 elements then it needs to be resell, no. That
3 particular issue was never in front of us as to how
4 much do you have to buy in order for it to become
5 resale?

6 **COMMISSIONER CLARK:** What services you have
7 to buy, that issue is not before us.

8 **MS. SIRIANNI:** Right.

9 **COMMISSIONER CLARK:** Is the policy issue,
10 though, when you do buy -- and we're not going to
11 decide what they are -- that you buy it at resale, is
12 that before us?

13 **MS. SIRIANNI:** Well, I believe it's Staff's
14 position that it doesn't matter. You could totally
15 recreate a service --

16 **COMMISSIONER CLARK:** Then it is before us.
17 Staff is saying it doesn't matter --

18 **COMMISSIONER GARCIA:** It becomes the central
19 issue of what we're discussing. Even though that may
20 not have been what was before us it becomes the
21 central issue here.

22 **MS. SIRIANNI:** I believe it's pretty clear
23 in the contracts, and we need to go back and remember
24 that we're doing a contract dispute here, not
25 necessarily a policy in a general sense.

1 **COMMISSIONER GARCIA:** I think it's clear in
2 MCI's case, because I think to some degree it's
3 contemplated there, and Staff points it out in the
4 language, and I think -- not playing lawyer here, but
5 clearly it appears that the parties had some meeting
6 of the minds because it's in the contract. It's
7 discussed in some way. And I don't find that in
8 AT&T's agreement.

9 **MS. SIRIANNI:** I would agree it's clearer in
10 MCI's agreement than AT&T's agreement.

11 **COMMISSIONER GARCIA:** In other words, if we
12 know that the parties were -- we're talking about what
13 the parties were to some degree contemplating and I
14 don't know if I find that when I look through AT&T.

15 **CHAIRMAN JOHNSON:** Can you hold on for a
16 second? We're going to have to proceed in a more
17 orderly manner, and it's because so many Commissioners
18 have so many questions. I need to make sure that each
19 Commissioner's question is answered. Generally we can
20 do free-for-all, but not today. And Commissioner
21 Deason had a pending question.

22 **COMMISSIONER DEASON:** Yeah. I had a
23 question. We kind of got sidetracked there, and I'll
24 repeat the question.

25 Hypothetically, if the Commission were to

1 decide that we were going to impose a resale pricing
2 standard on the purchase of unbundled network elements
3 that recreate a service, who gets the access charge
4 revenue? Because we have a combination of elements
5 but we're pricing at resale.

6 **MR. STAVANJA:** Well, Commissioner, the
7 question then becomes if it is priced at resale, do
8 they -- in effect are they getting a resold service,
9 or are they still having control over those UNEs, but
10 going to have to pay the resell price?

11 **COMMISSIONER DEASON:** That's precisely the
12 question.

13 **MR. STAVANJA:** And I think that the parties
14 would be happy, AT&T and MCI would be happy to pay the
15 resale rate and still control the UNEs.

16 **COMMISSIONER DEASON:** I think that that is
17 the key here, is who gets the access charge revenue,
18 seems to me.

19 **MR. STAVANJA:** That discussion was brought
20 up.

21 **COMMISSIONER DEASON:** Mr. Glen testified
22 about that as I recall.

23 **MR. PELLEGRINI:** I think the means by which
24 the service is provisioned is what is telling. If the
25 service is provisioned through unbundled network

1 elements, then the pricing standard should be that
2 prescribed for unbundled network elements. If the
3 service is provisioned through resale, then that
4 standard should apply, regardless of the service that
5 is provisioned by means of unbundled network elements
6 whether that service reconstitutes, or recreates,
7 rather, a retail service or it does not.

8 **COMMISSIONER JACOBS:** Do you understand
9 there to be any restriction on our authority to impose
10 such a standard, i.e., that once it can be defined as
11 constituting an existing platform, is there something
12 that restricts our authority to make it resale versus
13 unbundled?

14 **MR. PELLEGRINI:** I don't think -- no, I
15 don't think there's a restriction on your ability to
16 do that. But I think it would be at variance with the
17 holding of the 8th Circuit to do that.

18 **COMMISSIONER DEASON:** I'm sorry. What would
19 be at variance to do what?

20 **MR. PELLEGRINI:** To impose a resale pricing
21 standard on a service, if I understand Commissioner
22 Jacobs' question correctly, to impose a resale pricing
23 standard on a service that is being provisioned by
24 means of UNEs I think would be at variance with the
25 8th Circuit's holding.

1 **CHAIRMAN JOHNSON:** Could you explain why?

2 **MR. PELLEGRINI:** I'm sorry?

3 **CHAIRMAN JOHNSON:** Why again?

4 **MR. PELLEGRINI:** Why?

5 **CHAIRMAN JOHNSON:** Uh-huh.

6 **MR. PELLEGRINI:** Because what the 8th
7 Circuit has held is that ALECs must have access to
8 unbundled network elements in order to provide
9 telecommunications services without limitation at cost
10 based prices. That's the holding.

11 So -- and I think without limitation, it's
12 quite important. I take it to mean that they provide
13 any telecommunications service, whether or not it
14 recreates a retail service, and that being the case --

15 **COMMISSIONER CLARK:** I think that's the
16 point, did they say whether or not it creates a retail
17 service? I don't think they did.

18 **MR. PELLEGRINI:** They don't use those words
19 but they said "In order to provide the
20 telecommunications services."

21 **COMMISSIONER CLARK:** Right. Here's my
22 question. It seems to me they didn't go to the issue.
23 If you do that, what is its impact on the resold
24 provisions? They didn't go further and reconcile how
25 those two provisions are supposed to work together.

1 **MR. PELLEGRINI:** But they did discuss,
2 Commissioner Clark, at length resale and unbundled
3 accesses to the same entry strategies with different
4 risks and rewards.

5 **COMMISSIONER CLARK:** I agree with that. And
6 they should be recognized as distinct. And when
7 someone comes in and purchases UNE, when their
8 strategy is really resale, have you, in effect, done
9 away with the second strategy?

10 **MR. PELLEGRINI:** Well, I don't think so.
11 And I think that question was drawn out rather well in
12 Issue 7. In the first place, the price of entry
13 through unbundled network elements is in excess of the
14 price for resale.

15 **COMMISSIONER CLARK:** But the point is who
16 keeps access?

17 **COMMISSIONER GARCIA:** But the access throws
18 it back, so there's just --

19 **MR. STAVANJA:** I'm sorry, I don't
20 understand.

21 **COMMISSIONER GARCIA:** The value of access
22 brings that back into play. I mean, it may be more
23 expensive on one side but the advantages of getting
24 the access component, that's where the risk factor
25 enters, you can do very well or not so well. That

1 puts it into play. It's just a different strategy.

2 One has more risk than the other.

3 **MR. STAVANJA:** Sure. And there's a lot of
4 up-front costs also associated with UNEs. I mean, if
5 you look at all of those nonrecurring charges and try
6 to figure out how long is it going to take to recover
7 those.

8 **COMMISSIONER DEASON:** It's definitely more
9 risk providing service with UNEs than under a resale
10 arrangement.

11 Let's back up for just a second. Are those
12 questions so far answered?

13 **CHAIRMAN JOHNSON:** Yeah.

14 **COMMISSIONER DEASON:** We had some discussion
15 about the 8th Circuit decision, and I guess my
16 question is kind of fundamental. How does a court
17 decision that was made after the contracts were signed
18 affect how we now interpret the contracts? Because I
19 thought we were under the standard of interpreting the
20 contracts based upon what was known as the contracts
21 were signed and what the parties knew and what they
22 negotiated and what their intent was. Or is our
23 standard that we don't care what they knew at the time
24 they signed the contract; if there's a court decision,
25 we're going to use the court decision to interpret the

1 contracts that were signed prior to the court
2 decision.

3 **MR. PELLEGRINI:** In answer to that question,
4 Commissioner Deason, is this: Under the contracts --
5 and this is not disputed by others -- there is an
6 obligation in the first place to provide for unbundled
7 elements in combination. BellSouth has undertaken
8 that obligation under both the MCI and AT&T contracts.

9 **COMMISSIONER DEASON:** The contract specifies
10 that.

11 **MR. PELLEGRINI:** Yeah.

12 **COMMISSIONER DEASON:** That is consistent
13 with the 8th Circuit decision. Correct or not?

14 **MR. PELLEGRINI:** Well, the 8th Circuit
15 subsequently held that the ILEC did not have that
16 obligation. The only obligation that the ILEC has is
17 to provide unbundled access to network elements. And
18 this is -- this is a holding that's on appeal to the
19 Supreme Court at the moment.

20 **COMMISSIONER DEASON:** But they have to have
21 access to the elements. The question is whether --
22 what -- what structure they have. Whether they are
23 bundled, unbundled; whether they constitute a platform
24 or not. That type thing. That's what's on appeal,
25 correct?

1 **MR. PELLEGRINI:** That's right. And the 8th
2 Circuit's holding did not preclude the ILEC from
3 agreeing to provide bundled network elements if it
4 wished. And that's what we have in these agreements
5 is an agreement to do that.

6 **COMMISSIONER DEASON:** So what is at odds
7 between the contracts and the 8th Circuit decision?

8 **MR. PELLEGRINI:** I don't think of anything
9 that's at odds.

10 **COMMISSIONER DEASON:** Staff's interpretation
11 of the contracts, there's nothing inconsistent with
12 your interpretation of the contracts with the
13 subsequent 8th Circuit decision?

14 **MR. PELLEGRINI:** No, with one exception.

15 **COMMISSIONER GARCIA:** You're taking the 8th
16 Circuit decision a little farther than where we took
17 it as a Commission.

18 **MR. PELLEGRINI:** What I was just going to
19 say is if the 8th Circuit's holding with respect to
20 the ILECs' obligation to provide unbundled elements is
21 upheld by the Supreme Court, then there is a provision
22 in both contracts which would enable the parties to
23 renegotiate the relevant language. And that decision
24 is anticipated, I think, sometime in the next year.
25 The contracts expires in mid-2000.

1 **CHAIRMAN JOHNSON:** Commissioner Jacobs.

2 **COMMISSIONER JACOBS:** Help me with this.

3 The contracts -- the provisions on
4 unbundling in the contracts were premised upon those
5 provisions in the Act dealing with unbundling. Is
6 that a fair statement?

7 **MR. PELLEGRINI:** Would you repeat the
8 statement, please?

9 **COMMISSIONER JACOBS:** The provisions in the
10 Interconnection Contract were made pursuant to, and
11 based upon authority or direction, put it another
12 way -- in the Act.

13 **MR. PELLEGRINI:** Yes, that's a fair
14 statement.

15 **CHAIRMAN JOHNSON:** Or the FCC Order. Was it
16 the Act or the FCC order?

17 **MR. PELLEGRINI:** Both the Act and the FCC
18 Order. First reported Order.

19 **MR. STAVANJA:** We had to be consistent with
20 both.

21 **COMMISSIONER JACOBS:** And then if my
22 understanding is correct, what the 8th Circuit did was
23 vacated that underlying authority, did it not?

24 **MR. PELLEGRINI:** Certain parts of the FCC
25 order. Those parts dealing particularly with pricing.

1 Those provisions were --

2 **COMMISSIONER JACOBS:** You have a response?

3 **MR. STAVANJA:** Yeah. The provision that the
4 FCC also had was that if elements are already
5 combined, that the ILEC must keep them combined. That
6 was taken out.

7 The 8th Circuit court said that the ILEC
8 does not have to do all of the work of putting them
9 together, but there is a provision in the contracts
10 for both AT&T and MCI that say -- if those elements
11 already combined and serving an existing BellSouth
12 customer, Bell, you will not take them apart.

13 **COMMISSIONER JACOBS:** Right. That was my
14 understanding of what this is. So the essence of
15 that -- let me offer or suggest this interpretation,
16 is that it affected -- and what I'm driving at here is
17 how it affected the underlying authority under which
18 this contract was established. And whether or not --
19 and I think the question that Commissioner Garcia has
20 is whether or not that effect should be carried
21 forward in our deliberations today. But that effect
22 was to say that any restrictions on how the
23 combination of unbundled elements should be
24 provisioned should be guided by the change -- or the
25 statement on the statute, or the interpretation of the

1 statute that was rendered by the court, which is to
2 say they can't require -- that the IXCs can't require
3 the LECs to put them together. They can be -- but
4 they can be pulled apart. Is that a fair statement?

5 In other words, as a result of the 8th
6 Circuit decision, is it valid law that any element can
7 be pulled out of the ILECs' network, but if the IXC
8 want to provision them in a bundled nature, they can't
9 require the ILEC to put it back together. Is that a
10 fair statement?

11 MR. PELLEGRINI: Under the 8th Circuit's
12 ruling?

13 COMMISSIONER JACOBS: Right.

14 MR. PELLEGRINI: That would be true under
15 the 8th Circuit's ruling.

16 COMMISSIONER JACOBS: So, now what I'm
17 trying to corner here in a very inartful way, but how
18 does that now affect what the parties were
19 understanding when they entered into these contracts?
20 Because when they went into -- in my mind that was not
21 necessarily within the context of their understanding
22 at the time of the contract. Am I correct?

23 MR. PELLEGRINI: You are correct.

24 COMMISSIONER JACOBS: So how did that
25 decision affect those interpretations and those

1 negotiations -- interpretation of the statute as they
2 exist before the decision was render?

3 **MR. PELLEGRINI:** BellSouth undertook that
4 obligation prior to the 8th Circuit's ruling on that
5 point. And this comes, I think, to the point I made
6 just a few moments ago. That is, that that ruling is
7 not yet a final and nonappealable ruling.

8 **COMMISSIONER JACOBS:** I understand that. I
9 understand that. But I want to go to the fact that a
10 court has addressed the authority under that statute.
11 And what now -- I know it's not a final and I know it
12 can be still interpreted by a court of a higher
13 jurisdiction. But what I want to know what impact
14 should it have on a party's interpretation of their
15 agreement? Okay? Because I think that's really the
16 ultimate question.

