

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Petition of Competitive Carriers for Commission
action to support local competition in BellSouth
Telecommunications, Inc.'s service territory.

DOCKET NO. 981834-TP

COPY

BEFORE:

CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JULIA A. JOHNSON
COMMISSIONER E. LEON JACOBS

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

27**

DATE:

March 30, 1999

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(850) 561-5598

BUREAU OF REPORTING

RECEIVED 4-5-99

DOCUMENT NUMBER-DATE

04350 APR-58

FPSC-RECORDS/REPORTING

APPEARANCES:

PHIL CARVER, Esquire, representing BellSouth
MARSHA RULE, Esquire, representing AT&T
JOE MCGLOTHLIN, Esquire, and Vicki Gordon Kaufman,
Esquire, representing FCCA and TRA
KIM CASWELL, Esquire, representing GTE
DONNA McNULTY, Esquire, representing WorldCom

STAFF RECOMMENDATION

Issue 1: Should the Commission grant BellSouth's Motion to Dismiss the Petition of the Competitive Carriers for Commission Action to Support Local Competition in BellSouth Service Territory?

Recommendation: No. The Commission should deny BellSouth's Motion to Dismiss.

Issue 2: Should the Commission grant the Petition of the Competitive Carriers for Commission Action to Support Local Competition in BellSouth's Service Territory?

Recommendation: The Commission should grant in part and deny in part the Competitive Carriers' Petition to the extent specified in the Conclusion section of staff's memorandum dated March 18, 1999.

Issue 3: Should this docket be closed?

Recommendation: No. This docket should remain open to address the relief required by the Commission in the Order issued on this staff recommendation.

P R O C E E D I N G S

CHAIRMAN GARCIA: Item Number 27.

COMMISSION STAFF: Commissioners, Item 27 is staff's recommendation on a Competitive Carriers petition for Commission action to support local competition in BellSouth's service territory.

The petition essentially requests five items of relief. Those include, number one, an establishment of a generic BellSouth unbundled network element pricing docket to address issues effecting local competition; number two, establish a competitive forum to address BellSouth operations issues; three, establishment of third-party testing of BellSouth's operating support system, its OSS; four, the initiation of a rulemaking proceedings to establish expedited dispute resolution procedures applicable to all local exchange carriers; and, five, any other relief that the Commission deems just and proper.

Staff recommends the Commission grant in part and deny in part the Competitive Carriers petition, and we recommend that you do it as follows in two phases. This two-phase approach is necessary, we believe, given the available Commission time and resources. The first phase would be to initiate a generic unbundled network element pricing docket for the big

1 three Florida local exchange carriers. That would be
2 BellSouth, GTE, and Sprint. This would address the
3 pricing of UNE combinations as well as the deaveraged
4 pricing of local loops.

5 Concomitantly, we would recommend that the
6 Commission should continue to move forward on its OSS
7 workshops to address BellSouth's operational issues.
8 And then as soon as feasible afterwards the Commission
9 should start its second phase of the proceedings.

10 In the second phase the Commission would conduct
11 a generic proceeding to address collocation issues,
12 and also a proceeding to