17 **COMMISSIONER GARCIA:** It's a question that
18 we specifically didn't engage in last time. We
19 specifically avoided it. Some of the issues Staff
20 takes us to, we were very specific to say we did not
21 decide this issue. We avoided those issues. And
22 Staff believes that with the 8th Circuit ruling that
23 those issues were addressed. That the position that
24 this Commission took, of not having part of it in the
25 agreement we approved here, it was addressed by the

1 8th Circuit. So our discussion here is sort of moot.
2 I'm just saying Staff position. I'm not saying that I
3 agree with Staff.

4 **COMMISSIONER JACOBS:** Again, that was a leap
5 of logic that was made that perhaps was inappropriate.

6 **COMMISSIONER GARCIA:** That's what I call it.
7 I don't think Staff would call it that.

8 **COMMISSIONER JACOBS:** What I'm trying to go
9 back to is what went into that leap of logic? The
10 holding that was rendered I think is clear. We don't
11 have to debate that. What I'm saying is if you don't
12 accept necessarily it prevailed in its decisions, in
13 the decision of this Commission, what do we analyze?
14 What do we review in terms of what these parties were
15 dealing when they entered into this decision? And how
16 should we apply the change in the underlying statute,
17 the underlying authority? Was it effected at all? If
18 it was effected, what effect should we give that
19 decision as to the underlying authority? Because I
20 think that's where the parties were. They were
21 operating to say these are the requirements of the
22 Act. We're operating as to the requirements of the
23 Act.

24 Now, if there were some -- that we're
25 impugning into the 8th Circuit, we need to understand

1 what that is. You have made some suggestions in your
2 recommendation as what that change was and what effect
3 it should be given.

4 And we may need to discuss whether or not we
5 agree with the effect that you suggested. But I don't
6 still don't see any real discussion about what the
7 basic elements of that should be.

8 **COMMISSIONER GARCIA:** Or whether the parties
9 saw that as what they were agreeing to.

10 **COMMISSIONER JACOBS:** I think that's what
11 we're driving at.

12 **COMMISSIONER CLARK:** It seems to me that it
13 was only Bell that raised the issue that something
14 happened in the 8th Circuit decision that allows them
15 to do something different or affects the contract; is
16 that correct?

17 **MR. PELLEGRINI:** Certainly BellSouth has
18 raised that point.

19 **COMMISSIONER CLARK:** Show me in the
20 recommendation where we addressed that. Tell me where
21 it is. Because it seems to me when I read it I
22 concluded that what the 8th Circuit decided didn't
23 matter because we had contracts which covered it.

24 **MR. PELLEGRINI:** No. The contracts are
25 subject to revision, depending upon the Supreme

1 Court's ultimate ruling.

2 **COMMISSIONER CLARK:** They are not now
3 subject to revision because we don't have a final
4 decision, right?

5 **MR. PELLEGRINI:** Yes.

6 **COMMISSIONER CLARK:** So it doesn't matter
7 what the 8th Circuit has done. We should look only at
8 the contracts. Is that right?

9 **MS. SIRIANNI:** That's correct. We have
10 contract language in the agreements. And this is a
11 dispute between the contract language, and we should
12 look at the plain language of the contract to
13 determine it.

14 **COMMISSIONER GARCIA:** See, that changes it a
15 lot. Because I thought in here you do use rationale
16 by the 8th Circuit.

17 **COMMISSIONER CLARK:** They use it for sort of
18 justification for saying we're on the right track.

19 **MS. SIRIANNI:** Right. I don't believe that
20 we're using the 8th Circuit decision to come to a
21 conclusion. It's in support of, but not solely.

22 **COMMISSIONER GARCIA:** If we're there, then
23 how do we make --

24 **COMMISSIONER CLARK:** Let me try and --

25 **COMMISSIONER GARCIA:** I'm sorry.

1 **COMMISSIONER CLARK:** Sort it out.

2 I think what -- you brought up the 8th
3 Circuit. BellSouth at some point said that if you had
4 a decision, we're entitled to renegotiate this part of
5 the contract. Staff is saying no, it's not final, and
6 for that reason you don't renegotiate and we only look
7 at the contracts. Isn't that correct?

8 **MS. SIRIANNI:** Yes. And I believe even
9 BellSouth has acknowledged that until the 8th Circuit
10 decision is final that not until that time can they go
11 back and renegotiate the language in the contract.

12 **MR. PELLEGRINI:** There's no question about
13 that. BellSouth doesn't make that argument that they
14 have a present right to renegotiate --

15 **COMMISSIONER CLARK:** Commissioner Garcia,
16 does that make sense now?

17 **COMMISSIONER GARCIA:** It makes sense, but it
18 certainly changes the position that I understood. In
19 other words, because then it brings us back to what we
20 decided here and what was before this Commission. And
21 this recommendation takes us a little bit further than
22 where we were when we decided not to address some of
23 these issues.

24 **MR. STAVANJA:** Well --

25 **COMMISSIONER GARCIA:** Very specifically.

1 **COMMISSIONER CLARK:** I have sort of a
2 different question I'd like to ask now, if you'll let
3 me.

4 **COMMISSIONER DEASON:** We didn't decide it
5 because it was not in front of us when we arbitrated
6 these agreements to begin with. We made the decision
7 it was not part of the arbitration, therefore, it was
8 not in front of us.

9 Then it got put squarely in front of us by
10 these dockets presently. And all of this is going on
11 regardless of what the 8th Circuit did or did not do.
12 But we do have the benefit, if you want to call it
13 that, of the 8th Circuit's decision in the mean time;
14 is that correct?

15 **MR. PELLEGRINI:** You may recall that when
16 this question was first presented to the Commission at
17 agenda conference so many months ago now, BellSouth
18 argued perhaps now the time had come to present this
19 issue somewhat generally or somewhat generically to
20 the Commission. And as a result of that, Issue 7 was
21 raised.

22 **COMMISSIONER CLARK:** Well, I guess there's
23 one other thing I want to ask the Staff on the issue
24 of when you combine -- when you take UNEs and combine
25 them in such a way that you duplicate service, how

1 should you price it and what should it be called? I
2 think those two questions are, in fact, inherent in
3 your recommendations on Issues 1 and 4. Because what
4 you say in each one of them is that -- that the prices
5 to be charged are those for the unbundled network
6 elements, regardless of the use to which they are put.

7 **MR. PELLEGRINI:** Yes. That's a conclusion
8 that we draw from the agreement.

9 **COMMISSIONER CLARK:** I think inherent in
10 that is if you buy it as UNES, it doesn't matter. If
11 it in fact duplicates and is resold service, it will
12 be priced at UNES and you get to keep the access. It
13 won't be treated as resold. So what matters is how
14 you ask for the service.

15 **MR. PELLEGRINI:** And there is no language in
16 either agreement -- no language in either agreement
17 which limits the use to which the ALEC may put --

18 **COMMISSIONER CLARK:** I wondered if I was
19 living in a parallel universe. It seemed to me I
20 always knew that was at issue between all of the
21 parties at every point. And it's curious to me that
22 this is the language -- I found the language in the
23 MCI agreement quite curious. More curious than the
24 AT&T. But they were equally surprising. So in
25 effect, it is before us, the issue. And by Staff's

1 recommendation, conclusion is you buy them as
2 individual UNES; they are priced that way. And you
3 keep the access charges regardless of whether or not
4 it duplicates a retail service.

5 **COMMISSIONER DEASON:** Because it's specified
6 so in the contract.

7 **COMMISSIONER CLARK:** I understand that,
8 but --

9 **COMMISSIONER GARCIA:** That's the jump.

10 **COMMISSIONER CLARK:** And, Commissioners, I
11 mean, I understand the legal theory of contracts and
12 what's the plain meaning. But as I say, I felt like I
13 was in a parallel universe because there was no doubt
14 in my mind through all of these negotiations that that
15 was a point on which there was strong contention.

16 **MR. PELLEGRINI:** Right. It's all the more
17 remarkable that there's not different language in the
18 agreements, it seems to me.

19 **COMMISSIONER GARCIA:** That being the case,
20 though, shouldn't we then consider the possibility --
21 which I guess you left it open, what issue was that?

22 **CHAIRMAN JOHNSON:** 7 was the issue.

23 **COMMISSIONER GARCIA:** No, the issue --

24 **COMMISSIONER CLARK:** They leave it open, in
25 I guess, Issues 3.

1 **COMMISSIONER GARCIA:** 6 or --

2 **MR. PELLEGRINI:** Issues 3 and 6 state
3 Staff's recommendation if the Commission disagrees
4 with Staff's recommendation in Issues 1 and 2 and
5 Issues 4 and 5.

6 **COMMISSIONER GARCIA:** Right. Susan, I think
7 you've hit the nickel on the head in what I was trying
8 to get at. Is that here is a major issue contention
9 that these parties we know were central to this, and
10 yet we're having to divine from language. Clearly,
11 MCI is a little bit clearer than AT&T's, but
12 nonetheless we're having to divine, because of what we
13 have before us, where they intended to go. And I
14 don't think that language is clear enough to take us
15 where Staff takes us.

16 **MR. PELLEGRINI:** I think we have to continue
17 to focus on the fact that what we have before us are
18 disagreements that arise out of the performance of the
19 agreement. We have contract disputes before us. And
20 there's law that guides the interpretation of
21 agreements in these situations.

22 **COMMISSIONER CLARK:** Charlie, I
23 wholeheartedly agree with you. But these aren't like
24 contracts that people just -- I mean, there was
25 limited time to agree to them and this issue was

1 clearly part of the arbitration.

2 Let me back up. It was not part of the
3 arbitration, because we found that that issue was not
4 before us. But certainly it was clear to me it was a
5 contentious issue.

6 And I don't know how to reconcile the
7 language that I see in the contract and the knowledge
8 of the negotiations and the arbitrations and the
9 proceedings before us that took place on this issue.
10 And the fact that to some extent aren't we
11 establishing a generic policy? Or is Staff clearly
12 limiting their recommendation with respect to UNEs
13 that are recombined to broad retail service that it
14 only has applicability to these two contracts for the
15 length of these contracts?

16 **MS. SIRIANNI:** Just what you said. Only to
17 these two companies for the length of this contract.
18 Next time they negotiate, it starts all over again.

19 **COMMISSIONER CLARK:** How long are these
20 contracts in effect for?

21 **MR. PELLEGRINI:** Until June of 2000, I
22 think.

23 **COMMISSIONER GARCIA:** Let me ask, are other
24 contracts more specific on this issue?

25 **MS. SIRIANNI:** I don't know.

1 **COMMISSIONER GARCIA:** Because if not, they
2 are not, then we are doing exactly what Susan says.
3 We're deciding policy for everyone else.

4 **MS. BROWN:** I don't understand how you reach
5 that conclusion.

6 **COMMISSIONER GARCIA:** Because they are
7 not -- even Staff points it out. We get to our
8 conclusion by sort of figuring out what it is we think
9 they meant, correct? But it's not there in the
10 contracts. We know as a Commission when we looked at
11 this issue that we specifically avoided this issue
12 because we said this is not before us. Staff now puts
13 it squarely before us and says this is what they meant
14 more, or less, correct? Or what should be meant in
15 light of everything that's gone on.

16 **MS. BROWN:** Well, I think what Staff first
17 puts before you is that the plain meaning of the words
18 there on the page are that they shall not be --

19 **COMMISSIONER CLARK:** Where is the language
20 in the recommendation?

21 **MS. SIRIANNI:** Page 11.

22 **MS. BROWN:** Page 11. "With respect to
23 network elements charges in Attachment 1 are inclusive
24 and no other charges apply." It's the plain meaning
25 of the language that you look to.

1 **CHAIRMAN JOHNSON:** Martha, let me ask a
2 quick question. Whatever happened to the -- is the
3 most favored nation's clause still in effect? Or did
4 that get overturned? I mean like if we were to
5 determine --

6 **MS. BROWN:** None of the Act has been
7 overturned. Certain parts of the FCC's order
8 interpreting it have been overturned, and that section
9 of 252-I that the FCC interpreted to mean that you
10 could pick and choose sections has been overturned by
11 the 8th Circuit. The 8th Circuit has said that if
12 you're going to elect to use 252-I to take another
13 agreement, you have to take the whole shebang. You
14 can't just pick pieces.

15 But I wanted to mention that to Commissioner
16 Jacobs, too, the Act has -- nothing about the Act's
17 constitutionality or any provision in it has been
18 overturned by the 8th Circuit. It's only certain
19 sections of the FCC's rules implementing the Act.

20 **COMMISSIONER JACOBS:** You're correct. I
21 verified that.

22 **COMMISSIONER CLARK:** The Texas court has
23 taken issue with that.

24 **MS. BROWN:** That's true. I forgot about
25 that.

1 **COMMISSIONER GARCIA:** Martha, let me bring
2 you back to what you just said, because I think it
3 defies logic.

4 You're saying to me that we all knew that
5 there was a discussion and a debate on this particular
6 issue. And then you're saying to me that you turned
7 back to that very contract and you say it's -- it has
8 plain meaning in the contract.

9 **MS. BROWN:** Well, I don't remember the
10 sequence of events quite that way. And it's been a
11 while, and we've had a lot going on since, so correct
12 me if I'm remembering this incorrectly, but it seems
13 to me that we began these arbitrations with AT&T and
14 MCI, and there were particular issues before us. And
15 we resolved those issues. And we said now go back and
16 write up a contract that's going to reflect that. And
17 they did that. And it was at that point that Bell
18 began to raise this question of whether you could
19 recombine UNEs to recreate retail service.

20 And so it was sort of in between your
21 initial decision to arbitrate the issues before you.
22 They wrote the contract. Then Bell raised this on
23 reconsideration. And it was at that point that you
24 said, "Now, wait a minute. We didn't decide that in
25 the arbitration."

1 **COMMISSIONER DEASON:** Correction. I think
2 we had a discussion on that the very first time it
3 came up for arbitration.

4 **MS. BROWN:** Had a discussion on it in the
5 arbitration, you're right. You're absolutely right.
6 Decided that it wasn't before you. But said we're
7 worried about this so we want the FCC to know we're
8 worried about this.

9 **COMMISSIONER GARCIA:** Either way, in your
10 chronology either way, we, as a Commission, said
11 there's a problem here. And we said we're not going
12 to address it, correct?

13 **MS. BROWN:** Because it wasn't specifically
14 raised before you. That's right.

15 **COMMISSIONER GARCIA:** But now you're telling
16 me that this language is not only raises that issue
17 but solves it?

18 **MS. BROWN:** For these contracts.

19 **COMMISSIONER CLARK:** And I guess the
20 question is how can that be? Especially when it was
21 raised in the arbitration, at least initially, and how
22 can that -- is it appropriate to follow that when we
23 have concerns about it as a policy matter?

24 **MS. BROWN:** Well -- and I wanted to have a
25 chance to address that dilemma of yours because I

1 think I understand it.

2 I don't know exactly what to do about it.
3 And I have another concern, and that is that if you
4 look -- if you take for the future, if we get these
5 disputes again, and we have contract provisions in
6 front of us and they say everything is inclusive
7 here -- I mean the language is fairly clear, are you
8 then going to say "Well, yeah, but we're worried about
9 it so we're not going to uphold the provisions of it."

10 **COMMISSIONER CLARK:** I thought we could say
11 that on a public interest. Didn't we have some
12 other -- we approved them unless we find they are not
13 in the public interest. What is the language in the
14 FCC?

15 **MS. BROWN:** That would be at approval, not
16 if a contract dispute, an interpretation came up.

17 But anyway -- I think what you're saying
18 underneath all of this, Commissioner Clark, can I
19 just -- is that there is an ambiguity somewhere. I
20 mean, the language says what it says. But there is
21 still, in the circumstances surrounding it, some
22 question as to what the parties intended by that
23 language.

24 **COMMISSIONER GARCIA:** The question that was
25 brought up by this Commission, when this was brought

1 before us --

2 MS. BROWN: No.

3 COMMISSIONER GARCIA: -- and we had a
4 problem there.

5 MS. BROWN: And though I realize that this
6 is a little bit different than what the Staff has
7 recommended to you, I can't -- I can very well
8 understand where you're coming from, but I think the
9 way you get to it and still protect contract
10 interpretation principles, which is important to do, I
11 think, here, is to say that "Yes, the plain language
12 says this. The circumstances so clearly indicate to
13 us, though, that there is some controversy about what
14 the implications of that, that it is clear to us that
15 at the time the contracts were entered into, and at
16 the time we initially approved them, that there's
17 uncertainty as to what was meant here," and then you
18 can get to resolve the issue that way.

19 COMMISSIONER CLARK: There was not a meeting
20 of the minds that that included UNEs that were
21 recombined to provide the --

22 MS. BROWN: And you all heard -- I was not
23 here through all of the testimony at the hearing, but
24 if you can refer back to what you heard then, my guess
25 is that you heard the same thing quite often at the

1 hearing. So that's where I leave -- that's the option
2 you have. So your choice is to say the plain language
3 is clear and go forward from that point with strict
4 contract interpretation.

5 **COMMISSIONER GARCIA:** Martha, stop right
6 there. And I wouldn't have a problem had we said
7 nothing about this issue. I would have said well,
8 even though the language is not very specific -- but
9 in this case we knew there was a controversy. We know
10 that there was a meeting of the minds. We, as a
11 Commission, said, "Well, this isn't before us." You
12 disagree.

13 **MS. BROWN:** I'm going to get out of this
14 now.

15 **MS. SIRIANNI:** The bottom line is that the
16 companies agreed on the language --

17 **MR. STAVANJA:** Right.

18 **MS. SIRIANNI:** -- to put it in the contract.
19 Both companies signed on the dotted line.

20 **COMMISSIONER CLARK:** But let me add
21 something -- and I thought Witness Hendrix's point on
22 this was somewhat well-taken. They asked to add
23 language that would clarify that. We said no, it's
24 not before us. And they got a clear message they need
25 to sign this thing and not come before us again.

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1 **MS. SIRIANNI:** And what they could have done
2 at that point was disagree on the entire language and
3 then we would have taken the whole entire language out
4 of the agreement. But they didn't disagree on that
5 portion of it. The part that you're talking about, it
6 says, "Further negotiations between the parties should
7 address the price of a retail service that is
8 recreated by combining UNEs, recombining UNEs shall
9 not be used to undercut the resale price of the
10 service created." That was the portion that they
11 disagreed on.

12 **COMMISSIONER CLARK:** They asked to put that
13 in. We told them no, because it was not yet before
14 us.

15 **MS. SIRIANNI:** Right. But the two parties
16 did not disagree on the rest of the language that goes
17 into "are inclusive and no other charges apply,
18 including, but not limited to, any other consideration
19 for connecting any network elements with any other
20 network elements."

21 **COMMISSIONER GARCIA:** But this has
22 functionality without this discussion in the
23 recombination issue. Forgetting about the recreation
24 of existing BellSouth service, whatever that
25 discussion is, this functions -- if this was an

1 agreement and this wasn't the issue, this still --
2 this is still operative language for a combination;
3 for recombining UNEs not to create an existing
4 service. You would still go to this language; is that
5 correct?

6 **MS. SIRIANNI:** That's correct.

7 **COMMISSIONER GARCIA:** So it operates
8 independently of where you are taking it now. Now
9 you're taking it that this language addresses the
10 issue that we discussed as a Commission, and we did
11 not resolve and that solves it, according to you,
12 because they agreed to sign this.

13 **MR. CORDIANO:** The pricing part.

14 **MR. STAVANJA:** The pricing, yes. The
15 Commission already said they can go ahead and
16 recombine the elements and recreate a service. What
17 this clause here says is the pricing part which says
18 you can put them -- there will be no other charges
19 other than what it contained in the agreement.

20 **COMMISSIONER GARCIA:** But do you realize
21 that the one part we took out of it is the one part
22 that went to discussion. In other words --

23 **MR. STAVANJA:** That's because they disputed
24 that language. They didn't dispute this language.

25 **COMMISSIONER GARCIA:** But they disputed that

1 language in context to the overall agreement about
2 this specific issue. They couldn't come to a meeting
3 of the minds. And you're now turning to me and saying
4 this language addresses that issue. They couldn't
5 come to an agreement and you're saying to me we didn't
6 allow that language in there, you're saying, but they
7 did come to an agreement. Here it is, even though --

8 **MR. STAVANJA:** They should have disputed
9 that language too.

10 **COMMISSIONER GARCIA:** I'm sorry?

11 **MR. STAVANJA:** They should have disputed
12 that language too.

13 **COMMISSIONER GARCIA:** Well, you're using --
14 try and understand, there's a broader argument here
15 than was made.

16 **MR. STAVANJA:** I understand.

17 **COMMISSIONER GARCIA:** They come to us. We
18 say this is not before us. In fact, we did discuss it
19 originally. It comes up on reconsideration. We say
20 this is not in here. We don't allow that language.
21 And then you come to us and say, well, no. Here it
22 is. We have to realize, we're dealing with very
23 sophisticated parties. We're not dealing with two
24 guys that just walked in off the street and signed a
25 form contract.

1 And obviously, if they allowed this in here,
2 without this discussion -- which was central --
3 central to the issue, what's Maryrose just read -- how
4 can you then turn around and say this is the -- the
5 entire discussion was in here. They made a mistake,
6 is what you were saying to me. They made a mistake.
7 They shouldn't have signed this contract.

8 **MR. STAVANJA:** They wouldn't have been the
9 first. This Commission has already addressed the
10 contract where another company made a big mistake, and
11 as a result this Commission says, "You signed the
12 contract. We're not going to mess with the language
13 in the contract."

14 **COMMISSIONER GARCIA:** But in this case we
15 were messing --

16 **COMMISSIONER CLARK:** Excuse me. Can you
17 tell me what that was?

18 **MR. STAVANJA:** That was -- I don't remember
19 the docket number, but it was one of the Sprint
20 agreements, Sprint local agreements. And several
21 parties have come since then and have adopted that
22 agreement.

23 **COMMISSIONER CLARK:** You need to be more
24 specific so I can conclude that your analogy is
25 applicable.

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1 **MR. STAVANJA:** There was -- the agreement
2 stated -- had to do with, I believe, reciprocal
3 compensation and should one ALEC that doesn't have
4 all -- is not using all of the same elements in their
5 network, but the ILEC is using more -- should they be
6 compensated the same. I think it revolved around
7 tandem switching. The ALEC didn't have a tandem
8 switch but they were going to be compensated at the
9 same rate. They were going to pass it back and forth.

10 **COMMISSIONER CLARK:** If you're talking about
11 down in the Fort Myers area and the cellular, that was
12 different.

13 **MR. STAVANJA:** No, no, no, no, no.

14 **MS. BROWN:** He's talking about the Sprint
15 MFS agreement, Commissioner. And after the agreement
16 was signed, Sprint even filed a motion saying -- and I
17 can't remember the name of the motion, but it was "Oh,
18 please don't approve this agreement with this
19 provision in it. We made a mistake. We
20 misunderstood. It's not in the public interest." We
21 came before you with a specific recommendation that
22 you tell Sprint that it had signed it and --

23 **COMMISSIONER GARCIA:** Martha, you do realize
24 there's a difference here. You can distinguish that
25 between the discussion we're having today.

1 **MS. BROWN:** All I'm doing is relating the
2 facts of it, this was the argument here, that --

3 **COMMISSIONER GARCIA:** I think you're getting
4 caught up in the mistake issue, and I'm just using
5 that as an example.

6 **MS. BROWN:** The distinction is, I guess that
7 Sprint and MFS went and resolved all of this, or
8 negotiated this themselves without any Commission
9 input.

10 **MR. STAVANJA:** Actually, the Commission
11 sided with Sprint and said you're right, you shouldn't
12 have to compensate the other company. But when they
13 left, okay, they had the same cat fight between them
14 two at the hearing. And when they left, they came
15 back with an agreement -- Sprint said, "We will
16 compensate them." But then they turned around said,
17 "Oh, my gosh, we made a mistake. We want this to be
18 fixed. Would you fixed it?" And the Commission said,
19 "Well, wait a minute, you signed it. You negotiated
20 it. You signed it. We're not going to mess with that
21 language."

22 **COMMISSIONER CLARK:** Was it arbitrated?

23 **MR. STAVANJA:** Oh, yeah. They were here and
24 they were fighting over that.

25 **COMMISSIONER CLARK:** Well, you may be right.

1 But let me ask the question follow up and maybe focus
2 it a little more in following up with what Joe said.

3 When we took up these agreements it was
4 brought up about the issue of when you recombine, and
5 it duplicates a retail service. And we said that was
6 not arbitrated between the parties, therefore, it's
7 not before us. Is that what we said?

8 MR. PELLEGRINI: Yes.

9 COMMISSIONER CLARK: Okay. How, if it was
10 not arbitrated, can you conclude that this contract
11 provision applies to it?

12 MR. PELLEGRINI: Because the language in the
13 agreements which we think identify the pricing
14 mechanism are negotiated -- is all negotiated
15 language.

16 COMMISSIONER CLARK: You're making a
17 distinction between that which came before us to be
18 arbitrated and that which was agreed to?

19 MR. PELLEGRINI: Yes.

20 COMMISSIONER CLARK: Okay.

21 MR. STAVANJA: Commissioner Clark.

22 COMMISSIONER JACOBS: For a moment, Madam
23 Chairman, it appears to me we're basically debating
24 Issue 1. And we may want to proceed on that, as to
25 whether or not the language is clear and should remain

1 applicable in the contract.

2 **CHAIRMAN JOHNSON:** Are you ready to move it?
3 Or do you want to continue the discussion --

4 **COMMISSIONER JACOBS:** We were up in the air
5 as to whether or not we should proceed with Issue 7.
6 I'm saying we basically started in on Issue 1. We may
7 want to go ahead and proceed on it and kind of go down
8 the list.

9 **COMMISSIONER GARCIA:** I guess a feeling
10 that -- and I sort of discussed this the other day,
11 but it almost seems that you're using language in the
12 contract to go around what this Commission didn't
13 decide. It wasn't arbitrated. We specifically spoke
14 on this issue by not speaking. We said it wasn't
15 before us. And then it comes back around and you say
16 well, it is in there. BellSouth made a mistake. They
17 signed this agreement. It's in there.

18 **MR. PELLEGRINI:** I think, Commissioner
19 Garcia, that in Issue 7 Staff is addressing the
20 concern that the Commission expressed in the
21 reconsideration order. That is, the fear that
22 provisioning services through UNEs would undercut the
23 resale standard.

24 **COMMISSIONER GARCIA:** Charlie, it's more
25 than undercutting. And I think we had this discussion

1 yesterday when I spoke to Staff.

2 You're right. You make some very good
3 arguments. But the bottom line argument is that this
4 Commission said this wasn't before us. And you're
5 telling us, well, it doesn't matter because they
6 negotiated out. Yet the company was here, we were
7 here discussing this issue, central to the discussion
8 and we said they didn't reach this agreement. And
9 you're telling us that they did. You're saying that
10 there was a meeting of the minds. Forget the whole
11 discussion that we had. You're saying there was a
12 meeting of the mind. And you're almost equating it to
13 a mistake by BellSouth of signing the contract.

14 **MR. PELLEGRINI:** Well, what was not before
15 the Commission is what is the appropriate mechanism
16 for pricing network element combinations. That's what
17 the Commission said was not before it.

18 **COMMISSIONER GARCIA:** Right. But you're
19 saying they signed the agreement that takes care of
20 that.

21 **MR. PELLEGRINI:** Yes.

22 **COMMISSIONER CLARK:** I think the distinction
23 was the only things that were before us were those
24 issues they couldn't agree on in the arbitration. And
25 you're saying this language shows they agreed to a

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1 pricing, and they made no distinction when it covered
2 network elements that are combined to duplicate a
3 retail service.

4 **MR. PELLEGRINI:** Fairly read, that's what
5 the agreement said.

6 **COMMISSIONER CLARK:** Let me ask you this:
7 When was it brought up in the arbitration? Was it an
8 issue in the arbitration? It wasn't, was it? It was
9 brought up during the hearing sometime. And then it
10 was brought up on reconsideration. Is that correct?

11 **MR. PELLEGRINI:** There was an issue in the
12 arbitration which said should AT&T be allowed to
13 combined BellSouth's unbundled network elements to
14 recreate BellSouth services. There was that issue.

15 **COMMISSIONER CLARK:** Do you have a copy --
16 is that the prehearing statement for that?

17 **MR. PELLEGRINI:** No, it's not.

18 **COMMISSIONER CLARK:** What is it?

19 **MR. PELLEGRINI:** This is an excerpt from
20 BellSouth Witness Scheye's testimony.

21 **COMMISSIONER CLARK:** Can I see that?

22 **COMMISSIONER DEASON:** Was that in the
23 original arbitration?

24 **CHAIRMAN JOHNSON:** Did we answer the
25 question?

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1 **COMMISSIONER DEASON:** Yes, we said they
2 could, but we didn't say at what price.

3 (Counsel shows document to Commissioner
4 Clark.)

5 **COMMISSIONER JACOBS:** When that decision was
6 made -- and I'm kind of asking -- did it distinguish
7 whether or not the unbundled elements were a part of
8 an existing ILEC service or not?

9 As I've read it, it just says any element
10 should be provided by the ILEC. It didn't make a
11 distinction whether or not that element was then a
12 part of an existing ILEC service. Is that true?

13 **MS. SIRIANNI:** That is correct.

14 **COMMISSIONER JACOBS:** So then there was no
15 distinction at that time as to whether or not that
16 element was a part of some existing service? The only
17 issue was whether or not once it was required to be
18 provided, the IXC or the CLEC could recombine it in
19 such a way such as to recreate a new service; is that
20 correct?

21 Because that's a subplot that I see in your
22 logic here, is that -- I think the ILECs are saying,
23 "If it's sitting out there as a part of an existing
24 service, we don't have to unbundle it." It's not --
25 in essence, that those elements are not unbundled

1 elements. I didn't see that in the original logic.
2 First of all, am I correct in that interpretation?

3 **MR. PELLEGRINI:** If I understand you
4 correctly, I think to the contrary. BellSouth is
5 saying they would -- outside the contract, they would
6 unbundle those elements. They would provide them as
7 separate unbundled elements. But their obligation
8 exists under the present contracts to provide them as
9 bundled elements. I don't know if that addresses your
10 question.

11 **COMMISSIONER JACOBS:** So what you're saying
12 is that it's without question that in the part --
13 there was a meeting of the minds, that if there were
14 elements that were part of an existing ILEC service,
15 that those elements could be unbundled?

16 **MS. SIRIANNI:** That those elements can be
17 purchased as unbundled network elements?

18 **COMMISSIONER JACOBS:** That's without
19 question.

20 **MS. SIRIANNI:** Right.

21 **COMMISSIONER JACOBS:** Okay. The only
22 question is whether or not -- how you recombine them
23 when the CLEC provisions them.

24 **MS. SIRIANNI:** How they are priced.

25 **COMMISSIONER DEASON:** The question is how

1 they are priced.

2 COMMISSIONER JACOBS: Okay.

3 COMMISSIONER CLARK: And who gets access.

4 MS. SIRIANNI: I just wanted to read out
5 of -- this is the initial order in the 833 arbitration
6 and it specifically says --

7 COMMISSIONER DEASON: Read it slowly,
8 because the court reporter had a really hard time the
9 last time you read something.

10 MS. SIRIANNI: Oh, really? Sorry.

11 (Laughter)

12 "Since it appears, based on the above, that
13 the FCC's Rules and Order permit AT&T and MCI to
14 combine unbundled network elements in any manner they
15 choose, including recreating existing BellSouth
16 services, that they may do so for now." Then we go on
17 to say "However, we have a concern and may revisit
18 this portion of the order should the FCC's
19 interpretation change." We were pretty clear in the
20 initial order they could recreate an existing service.

21 Now, your question as to were we specific
22 about how they should price it, that doesn't appear in
23 this language. But then if you go to the
24 reconsideration order, and it talked about in the
25 reconsideration -- Bell's reconsideration in AT&T's

1 cross motion, we talk about -- on page, I think
2 it's -- on Page 8 it specifically says that "We set
3 rates only for the specified UNEs that the parties
4 requested, and that it's not clear from the record in
5 this proceeding that our decision included rates for
6 all elements necessary to recreate a complete retail
7 service. And it is inappropriate for us to make a
8 determination on that issue at this time. As such, we
9 find that BellSouth's motion does not identify any
10 point or fact of law that we failed to address, and we
11 agree with AT&T and MCI that BellSouth is merely
12 presenting its previous argument from a different
13 angle in an effort to have us reconsider an issue in
14 which we already reconsidered and decided." And that
15 you still state your concern about recombining network
16 elements to recreate a service.

17 **CHAIRMAN JOHNSON:** How did they frame the
18 motion to which we were reacting there? What was
19 their motion?

20 **MS. SIRIANNI:** BellSouth's motion?

21 **CHAIRMAN JOHNSON:** Uh-huh.

22 **MS. SIRIANNI:** BellSouth's motion at this
23 point takes up the pricing of unbundled elements when
24 they are recombined and that's when they start their
25 it should be resale.

1 **CHAIRMAN JOHNSON:** So their motion was to
2 get us to set pricing, or was it --

3 **MR. PELLEGRINI:** Well, BellSouth, on
4 reconsideration, argued that reconsideration was
5 necessary in order to correct misunderstanding --

6 **CHAIRMAN JOHNSON:** Charlie, start over and
7 slow down.

8 **MR. PELLEGRINI:** BellSouth's argument on
9 reconsideration was this: "That it was necessary to
10 reconsider the order to correct misunderstandings of
11 BellSouth's position, to eliminate confusion over
12 terms of rebundling and recombination, to amend our --

13 **CHAIRMAN JOHNSON:** Slow down a little bit.
14 She's trying to take this.

15 **MR. PELLEGRINI:** I'm sorry. "To eliminate
16 confusion over the terms of rebundling and
17 recombination, to amend our misapprehension of our
18 legal authority, and to correct misconceptions
19 regarding the assumption of risk involved in
20 rebundling as opposed to resale."

21 **CHAIRMAN JOHNSON:** Could I see that, too?

22 **COMMISSIONER CLARK:** Madam Chairman, I think
23 what is happening is we had -- on the reconsideration
24 we had to look at the standard, did we consider it,
25 and did we misunderstand anything? We did consider

1 it, we didn't misunderstand anything, and that's why
2 we still didn't address it. Because in the original
3 order we said it wasn't before us. But we did raise
4 concerns about how it would circumvent the resale and
5 how it would affect the notion of joint marketing.
6 And now I think it's clear we have before us the
7 notion of how it affects access charges too.

8 MS. SIRIANNI: I also wanted to go on in the
9 reconsideration order, and on Page 30, it talks about
10 recurring charges, and I think some of the same
11 language is under nonrecurring charges, and Staff
12 decision, it says "We find that the prices we set for
13 UNEs are appropriate on an individual basis. However,
14 when two or more UNEs are combined, AT&T or MCI may be
15 paying duplicate charges. In the example of combining
16 a loop and a port, we believe it is inappropriate for
17 AT&T or MCI to incur duplicate charges." With some
18 specifics. "Therefore, we shall reconsider our
19 decision on this point and require BellSouth to remove
20 all duplicate charges when combinations of network
21 elements are ordered."

22 So while back on Page 8 it says we didn't
23 consider it, here we say when they are combined,
24 there's duplicate charges.

25 COMMISSIONER CLARK: I would say one is a

1 broader issue, and you need to look to the specific on
2 when it recreates a service to what we decided. And
3 we said it wasn't before us. We were not asked to
4 arbitrate it.

5 I think that's probably the way we ought to
6 look at this. This is a broad statement on unbundled
7 network elements. It doesn't go to the issue of when
8 they are combined to provide resold services.

9 MS. SIRIANNI: In Staff's mind --

10 COMMISSIONER CLARK: Sorry, retail services.

11 MS. SIRIANNI: I just want to say this. In
12 Staff's mind, when we set unbundled network elements
13 initially in the arbitration, I think we knew that
14 there were carriers out there that would probably be
15 purchasing more than one UNE at a time.

16 COMMISSIONER CLARK: I would think so.

17 MS. SIRIANNI: Right. So when they would do
18 that, they would have to combine certain elements
19 together. The prices that we assumed that they would
20 use were the prices that we set.

21 COMMISSIONER CLARK: I agree with that.

22 MS. SIRIANNI: And so by the verbiage back
23 on Page 8 of that, where we say we believe BellSouth
24 is taking this up as another angle, in our mind the
25 UNE prices added together is what the company would

1 use in order to provide an end user service under the
2 provision of unbundled network elements, unlike
3 BellSouth bringing up in the reconsideration the idea
4 of now, all of a sudden, if you use enough unbundled
5 network elements, that all of a sudden it becomes
6 local service, then you better call it resale.

7 **CHAIRMAN JOHNSON:** Ms. Sirianni, I agree
8 with everything you said as to what Staff was
9 thinking, because to me --

10 **COMMISSIONER GARCIA:** I don't -- now they
11 are reading our minds.

12 **CHAIRMAN JOHNSON:** No. I clarified as to
13 what Staff was thinking.

14 **MS. SIRIANNI:** I'm just saying what Staff
15 was thinking there. Because obviously we knew that
16 there was not enough CLECs out there that had that
17 much of their own facilities in place that they may
18 only be purchasing one UNE at a time.

19 **CHAIRMAN JOHNSON:** But one of the issues
20 was -- and remembering back to the debate -- one of
21 the issues or one of the questions for Commissioners
22 was what happens when they do rebundle in such a way,
23 if it is possible, to create a R-1 service? How
24 should that be priced? And it appeared to me that
25 Bell kept trying to get us to answer that question

1 over and over again, and that we didn't answer that
2 question, and that they felt that the contract didn't
3 answer the question.

4 It seems to me that when Bell and the
5 companies were negotiating the contracts, they had to
6 deal with that FCC Order that was out there that said
7 unbundle this stuff, put it back together. The Bell
8 company screamed and shouted the whole time through.
9 But that was the FCC order. So they were trying to
10 deal with that issue of, "Okay, how do we comply with
11 the FCC Order and have these negotiations?" But when
12 you -- when it came to an issue of what if they
13 unbundled and rebundled something that would
14 constitute R-1, they are saying, "Whoa. That's a
15 pricing issue." And someone needs to address the
16 pricing issue. It's not just unbundling/rebundling.
17 It's a pricing issue now and it relates to access too.
18 Because if it's rebundled in such a way that it's just
19 resale, the ILEC would get the revenues.

20 So to me I can not -- and I can even look at
21 the contract and see that both parties -- it's almost
22 reconcilable, you know. Because I can see Bell
23 looking at it and saying, "Oh, yeah. We agreed to
24 that. We agreed to the fact that we had to unbundle
25 and rebundle." But when what is being rebundled is a

1 R-1 or B-1 service, that's a different story, because
2 now you're talking resale and now you're talking a
3 complete service and that should be treated
4 differently. And I don't know where we've addressed
5 that.

6 MS. SIRIANNI: Let me just say -- and what
7 is asked to be recombined here is only a loop and a
8 port. And it's Staff's position that that does not
9 constitute --

10 COMMISSIONER GARCIA: Right.

11 MS. SIRIANNI: -- local service, and that's
12 what is at issue here.

13 COMMISSIONER CLARK: We understand.

14 COMMISSIONER GARCIA: We understand that.
15 We agree with Staff's perception.

16 COMMISSIONER CLARK: Wait a minute. We
17 haven't agreed with that.

18 COMMISSIONER GARCIA: I'm sorry. I agree
19 with your discussion. Let me not take it that far. I
20 agree with your discussion there. And it's a good
21 point. Walter, was asking are for some time.

22 MR. D'HAESELEER: Commissioners, I'd like to
23 have maybe 10 or 15 minutes to talk to Staff and see
24 if we're all on the same page.

25 COMMISSIONER CLARK: I think you are.

1 Except we're not on that page.

2 CHAIRMAN JOHNSON: Okay. A 15-minute break.

3 MR. D'HAESELEER: I understand and that's
4 what I want to talk to them about.

5 CHAIRMAN JOHNSON: We'll take a 15 minute
6 break.

7 (Brief recess taken.)

8 - - - - -

9 CHAIRMAN JOHNSON: We're going to go back on
10 the record. Mr. Pellegrini.

11 MR. PELLEGRINI: Commissioners, Staff
12 believes that if you have some difficulty in voting
13 Staff's recommendations in Issues 1 and 2 and in
14 Issues 4, and 5, and in 7, for that matter, that's not
15 a problem. Issues 3 and 6 represent, in effect, a
16 back door.

17 COMMISSIONER CLARK: An alternative.

18 MR. PELLEGRINI: An alternative. And with
19 that you could still decide Issues 8, 9 and 10, and we
20 would recommend that you do that.

21 CHAIRMAN JOHNSON: So as to the first issues
22 do we need --

23 MR. PELLEGRINI: Well, if you wish, you
24 could vote to deny Staff in Issues 1 and 2 and Issues
25 4 and 5, and adopt Staff's recommendation in Issues 3

1 and -- Issue 3 and Issue 6.

2 **CHAIRMAN JOHNSON:** Now, are you saying we
3 don't need to answer the fundamental questions that
4 are being raised, or we need to?

5 **MR. PELLEGRINI:** No, I'm simply saying that
6 if you can't accept Staff's interpretation of the
7 contracts, then you can vote in Issues 3 and 6 to
8 require the parties to negotiate what the price for
9 whatever combinations should be.

10 **CHAIRMAN JOHNSON:** I see.

11 **COMMISSIONER CLARK:** Madam Chairman, I think
12 we have had a good discussion on some of the broader
13 issues, and I think we can, at this point go issue by
14 issue, starting with Issue 1.

15 **COMMISSIONER DEASON:** Well, let me ask a
16 question to Mr. Pellegrini.

17 What you have just presented as an
18 alternative would require negotiations, more
19 negotiations. Of course, we have two agreements in
20 front of us. What if MCI, in particular, says "I have
21 nothing further to negotiate. I have a signed
22 contract with very explicit language, which I think if
23 it goes to a court is going to uphold my position, why
24 should I negotiate anything?"

25 **MR. PELLEGRINI:** And very well may see a

1 motion for reconsideration on that very point for an
2 appeal, but --

3 **COMMISSIONER CLARK:** I think if we don't
4 agree with Staff on 1, that doesn't necessarily mean
5 we have to agree on 3. But I think we can work
6 through the issues. It doesn't mean we have to agree
7 with the conclusions. And I think we can still wrap
8 this up.

9 But, Commissioner Deason, you're correct.
10 That if we decide to send them back to negotiate, they
11 may believe that they've already negotiated. And I
12 would suggest that no matter what we decide on
13 Issue 1, it's probably going to be appealed. I mean,
14 I can't foresee that it wouldn't be.

15 **COMMISSIONER DEASON:** You know, I agree.
16 The ideal situation would be for the parties to come
17 to the Commission and say, "We definitely have an
18 agreement and it's clear, it's unambiguous, and this
19 is what we desire, and go forward, and compete and do
20 good." But we don't have that. And I'm not so sure
21 at this point, given the history of this entire
22 process, if we say go back and negotiate further, that
23 we're going to get something fruitful. But I'm not
24 opposed to trying that.

25 I guess the difficulty I have is that, at

1 least with MCI, it appears that there is a contract
2 with language in it that could be interpreted -- in
3 fact, it's our own Staff's recommendation that it
4 could be interpreted a certain way and it can only
5 would be interpreted that way. And if I were MCI, I
6 will not see a lot of -- I would not have a lot of
7 desire to go back and renegotiate from a position that
8 I felt I had already accomplished in this signed
9 contract. But so be it.

10 **CHAIRMAN JOHNSON:** Let me ask one question
11 on Issue 1. I think -- and Staff can help me through
12 this -- as I read Issue 1, maybe I want -- maybe the
13 question I want answered isn't being asked here or
14 something. Because my concern, as it relates to the
15 contract, is whether or not the contract addresses the
16 rebundling of elements that would constitute R-1. And
17 I don't think the contract discusses what those
18 elements would be, how it would be rebundled and then
19 how it would be priced. But I think that the contract
20 does discuss anything less than that, if you bundled a
21 couple of items. You know, anything less than R-1 the
22 contract seems to address to me. But when it gets up
23 to bundling enough services to constitute resale and
24 you're getting into pricing issues, and you're getting
25 into a created service, then that's a different point

1 that was not negotiated in this particular contract.

2 **MR. PELLEGRINI:** There's not specific
3 language that deals with that situation in the
4 agreement; no, there's not. The language in the
5 agreement simply requires BellSouth to provide
6 combinations of elements. And we think that for the
7 combinations of elements, whatever those elements
8 might be, the pricing standard is established in the
9 agreement, particularly in Section 2.6.

10 **CHAIRMAN JOHNSON:** See -- and I guess I'm
11 thinking, when the combination of elements would be
12 sufficient to constitute R-1, that's a different
13 issue.

14 **MR. PELLEGRINI:** That specifically is not
15 addressed.

16 **CHAIRMAN JOHNSON:** And I thought at one
17 point that was BellSouth's argument, like, "Hold on,
18 Commissioners, we did not. That's something that we
19 need to arbitrate. Because that is not something we,
20 being MCI and BellSouth, agree upon. That is a point
21 of contention."

22 **MR. PELLEGRINI:** Let me read a particular
23 section in the MCI agreement. It's Section 2.4 of
24 Attachment 3.

25 **CHAIRMAN JOHNSON:** Is it cited somewhere in

1 here too?

2 MR. PELLEGRINI: It's on Page 12.

3 CHAIRMAN JOHNSON: Okay. I see it.

4 MR. PELLEGRINI: "BellSouth shall offer each
5 network element individually and in combination with
6 any other network element or network elements in order
7 to permit MCI to provide telecommunications services
8 to its subscribers."

9 That, we think, convincingly describes
10 BellSouth's obligation for provisioning network
11 element combinations under the agreement.

12 CHAIRMAN JOHNSON: Okay.

13 COMMISSIONER CLARK: Madam Chairman, I'm
14 prepared to make a motion on Issue 1.

15 CHAIRMAN JOHNSON: Okay.

16 COMMISSIONER CLARK: And let me just
17 indicate that I understand that Staff believes that
18 the language on -- that's quoted on Page 11 and then
19 as just read, by 12, is clear and unambiguous.

20 My view would be that it does describe a
21 generic pricing with respect to individual elements
22 and a combination of elements. But it does not
23 address the specific issue of when they are recombined
24 to duplicate a retail service. And that given that,
25 we can look at the circumstances surrounding the

1 negotiation and the arbitration. And it was clear to
2 me at that point that that was always a point of very
3 vigorous contention between these parties. And as a
4 result, I don't believe those contract provisions
5 cover it. And for that reason my recommendation would
6 be that on Issue 1 we adopt Staff's recommendation
7 with the exception of the sentence -- the second
8 sentence, or the third sentence, if you count "yes" as
9 a sentence, but the second sentence being "The
10 Commission should also find that MCI-BellSouth
11 Interconnection Agreement specifies how prices will be
12 determined for combinations of unbundled network
13 elements that do recreate an existing BellSouth retail
14 service." We would delete that.

15 And then in the last sentence the sentence
16 would read, two lines up from the bottom, after the
17 combination -- after the word "combination," comma, we
18 would say, "except when the combined network elements
19 recreate an existing BellSouth retail service." And
20 that would be my motion.

21 **CHAIRMAN JOHNSON:** There's a motion.

22 **COMMISSIONER GARCIA:** I'll second.

23 **CHAIRMAN JOHNSON:** There's a motion and
24 second. Any further discussion?

25 **COMMISSIONER JACOBS:** Having that -- that

1 has some ramification of subsequent issues.

2 **COMMISSIONER CLARK:** Yes, it sure does. And
3 think we can deal with them -- that is the initial
4 decision we have to make, and then we can get to the
5 others.

6 **CHAIRMAN JOHNSON:** There's a motion and
7 second.

8 **COMMISSIONER DEASON:** Could I get the
9 language again at the bottom of the recommendation
10 paragraph?

11 **CHAIRMAN JOHNSON:** Yes.

12 **COMMISSIONER CLARK:** Just a minute. It
13 would say "except when the UNEs are combined to
14 recreate an existing BellSouth retail service."

15 **MR. PELLEGRINI:** Commissioner Clark, would
16 you eliminate the language with respect to duplicate
17 charges; charges for unneeded functions? I think you
18 ought not to. The very last line.

19 **COMMISSIONER CLARK:** Yes. That's correct.
20 It would seem to me that prices must eliminate the
21 duplicate charges or charges for unneeded functions
22 and activities for those elements that are combined
23 but don't recreate the retail service.

24 **COMMISSIONER DEASON:** So you would leave in
25 the last phrase beginning with "and subject to the

1 elimination?"

2 **COMMISSIONER CLARK:** Yes.

3 **COMMISSIONER JACOBS:** And striking the whole
4 sentence there in the middle that deals with the --

5 **COMMISSIONER CLARK:** That's correct.

6 **CHAIRMAN JOHNSON:** Any other questions or
7 discussion on the motion?

8 **COMMISSIONER JACOBS:** There is one concern
9 that I have, and I'm coming late to this, so -- I
10 guess as I'm reading it now, my concern probably is
11 not that great. And the idea is that we may be
12 implying some finding as to what the parties -- what
13 level of meeting of the minds there was amongst the
14 parties. I want to be clear that we're not doing
15 that. Because there could be some implication that we
16 would be reforming the agreement.

17 The reason I bring it up to you, you said
18 that the original language was unambiguous. And it's
19 my understanding that this aspect of it simply was not
20 addressed as opposed to we're reforming something that
21 was in the contract.

22 **COMMISSIONER CLARK:** I don't think we're
23 reforming the contract. I think there was not a
24 meeting of the minds that this provision covered where
25 it recreated an existing service. It gives a generic

1 frame work on generically combining network elements.
2 It does not go to the issue of when they are
3 recombined to recreate an existing retail service.
4 And as evidence of that, I point to the fact that it
5 was testified to at the hearing. It was hotly
6 contested. And has remained a contested issue with
7 respect to that recombining and how it is priced.

8 **COMMISSIONER JACOBS:** Okay. With that
9 understanding.

10 **CHAIRMAN JOHNSON:** There's a motion and a
11 second. All those in favor signify by saying "aye."
12 Aye.

13 **COMMISSIONER DEASON:** Aye.

14 **COMMISSIONER CLARK:** Aye.

15 **COMMISSIONER JACOBS:** Aye.

16 **COMMISSIONER GARCIA:** Aye.

17 **CHAIRMAN JOHNSON:** Opposed? (No response)
18 Show that, then, approved unanimously.

19 Issue 2. Page 29.

20 **MR. PELLEGRINI:** Issue 2 presumes you've
21 agreed with us in Issue 1.

22 **CHAIRMAN JOHNSON:** So how do we rephrase
23 this?

24 **COMMISSIONER CLARK:** Well, just so it's
25 clear, I thought this was the issue of --

1 **COMMISSIONER JACOBS:** Where it still applies
2 except to the.

3 **COMMISSIONER CLARK:** I think this is the
4 appropriate place to make it clear that except in the
5 case where it's recreating a retail service you add
6 them up and then you subtract duplicate and
7 unnecessary charges. Okay? And that's my motion on
8 Issue 2.

9 **COMMISSIONER GARCIA:** I'm sorry. Repeat it.

10 **COMMISSIONER CLARK:** "With respect to the
11 combination of network elements, the price for them
12 will be adding up the individual prices for the
13 network elements then subtracting any duplicate or
14 unnecessary charges."

15 **COMMISSIONER JACOBS:** Except in the case
16 where they --

17 **COMMISSIONER CLARK:** Except -- but it does
18 not apply when they recreate a retail service. That's
19 my motion.

20 **CHAIRMAN JOHNSON:** There is a motion. Is
21 there a second?

22 **COMMISSIONER DEASON:** It does not
23 necessarily apply. I assume you're getting to the
24 point to where you're going to have the parties go and
25 negotiate.

1 **COMMISSIONER CLARK:** Well, I don't know.

2 **COMMISSIONER DEASON:** You don't know yet.

3 Well, see --

4 **COMMISSIONER CLARK:** I guess, Commissioner
5 Deason, I was --

6 **COMMISSIONER DEASON:** Well, I guess my
7 question is then what does apply? Is it -- is part of
8 your motion, then, that the resale rate would apply if
9 the UNes are recombined to reconstitute a service?

10 **COMMISSIONER CLARK:** Yeah. Kind of that's
11 what I'm getting to.

12 **COMMISSIONER DEASON:** That's part of your
13 motion?

14 **COMMISSIONER CLARK:** No, not this one.

15 **COMMISSIONER DEASON:** Oh, okay.

16 **COMMISSIONER CLARK:** I think that's maybe
17 the next issue, or -- I know it's in here somewhere,
18 but I'm not sure it's in here.

19 **COMMISSIONER GARCIA:** You're not going to
20 send them back to renegotiate?

21 **COMMISSIONER CLARK:** The only thing Staff
22 said they need to renegotiate was -- is addressed in
23 3, right?

24 **COMMISSIONER DEASON:** It concerned AT&T on
25 the new service, not migration service, is what Staff

1 determined needed to be renegotiated.

2 **MR. PELLEGRINI:** Well, somehow it's going to
3 have to be determined when a combination of network
4 elements recreates --

5 **COMMISSIONER CLARK:** Pardon me?

6 **MR. PELLEGRINI:** Somehow and somewhere it's
7 going to have to be determined how it is --

8 **COMMISSIONER CLARK:** Issue 7.

9 **MR. PELLEGRINI:** Yeah -- that a combination
10 of network elements would recreate an existing retail
11 service.

12 **COMMISSIONER CLARK:** I think --

13 **CHAIRMAN JOHNSON:** I don't know if we can do
14 that in this proceeding. It's difficult. Because
15 Ms. Sirianni already said we don't have the evidence
16 in order to do that. And, actually, it would be
17 better if the parties tried to get there themselves.

18 **MR. PELLEGRINI:** That's why I said somewhere
19 and somehow.

20 **COMMISSIONER CLARK:** I agree with that. But
21 we did have a lot of testimony on that, on Issue 7.
22 And I'm willing to give them some direction if I can't
23 decide the issue because we did hear a lot of
24 testimony about -- I, frankly, don't agree that a loop
25 and a port is local service. I recall vividly

1 Commissioner Garcia's point about plugging into the
2 wall and you can't get the electricity unless the wire
3 comes the other way. And for that reason, I don't
4 think the loop and port are adequate.

5 I guess I'm not clear in my own mind as to
6 what we have to decide in this proceeding relative to
7 that issue.

8 I think Issue 2, it should be relative only
9 to combination of network elements that do not
10 duplicate -- do not recreate an existing retail
11 service. And the prices for that should be the sum of
12 the individual elements less duplicate and unnecessary
13 charges. And that's all my motion on Issue 2 applies
14 to.

15 CHAIRMAN JOHNSON: Is there a second?

16 COMMISSIONER GARCIA: Second.

17 CHAIRMAN JOHNSON: A motion and a second.

18 Any further discussion? Seeing none, all those in
19 favor signify by saying "aye." Aye.

20 COMMISSIONER CLARK: Aye.

21 COMMISSIONER DEASON: Aye.

22 COMMISSIONER GARCIA: Aye.

23 COMMISSIONER JACOBS: Aye.

24 CHAIRMAN JOHNSON: Opposed? (No response)

25 Show that approved unanimously.

1 Issue 3.

2 COMMISSIONER JACOBS: This is the place
3 where we said --

4 COMMISSIONER CLARK: Issue 2 looks the same
5 as Issue 3.

6 COMMISSIONER JACOBS: Not really. Issue 3
7 is --

8 CHAIRMAN JOHNSON: Yeah. Issue 3 kind of
9 goes to that except -- the way that we've changed
10 Issue 1. Issue 3 goes to the retail service. Should
11 they renegotiate that or not? Because that's all
12 that's left hanging.

13 COMMISSIONER GARCIA: I think that's fine.

14 MR. PELLEGRINI: You would modify Issue 3,
15 then, to apply only to those situations in which the
16 combination of network elements recreates a retail
17 service? You would require negotiations in that
18 instance?

19 COMMISSIONER CLARK: Maybe I'm confused,
20 because the way Issue 2 -- Issue 2 and 3 are worded
21 exactly the same on my paper.

22 CHAIRMAN JOHNSON: See, it says, "If the
23 answer to Issue 1 is no, then what do you do?"

24 COMMISSIONER CLARK: Oh, got it. Thank you.

25 COMMISSIONER GARCIA: And it was, to some

1 degree.

2 **CHAIRMAN JOHNSON:** It was, "No, as it
3 relates to --

4 **COMMISSIONER GARCIA:** I think what Charlie
5 stated is fine.

6 **COMMISSIONER CLARK:** Well, I guess, then,
7 you're right. Now is the point that we make a
8 decision, perhaps, on how you price recombined UNES
9 that recreate an existing retail service; is that
10 correct?

11 **MR. PELLEGRINI:** And you would direct the
12 companies to negotiate what that price should be in
13 those.

14 **COMMISSIONER CLARK:** I guess it seems to me
15 that there is nothing to renegotiate. It's the resale
16 price. It's the wholesale price.

17 **COMMISSIONER GARCIA:** I don't think we need
18 to get there. Now you're going to the other side. I
19 think we should send them back to renegotiating and
20 then we may make that decision if it comes back before
21 us on that issue.

22 **COMMISSIONER CLARK:** Let me put my thought
23 process out there. One of the bases under which I
24 conclude that with respect to Issue 1 it was not
25 covered by the contract was the point that it was

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1 brought up in testimony in the hearing, and it has
2 remained a contentious issue, is that when you
3 recombine unbundled network elements to recreate an
4 existing service, it really is -- it's resale and
5 different provisions apply to resale, one being the
6 price. The second being whether the joint marketing
7 applies. And the third being the access charges.

8 I guess my thinking is part of that is if it
9 quacks like a duck, it looks like a duck, or whatever
10 that metaphor is, it's a duck. And we've already
11 priced that service. And it is the resale, it's the
12 retail price less the whole sale discount.

13 **COMMISSIONER GARCIA:** But the rationale is
14 that this hasn't been properly before us and to deal
15 with that now, I think, goes beyond -- in other words,
16 our argument was this wasn't before us, therefore, we
17 can decide from what we have. But to suddenly say it
18 is was before us, it goes a little bit too far. I
19 understand your rationale and perhaps we may get there
20 later on.

21 **COMMISSIONER CLARK:** I guess my answer to
22 you was the issue before us is if it is, in fact, a
23 duck, do you price it like a duck? And I think that
24 was -- we said that wasn't before us and I think now
25 it is before us.

1 **COMMISSIONER DEASON:** But, see, I don't
2 think that we can say that it is a duck, because we
3 had testimony that says that there are different risks
4 involved. Even though you may order elements and they
5 reconstitute an existing service, that that whole
6 approach to providing service by that mechanism
7 presents different risks and a different degree of
8 operating, a different amount of expertise to take
9 those elements and to operate them to provide
10 effective service. It may be close to being a duck,
11 but I'm not sure we're there with a duck.

12 I'm with Commissioner Garcia. Just because
13 we voted out Issue 1, then we take that leap that we
14 say then that it has to be priced at resale.

15 I'm hopeful and -- I'm hopeful that perhaps
16 there is some room for agreement between the parties.
17 Because it seems to me that before now they have been
18 focusing on one extreme versus the other; and that is
19 it's the UNES, and it's the sum of the UNES and we can
20 take those UNES and do with them what we want. And
21 the other extreme being that it has to be -- if it
22 reconstitutes a service, it's resale and it's got to
23 be priced at resale. And perhaps there's some middle
24 ground, and perhaps there's not. But, you know, it
25 seems to me the big key here is access charges, how

1 those are going to be handled. Maybe there should be
2 some sharing of access charges. I don't know.

3 **COMMISSIONER GARCIA:** Let me ask you what
4 happens -- we send them -- let's say we vote out 3
5 with the way you stated it, Charlie, if they don't
6 come to an agreement then that comes to us.

7 **MR. PELLEGRINI:** Yes, it does.

8 **COMMISSIONER GARCIA:** And that's fine.
9 And, Commissioner, if you think you have enough
10 information --

11 **COMMISSIONER CLARK:** It has in there -- I
12 mean, I'm not opposed to what you're suggesting
13 because I think the -- we may not be completely clear
14 as to what elements, in fact do, constitute local
15 service. I'm very comfortable saying it's not a loop
16 and a port. I thought Staff did a good analysis of
17 what is concluded -- included. And having the benefit
18 of that, maybe the parties can go back and reach some
19 agreement on what does, in fact, recreate local
20 service and how it should be priced. So I'm not
21 opposed to that.

22 **COMMISSIONER GARCIA:** And if not, they can
23 come back here. Charlie, restate my motion, please.
24 You stated it -- restate it, because you stated it
25 succinctly, and then I'll just move that.

1 **MR. PELLEGRINI:** Well, I think we need to
2 restate the recommendation in Issue 3 -- wait a
3 minute.

4 **COMMISSIONER GARCIA:** Charlie, I counted on
5 your --

6 **MR. PELLEGRINI:** I'm with you. All right.
7 The parties would be directed to negotiate what the
8 price for combinations of network elements should be
9 in the case where that combination would recreate an
10 existing retail service.

11 **COMMISSIONER GARCIA:** So moved.

12 **COMMISSIONER JACOBS:** If we're in a
13 proceeding that follows the authority that says this
14 is interconnection based on unbundled elements, how is
15 it that when negotiating resale provisions, which is
16 my understanding under a different mode of entry and a
17 different line of authority --

18 **COMMISSIONER GARCIA:** What was the question?

19 **COMMISSIONER JACOBS:** If we're in a
20 proceeding that is dealing with interconnection based
21 on unbundled elements, how then will we negotiate
22 based on resale? Which is my understanding is a
23 different line of authority and a different
24 proceeding.

25 **COMMISSIONER GARCIA:** Go ahead, Charlie.

1 **MR. PELLEGRINI:** What you would require the
2 companies to do would be to negotiate a price for
3 those combinations, that is those combinations --

4 **COMMISSIONER JACOBS:** It's my understanding
5 the base line of it is the resale price.

6 **MR. PELLEGRINI:** No.

7 **COMMISSIONER GARCIA:** That's what Susan
8 believes. And we may all believe that somewhere down
9 the line. But I, like Commissioner Deason, believe
10 that it may be a platypus and not a duck. So what we
11 need to do is send them back, have them look at this,
12 and then we'll come back and we'll make that
13 determination if it is the same thing. And that's a
14 distinction. You may be closer to Susan in truth and
15 you may have --

16 **CHAIRMAN JOHNSON:** You raise an interesting
17 issue. And as Mr. Pellegrini articulated Staff's
18 opinion of the court decision, he was stating or
19 maybe -- one of you -- Wayne, it may have been Wayne
20 that stated that, well, if you're talking about
21 unbundled network elements and you've got to price
22 them at cost and you can bundle them back together and
23 you're still dealing with cost and it's different from
24 price. That's where Staff was going when we first
25 started this discussion. So if you follow that

1 rationale, you probably wouldn't -- rebundling
2 unbundled network elements would still have a
3 cost-based kind of a price. I think that's where
4 you're head is.

5 **COMMISSIONER JACOBS:** Very astute, Madam
6 Chairman.

7 **COMMISSIONER CLARK:** Well, I'm --

8 **CHAIRMAN JOHNSON:** But I'm fine.

9 **COMMISSIONER CLARK:** He made the motion.

10 **CHAIRMAN JOHNSON:** There's a motion that we
11 allow -- well, we'll allow the parties to negotiate
12 the recreation of an existing service.

13 **MR. PELLEGRINI:** And I would just simply add
14 that that price ought to be consistent with the
15 provisions of the Act.

16 **CHAIRMAN JOHNSON:** Whatever that means,
17 because that might be debated.

18 **COMMISSIONER CLARK:** I don't think we should
19 say that, because then they'll get into a debate. I
20 think we should leave it as open as it might be. I
21 assume they'll do it consistent with the Act. I mean,
22 I don't know what that adds, and it might send a
23 signal we don't --

24 **COMMISSIONER GARCIA:** It's not necessary.

25 **MR. PELLEGRINI:** All right.

1 **CHAIRMAN JOHNSON:** We'll strike that.

2 **COMMISSIONER DEASON:** Well, I assume it's
3 understood that we don't want to do anything that's
4 contrary to the Act.

5 **COMMISSIONER GARCIA:** Right.

6 (Simultaneous conversation)

7 **COMMISSIONER GARCIA:** The Act is in all this
8 litigation -- we want to do what's right, basically,
9 and I think that's understood within all the context
10 of the legal-type discussion there.

11 **COMMISSIONER CLARK:** I'm -- has that been
12 seconded?

13 **CHAIRMAN JOHNSON:** Yes. And we're not going
14 to add that clarifying language.

15 There's a motion. Was there a second?

16 **COMMISSIONER CLARK:** I'll second it, but I
17 want -- or someone else can second it. I mean, I'm
18 willing to pursue that route because I think there's
19 two points that have been brought up.

20 There may be room for negotiation what is in
21 fact the recreation. There may be room for
22 negotiation on pricing and access charges in order to
23 move forward. I don't know. But maybe with the --
24 given the clarity with the respect to the fact that it
25 isn't just -- you can't just -- you're going to have

1 to look at it as a duck, I suppose, is the way to put
2 it, that provides some further information for the
3 parties.

4 **CHAIRMAN JOHNSON:** There's a motion.

5 **COMMISSIONER DEASON:** I have a question. I
6 guess this goes to Staff.

7 If this is the decision and the parties
8 negotiate and they come back and say it's all or none,
9 then we just make the call; is that correct?

10 **MR. PELLEGRINI:** Yeah, I think so. Yes.

11 **COMMISSIONER DEASON:** And it's possible that
12 they negotiate all of this the first round, the first
13 time, because we don't know what went on in their
14 negotiations. But we can give it a shot.

15 **CHAIRMAN JOHNSON:** There's a motion. I can
16 second it.

17 **COMMISSIONER DEASON:** I'll second the
18 motion.

19 **CHAIRMAN JOHNSON:** There's a motion and a
20 second. Any further discussion? All those in favor
21 signify by saying "aye." Aye.

22 **COMMISSIONER CLARK:** Aye.

23 **COMMISSIONER DEASON:** Aye.

24 **COMMISSIONER GARCIA:** Aye.

25 **COMMISSIONER JACOBS:** Aye.

1 **CHAIRMAN JOHNSON:** Opposed? (No response)

2 Show it approved unanimously.

3 Issue 4.

4 **COMMISSIONER CLARK:** As I understand, AT&T
5 is slightly different, because they only address the
6 UNEs when they are already combined, and they do have
7 to go back and renegotiate it when they are uncombined
8 and they want them combined.

9 **MR. PELLEGRINI:** Yes.

10 **COMMISSIONER GARCIA:** That would be no to B,
11 right?

12 **MR. PELLEGRINI:** No.

13 **COMMISSIONER CLARK:** No. The difference
14 here is that they apparently negotiated and said when
15 they are combined, it's UNEs less duplicative and
16 unnecessary --

17 **MR. PELLEGRINI:** Charges. That's how Staff
18 interprets the agreement, yes.

19 **COMMISSIONER CLARK:** Whereas, the MCI said
20 whether they are combined or not, when they are
21 brought as a combination, it will be the individual
22 prices, less the duplicate and the unnecessary
23 charges. Do you see the distinction? And I'm not
24 sure how to phrase a motion to account for that
25 distinction.

1 **COMMISSIONER GARCIA:** Would it be easier
2 just to vote down 4 and then just put that in 6?

3 **MR. PELLEGRINI:** Well, in the first place, I
4 think you would want to eliminate the second sentence
5 of the recommendation.

6 **COMMISSIONER CLARK:** Yeah.

7 **COMMISSIONER DEASON:** You don't make a
8 distinction whether it does or does not recreate an
9 existing service. The distinction you make is to
10 whether it's a migration customer or new a customer.

11 **MR. PELLEGRINI:** Yes.

12 **COMMISSIONER CLARK:** I'm sorry. I
13 understood that to be relevant to this particular
14 agreement, but you also recommended that it -- when
15 they are already combined, even if they recreate, it's
16 still the price in the contract.

17 **MR. PELLEGRINI:** Yes.

18 **COMMISSIONER CLARK:** But to be consistent
19 with the MCI, we have to take out that this pricing
20 applies when it recreates an existing service.

21 So it's --

22 **MR. PELLEGRINI:** Well, eliminating the
23 second sentence I think would accomplish that or at
24 least begin to accomplish that.

25 **COMMISSIONER DEASON:** What we need to do is

1 to modify Staff's recommendation to require a
2 negotiation for UNEs that are already combined which
3 do create -- recreate an existing service. And Staff
4 is already recommending negotiation for UNEs --

5 **COMMISSIONER CLARK:** I see your point.

6 **MR. PELLEGRINI:** Right, that are not already
7 combined.

8 **COMMISSIONER DEASON:** Does Staff agree with
9 that or not? To be consistent with what we did with
10 MCI?

11 **MR. PELLEGRINI:** Yes. Yeah.

12 **COMMISSIONER DEASON:** Well, somebody state
13 that as a motion, and I'll move it.

14 **COMMISSIONER CLARK:** I'm trying to --

15 **COMMISSIONER DEASON:** Or I'll second it.

16 Staff, you're recommending renegotiation for
17 AT&T when the elements are not already combined. And
18 it doesn't matter what those elements are being
19 combined for. If they are not already combined, you
20 want negotiation. You think the contract requires
21 there to be negotiation.

22 **MR. PELLEGRINI:** Right. And furthermore, if
23 they are combined and if they recreate --

24 **COMMISSIONER DEASON:** Then we're saying --

25 **MR. PELLEGRINI:** -- retail service, they

1 ought to be negotiated.

2 **COMMISSIONER DEASON:** Right. To be
3 consistent with what we're requiring for MCI.

4 **COMMISSIONER CLARK:** If that's a motion, I
5 second.

6 **COMMISSIONER DEASON:** That's a motion. Is
7 Staff clear on --

8 **MR. PELLEGRINI:** Yes.

9 **CHAIRMAN JOHNSON:** I'm just sorting it
10 through here.

11 **COMMISSIONER CLARK:** Okay.

12 **CHAIRMAN JOHNSON:** There's a motion and,
13 again, I'm not going to state it the way it was
14 stated, but just to make sure for my edification, that
15 we're requiring AT&T to negotiate if they are dealing
16 with elements that were not combined, or if they are
17 dealing with elements that were combined and recreate
18 a -- the R-1.

19 **COMMISSIONER CLARK:** Existing retail
20 service.

21 **CHAIRMAN JOHNSON:** Okay. There's a motion
22 and a second. Any further discussion? All those in
23 favor, signify by saying "aye." Aye.

24 **COMMISSIONER DEASON:** Aye.

25 **COMMISSIONER CLARK:** Aye.

1 **COMMISSIONER GARCIA:** Aye.

2 **COMMISSIONER JACOBS:** Aye.

3 **CHAIRMAN JOHNSON:** Opposed? (No response)

4 Show that approved unanimously.

5 Issue 5.

6 Charlie, what are we doing here in Issue 5?

7 **MR. PELLEGRINI:** Issue 5 is somewhat like

8 Issue 2. I'm trying to decide how it should be

9 changed.

10 **COMMISSIONER DEASON:** Well, we're requiring
11 the total of UNE prices that are in the contract to
12 apply less the duplicative charges only for those UNEs
13 that are not going to further negotiation.

14 **MR. PELLEGRINI:** Right. Correct.

15 **COMMISSIONER GARCIA:** So I don't think we
16 need to -- so what do we do on this?

17 **COMMISSIONER JACOBS:** There's one sentence
18 there in the middle.

19 **MR. PELLEGRINI:** Well, the pricing standard
20 in the agreement would apply as to the condition that
21 Commissioner Deason has just described.

22 **COMMISSIONER DEASON:** It would be for those
23 elements that are already combined that do not
24 constitute an existing service. The total of the UNEs
25 within the contract, less duplicative charges would

1 apply. All other situations are going to be subject
2 to further negotiation.

3 **CHAIRMAN JOHNSON:** That was a motion, and
4 there's a second.

5 **COMMISSIONER CLARK:** I'll make the motion.

6 **COMMISSIONER DEASON:** It doesn't matter.
7 I'm just looking for an affirmative from Staff that
8 that makes sense.

9 **MR. PELLEGRINI:** Yes, sir.

10 **MS. SIRIANNI:** Commissioners, I think you
11 need to delete the last sentence in that
12 recommendation.

13 **COMMISSIONER CLARK:** He just made a
14 different recommendation.

15 **MS. SIRIANNI:** Okay. Altogether?

16 **COMMISSIONER CLARK:** Yeah.

17 **CHAIRMAN JOHNSON:** So there's a motion. And
18 did you all understand the motion?

19 **MR. PELLEGRINI:** No, I have it. I
20 understand the motion.

21 **COMMISSIONER DEASON:** Technical Staff, give
22 me a nod.

23 **COMMISSIONER GARCIA:** Maryrose, it bothers
24 me when you don't get it, so let's get it. Let's make
25 sure we have something. And when Walter is shaking

1 his head, then we're really in trouble.

2 **MR. PELLEGRINI:** Well, the pricing standard
3 under the agreement would apply only to those
4 combinations which presently exist and which do not
5 recreate an existing retail service.

6 **COMMISSIONER DEASON:** But is there such a
7 thing? Combinations that already exist that do not
8 constitute an existing service? I don't know. We
9 haven't really addressed that issue yet.

10 **COMMISSIONER GARCIA:** There were in the
11 agreement, weren't there, Mary?

12 **COMMISSIONER CLARK:** I think there would be.
13 I mean, you could purchase -- I mean, If you say there
14 are ten UNEs that constitute retail service, you only
15 take three and they are presently combined, then it --

16 **COMMISSIONER DEASON:** Those three are
17 presently combined, but those three do not recreate a
18 service.

19 **COMMISSIONER GARCIA:** So you understood
20 that?

21 **COMMISSIONER DEASON:** Yeah.

22 **MS. SIRIANNI:** I'm okay now. When I was
23 listening to your recommendation, I was thinking how
24 it would go with this. I wasn't realizing that it was
25 totally separate.

1 **CHAIRMAN JOHNSON:** There's a motion and a
2 second. All those in favor signify by saying "aye."
3 Aye.

4
5 **COMMISSIONER DEASON:** Aye.

6 **COMMISSIONER CLARK:** Aye.

7 **COMMISSIONER GARCIA:** Aye.

8 **COMMISSIONER JACOBS:** Aye.

9 **CHAIRMAN JOHNSON:** Show it approved
10 unanimously.

11 Issue 6.

12 **MR. PELLEGRINI:** Issue 6 needs to be
13 consistent with Issue 3.

14 **COMMISSIONER CLARK:** Is Issue 6 only
15 applicable to AT&T?

16 **CHAIRMAN JOHNSON:** Yes.

17 **COMMISSIONER GARCIA:** Yeah.

18 **COMMISSIONER CLARK:** Okay.

19 **COMMISSIONER DEASON:** Prices are going to be
20 subject to negotiations. Isn't that the bottom line?

21 **MR. PELLEGRINI:** Yes. This is just a
22 complement of Issue 5. I think the parties would be
23 instructed to negotiate prices for --

24 **COMMISSIONER CLARK:** So Issue 6 is moot
25 because we've answered it in Issue 5.

1 MR. PELLEGRINI: I guess we have, yes.

2 COMMISSIONER GARCIA: Let's make sure.

3 COMMISSIONER DEASON: We need to specify
4 that we're -- like the debate that we had back on
5 Issue 3, that we're not specifying -- we're just
6 saying that it should be negotiated. Bring the prices
7 back to us.

8 MR. PELLEGRINI: I think we should identify
9 which combinations.

10 COMMISSIONER GARCIA: Recreating existing
11 services and those are going to be negotiated.

12 MR. PELLEGRINI: Well, for combinations that
13 do not presently exist and for those combinations that
14 do presently exist and recreate retail service, the
15 parties should be instructed to negotiate the prices
16 for them. That's in Issue 6.

17 COMMISSIONER DEASON: I second the motion.

18 CHAIRMAN JOHNSON: Motion and a second. Any
19 further discussion? Show it approved unanimously.

20 COMMISSIONER GARCIA: You got it? Okay,
21 good.

22 COMMISSIONER CLARK: Now, Issue 7. This is
23 where we don't -- we believe it is more generic, not
24 appropriate and that we should allow them to
25 negotiate. Is that correct?

1 **COMMISSIONER DEASON:** Commissioner Clark,
2 you had indicated earlier that you felt that it was
3 clear within this record that a port and a loop does
4 not constitute --

5 **COMMISSIONER CLARK:** Yes.

6 **COMMISSIONER DEASON:** -- an existing
7 service.

8 **COMMISSIONER CLARK:** Right.

9 **COMMISSIONER DEASON:** Is that within Issue 7
10 or is that somewhere else?

11 **COMMISSIONER GARCIA:** That's further down,
12 isn't it?

13 **MR. STAVANJA:** That's in Issue 7.

14 **COMMISSIONER GARCIA:** Is it?

15 **COMMISSIONER CLARK:** Staff concludes we
16 don't need to decide that because the agreements
17 covered it. And we've said the agreements don't.

18 **MR. STAVANJA:** We said -- Staff's
19 recommendation is that that standard for determining
20 what makes up the -- what combination of elements make
21 up for services is irrelevant because the Commission
22 has already said in the arbitration order that they
23 can't put the elements together. The 8th Circuit
24 court order already confirms what you've already said.
25 So it was just irrelevant to come up with some kind of

1 a standard.

2 **COMMISSIONER DEASON:** And, too, the fact
3 that you were not making a distinction when it came to
4 pricing.

5 **MR. STAVANJA:** Right. This is not a pricing
6 issue.

7 **COMMISSIONER DEASON:** I know it's not. But
8 this is based upon your recommendation in Issues 1 and
9 4 where you were then saying it doesn't make a
10 difference for pricing, anyway. It's the total of the
11 UNEs less the duplicative charges, regardless of
12 whether the UNEs ordered reconstituted service or not.

13 The Commission has differed from that
14 position to some degree. We've said that needs to be
15 negotiated. We've not said that it's one price or the
16 other. So we either need to specify to the parties
17 what we think a reconstituted service -- what elements
18 it takes, or else we need to leave it up to
19 negotiation and then come back and say, in this
20 scenario it is a reconstituted service. And,
21 hopefully, they will come back with prices and say we
22 agree these are the prices.

23 **COMMISSIONER GARCIA:** I would agree with you
24 that that's what we should do. We should just send
25 them back. But I'll tell you what, just as a, I

1 guess, foreshadowing, I think that on a personal basis
2 I like the logic in here. And it's strong. I think
3 we all at some point or another discussed that. But
4 we don't necessarily need to take this up now.

5 **COMMISSIONER CLARK:** You mean the
6 presentation of the evidence and the analysis with
7 respect to the fact that it wasn't only a loop and
8 port, it was more to it than that. I would agree with
9 that. But Staff seems to indicate that it's not just
10 the physical network elements, that it involves
11 management, competency skills, quality of service and
12 customer support and those things. And I suppose it
13 goes to the argument Mr. Gillan was making, and I have
14 to confess to not really buying into that argument.

15 It seems to me that to be able -- you can,
16 in effect, buy the same service by just describing it
17 a different way. And that's what we're dealing with,
18 is should you be able to describe it a different way
19 so you get access charges and you get around the joint
20 marketing?

21 **COMMISSIONER GARCIA:** I think that's part of
22 what we're sending them back to renegotiate.

23 **COMMISSIONER CLARK:** I understand that. And
24 I would say to be consistent with what we've done, we
25 wouldn't reach -- wouldn't make a decision on 7 and

1 leave that to their negotiation as I understood what
2 we were doing.

3 **COMMISSIONER JACOBS:** The concern I have is
4 it is such a threshold issue to those negotiations
5 that if it becomes deadlocked everything else falls by
6 the wayside.

7 **COMMISSIONER GARCIA:** We'll be taking it up
8 anyway if it does become deadlocked. I'll tell you
9 what, this gives them a good indication of where our
10 thinking is on some of this. It may not be Susan's
11 thinking. I'm saying my own. But it certainly gives
12 them an idea of what we think.

13 But, again, let's send them back to do that
14 part of the picture. Let's not limit the discussion
15 to something much smaller. I may agree with Staff's
16 reasoning, but let's not start the negotiation.

17 **COMMISSIONER JACOBS:** Well, let me not go
18 too far afield. I kind of sense that there was at
19 least some indication that Staff's analysis has
20 validity, and I can see going ahead and making a
21 decision on Issue 7. I don't think it -- given what
22 we've decided, I don't think it restricts their
23 negotiating abilities at all.

24 **CHAIRMAN JOHNSON:** Let me make sure I
25 understand Staff's position on this. I mean, I was

1 reading it very broadly, almost to suggest that
2 there's almost no way to recreate an R-1 service, you
3 know, so it was so way out there. Particularly when
4 you added the management competency. Even if like the
5 network items, you know, were totally owned by --
6 completely owned by the new provider, since the
7 management is different, so you all were taking it
8 probably a couple of steps further than I would take
9 it. And it's almost like if we adopted Staff's
10 rationale --

11 **COMMISSIONER GARCIA:** You have to go back.

12 **CHAIRMAN JOHNSON:** Yeah.

13 **COMMISSIONER CLARK:** No. You're right, if
14 we adopted Staff's rationale, there's no such thing as
15 recombining UNES to recreate retail service.

16 **CHAIRMAN JOHNSON:** Right.

17 **MR. STAVANJA:** That's not exactly what we're
18 saying. We're saying that when the parties purchase
19 unbundled elements to recreate an existing BellSouth
20 service, they are not creating a platypus when the
21 service is a duck; they are recreating, essentially, a
22 different breed of duck.

23 **COMMISSIONER GARCIA:** Which is not resale.

24 **MR. STAVANJA:** It's not. How can you do
25 that?

1 **COMMISSIONER CLARK:** But what you're saying
2 there is you can never purchase UNEs that you can then
3 recombine to recreate an existing retail service.

4 **MR. STAVANJA:** Well, if the elements, the
5 physical elements give you the functions that it takes
6 to provide the service. But that's only the physical
7 part --

8 **COMMISSIONER GARCIA:** Right, but you're
9 saying --

10 **COMMISSIONER CLARK:** And your answer to me
11 is yes.

12 **MR. STAVANJA:** Yes.

13 **COMMISSIONER GARCIA:** Your answer to Susan
14 is you can never recreate an existing BellSouth
15 service.

16 **MR. STAVANJA:** Identical to BellSouth?

17 **COMMISSIONER GARCIA:** Yes.

18 **MR. STAVANJA:** Well, that's the whole
19 purpose of using UNEs, so you can do something other
20 than being identical to BellSouth.

21 **COMMISSIONER GARCIA:** Not necessarily.

22 **MR. STAVANJA:** I just don't know how they
23 could do it unless they were to mimic everything that
24 BellSouth does. And it takes more than just the UNEs
25 to mimic everything that Bell does. I mean --

1 **COMMISSIONER GARCIA:** That's why we have to
2 leave this one off. I understand your thinking,
3 but --

4 **MS. SIRIANNI:** Commissioners, if I'm
5 understanding you, you like Staff's analysis in that
6 it goes through that a loop and port does not
7 constitute a recreated service.

8 **COMMISSIONER GARCIA:** Right.

9 **COMMISSIONER CLARK:** You need transport, you
10 need a tandem switch, you need OSS.

11 **MS. SIRIANNI:** Right. And so, you know, in
12 Staff's recommendation statement instead, you know,
13 you could identify that you agree that a loop and port
14 does not constitute resale. However, the company
15 should go back and negotiate what combinations of UNES
16 do recreate so that way Staff's analysis stays and it
17 goes through --

18 **COMMISSIONER GARCIA:** Right. I just don't
19 want to go as far as you all did in terms of -- we
20 don't need to get that far. But that I agree with
21 you.

22 **MS. SIRIANNI:** Right. That's all I'm
23 saying, you could just cut it to make a statement that
24 you agree that a loop and port -- because we are
25 setting rates for a loop and a port in Issue 8. And

1 so that way we're clear that it doesn't constitute
2 recreation of local service by just combining those
3 two and go on to say --

4 **COMMISSIONER GARCIA:** Maryrose, give us a
5 motion. Get someone there to give us a motion so that
6 we are all on the same page, because you're going to
7 have to write this up after. So what you're saying
8 is --

9 **MS. SIRIANNI:** While we agree that a loop
10 and port does not constitute a BellSouth retail
11 service --

12 **COMMISSIONER GARCIA:** Correct.

13 **MS. SIRIANNI:** -- the company should
14 negotiate --

15 **COMMISSIONER GARCIA:** What does.

16 **MS. SIRIANNI:** -- what does recreate an
17 existing BellSouth retail service.

18 **COMMISSIONER GARCIA:** Okay. That goes
19 further to where you were.

20 **COMMISSIONER JACOBS:** Yeah.

21 **COMMISSIONER GARCIA:** All right. I'll move
22 that.

23 **COMMISSIONER JACOBS:** Second.

24 **CHAIRMAN JOHNSON:** There's a motion and
25 second. Let me ask one question. I don't know -- I

1 guess it will just happen naturally because your
2 motion -- in our motion we said that the companies
3 should negotiate what is, but that will happen in the
4 natural course of things, I guess. Because what will
5 happen is AT&T or MCI will package together something
6 and say, "We want this at unbundled network element
7 prices." And Bell will say, "No. That's R-1." So
8 there is a motion and second.

9 **COMMISSIONER GARCIA:** Basically the motion
10 is saying, you know, we know what it's not, and I
11 think Staff did a good job of that definitely.

12 **CHAIRMAN JOHNSON:** Okay. There's a motion
13 and second. Any further discussion? Seeing none, all
14 those in favor signify by saying "aye." Aye.

15 **COMMISSIONER CLARK:** Aye.

16 **COMMISSIONER DEASON:** Aye.

17 **COMMISSIONER GARCIA:** Aye.

18 **COMMISSIONER JACOBS:** Aye.

19 **CHAIRMAN JOHNSON:** Show it approved
20 unanimately.

21 Issue 8.

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

23 **COMMISSIONER GARCIA:** Second.

24 **CHAIRMAN JOHNSON:** There's a motion and
25 second on Issue 8. Any discussion? Seeing none, all

1 those in favor signify by saying "aye." Aye.

2 COMMISSIONER CLARK: Aye.

3 COMMISSIONER DEASON: Aye.

4 COMMISSIONER GARCIA: Aye.

5 COMMISSIONER JACOBS: Aye.

6 CHAIRMAN JOHNSON: Opposed? Show 8 approved

7 unanimously.

8 Item 9. Or Issue 9.

9 COMMISSIONER GARCIA: I move it.

10 CHAIRMAN JOHNSON: There's a motion.

11 COMMISSIONER CLARK: What page is that?

12 CHAIRMAN JOHNSON: It's on Page 96.

13 COMMISSIONER GARCIA: I move 9 and 10.

14 COMMISSIONER CLARK: Second.

15 CHAIRMAN JOHNSON: There's a motion on

16 Issues 9 and 10. Any discussion? All those in favor

17 signify by saying "aye." Aye.

18 COMMISSIONER DEASON: Aye.

19 COMMISSIONER GARCIA: Aye.

20 COMMISSIONER CLARK: Aye.

21 COMMISSIONER JACOBS: Aye.

22 CHAIRMAN JOHNSON: Opposed? Show that

23 approved unanimously.

24 COMMISSIONER CLARK: I move Staff on

25 Issue 11.

1 **CHAIRMAN JOHNSON:** There's Motion on
2 Issue 11. Is there a second?

3 **COMMISSIONER GARCIA:** Second.

4 **CHAIRMAN JOHNSON:** Any discussion? Show it
5 approved --

6 **COMMISSIONER DEASON:** Just one second.
7 Thirty days?

8 **COMMISSIONER CLARK:** Commissioner Deason,
9 you're right. I was just looking at it from -- I
10 don't think this docket needs to be closed, but I
11 didn't focus on resubmitting an agreement.

12 **CHAIRMAN JOHNSON:** Staff, any recommendation
13 on the time?

14 **MS. SIRIANNI:** We did approve some rates
15 here, so they will be filing their agreement to
16 incorporate what we did approve. While I realize they
17 are still going to go off and negotiate other things,
18 so the 30 days could stand for what we did approve and
19 we could bring back --

20 **COMMISSIONER DEASON:** Are you saying within
21 30 days they can take the existing agreements, make
22 these changes consistent with that, because we did
23 approve some rates, with the understanding that they
24 will have additional time to negotiate some of the
25 broader policy questions?

1 **MR. PELLEGRINI:** So you may wish to extend
2 the time to something greater than 30 days.

3 **COMMISSIONER DEASON:** Well, I think we need
4 to try to move expeditiously on the things that we
5 have decided, realizing there's a lot that we have not
6 decided.

7 **MS. SIRIANNI:** In the latter sentence there,
8 the first -- well, "This docket shall remain open
9 pending Commission approval of the final arbitration
10 agreement in accordance with 252 of the Act." And
11 then you could just add, "and to pursue negotiations
12 as described in issues whatever." So you're leaving
13 it open not only for them to file the final
14 arbitration agreement, but to also go forth and
15 negotiate the other items that you discussed in Issues
16 1 through 7.

17 **COMMISSIONER CLARK:** Commissioner Deason,
18 the issue is giving them time to negotiate on the
19 things we've left them to negotiate. Is that correct?

20 **COMMISSIONER DEASON:** Yes.

21 **COMMISSIONER CLARK:** And 30 days is probably
22 not enough. Certainly 30 days is okay for those
23 things which we've approved, but I do think we should
24 set a time limit for the others.

25 **MS. SIRIANNI:** Okay. That's what my next

1 question was --

2 COMMISSIONER CLARK: I'm sorry, Maryrose.

3 MS. SIRIANNI: -- are we setting a time
4 limit on when they should negotiate and come back to
5 us?

6 COMMISSIONER DEASON: Does Staff have a feel
7 for that?

8 MS. SIRIANNI: I think it all depends on
9 what the ALECs are asking for. They may not have --
10 you know, their plans may not be to go and ask for
11 something that recreates a service right now. They
12 may be fine with the loop and port that we just did.
13 So I don't know if that's -- I don't know if that's in
14 their game plan to go forth without -- a loop and port
15 may be all they want right now and may not want to get
16 into that other.

17 COMMISSIONER CLARK: Let me ask the other.
18 Suppose they do need a resolution of this? If we
19 don't set a time, what do they do?

20 MS. SIRIANNI: Whenever they need something
21 that they can agree upon, then we'll see them back.

22 COMMISSIONER CLARK: Does the Act provide
23 time lines?

24 COMMISSIONER DEASON: Does one party benefit
25 by status quo so there's no motivation to negotiate?

1 **COMMISSIONER GARCIA:** What would be the
2 typical time we should do it?

3 **MS. SIRIANNI:** Well, in the Act what it does
4 is it talks about when you file a petition for initial
5 negotiation, and then from the time that's filed then
6 between the 135th and the 160th day, if you have not
7 decided or you cannot agree in the negotiations, then
8 you'll file with the Commission for arbitration.

9 This is a little different in that this
10 is -- you know, where do you go back and say it
11 started? I don't really know if there's a time span
12 or days that you could tie to this situation like you
13 would if it were the initial negotiation.

14 **COMMISSIONER GARCIA:** Shouldn't this be
15 considered as having done that since we're ordering
16 them to negotiate?

17 **MS. SIRIANNI:** I think I'm going to talk to
18 my attorney here. I'm not sure.

19 **MR. PELLEGRINI:** Well, I think the parties
20 will act in their own interest. And If they reach an
21 impasse, then they will come as quickly as possible to
22 the Commission.

23 **COMMISSIONER GARCIA:** Maryrose makes a
24 point, where does it start? Where does it finish?
25 What point are they in? We're ordering them to

1 negotiate this out. We need this open, when did it
2 start? When did it finish? When is our requirement
3 to step in?

4 **COMMISSIONER DEASON:** Why don't we specify a
5 time certain to bring back an agreement showing your
6 negotiations, or bring it back and say, "We negotiated
7 and we don't have anything," so we just know where
8 they are.

9 **MS. SIRIANNI:** That would be fine. In that
10 case I don't believe, since we are under that
11 original -- under the Act, that we wouldn't be under a
12 nine-month clock.

13 **MR. PELLEGRINI:** I don't think the statutory
14 limits apply in this case and it's within your
15 discretion to constrain the negotiations to a certain
16 period of time.

17 **COMMISSIONER DEASON:** Ninety days, 90 days.

18 **MS. SIRIANNI:** That's fine.

19 **COMMISSIONER DEASON:** Is that too much, too
20 little?

21 **COMMISSIONER GARCIA:** Can you just get a
22 feel for it.

23 **MR. PELLEGRINI:** It seems reasonable.

24 **COMMISSIONER GARCIA:** Why don't we leave
25 this to the hearing officer to get a --

1 **CHAIRMAN JOHNSON:** Can they come back
2 sooner? I mean if we say within 90 days, and if there
3 is flexibility in the law, they could come back
4 sooner, couldn't they?

5 **MS. SIRIANNI:** I would agree if you said
6 come back within 90 days, then come back tomorrow if
7 they wanted.

8 **MR. PELLEGRINI:** It could be the 90th day if
9 they're making progress and need further time --

10 **COMMISSIONER DEASON:** Why don't we just take
11 a short recess and let Staff discuss this and get --
12 as far as -- I don't want to do anything that is too
13 burdensome one way or the other, but even if we take a
14 short recess you don't have anything more to add.

15 **MS. SIRIANNI:** I'm not sure we really will.
16 You know, no time is a good time.

17 **COMMISSIONER DEASON:** Walter, what do you
18 think? Don't leave.

19 **CHAIRMAN JOHNSON:** Walter is leaving.

20 **MS. SIRIANNI:** I would think that, you know,
21 we won't really know that. The parties are the ones
22 that know that, because they know what combinations
23 they may want to ask for. They may be totally
24 satisfied with just for now getting the loop and port
25 and may not want to deal with that right now. So 90

1 days -- 90 days from now? Maybe they will want it.

2 I'm not sure. If we recess --

3 **COMMISSIONER CLARK:** If we keep talking
4 maybe they'll come up with something.

5 **MS. SIRIANNI:** Maybe Walter will come back
6 here and --

7 **CHAIRMAN JOHNSON:** My only concern was
8 whether or not some statutory clock would start
9 running and they have to wait --

10 **MS. SIRIANNI:** See, that's my real question.
11 I don't think the situation we are in right now is
12 consistent with how the Act lays out the time line for
13 negotiations. I think we're in a open time frame now,
14 and I guess I would suggest that we leave it open and
15 when they have a problem they will come back to us.
16 And just leave it as that. But that's just my
17 opinion.

18 **MR. D'HAESELEER:** The suggestion is that
19 when one party reaches an impasse that they then come
20 to us.

21 **COMMISSIONER CLARK:** What was it?

22 **MR. D'HAESELEER:** When they reach an impasse
23 that they come back to us.

24 **COMMISSIONER CLARK:** Okay. So the motion on
25 issue -- I guess the motion on Issue 11 would be that

1 they would resubmit the agreement with the changes
2 that we have voted on today within 30 days, and then
3 with respect to those items that we have directed
4 further negotiations, they will come back to us when
5 they reach an impasse.

6 **COMMISSIONER DEASON:** Or when they reach an
7 agreement.

8 **COMMISSIONER CLARK:** And the docket will
9 remain open. I move that.

10 **COMMISSIONER GARCIA:** Second.

11 **CHAIRMAN JOHNSON:** There's a motion and a
12 second.

13 **CHAIRMAN JOHNSON:** Show it approved
14 unanimously. Any others matters today?

15 **MR. PELLEGRINI:** No other matters, Chairman
16 Johnson.

17 **CHAIRMAN JOHNSON:** I want to congratulate
18 Staff and commend Staff for an excellent
19 recommendation. These were very, very difficult
20 issues and a lot of adversarial -- very adversarial
21 process, but you guys and girls did a wonderful job.
22 Thanks.

23 **MR. D'HAESELEER:** You guys did a pretty good
24 job too.

25 **CHAIRMAN JOHNSON:** Thank you, Walter.

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(Thereupon, the hearing concluded at 12:10

p.m.)

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

3 I, JOY KELLY, CSR, RPR, Chief, Bureau of
 Reporting Official Commission Reporter,
 4

5 DO HEREBY CERTIFY that the Special Agenda
 Conference in Docket No. 971140-TP was heard by the
 Florida Public Service Commission at the time and
 6 place herein stated; it is further

7 CERTIFIED that I stenographically reported
 the said proceedings; that the same has been
 8 transcribed under my direct supervision; and that this
 transcript, consisting of 117 pages, constitutes a
 9 true transcription of my notes of said proceedings.

10 DATED this 19th day of May, 1998.

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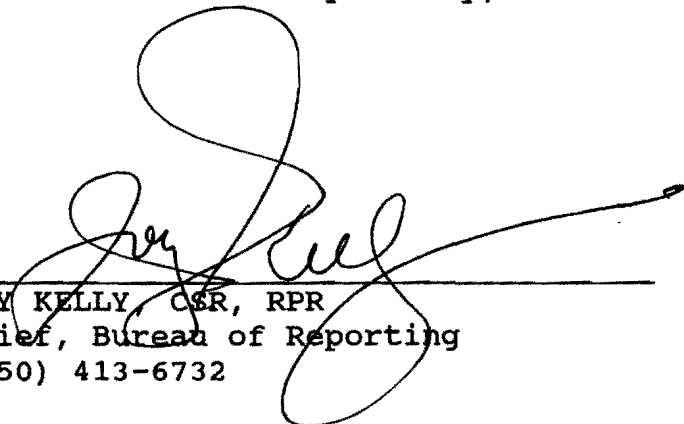
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 JOY KELLY, CSR, RPR
 Chief, Bureau of Reporting
 (850) 413-6732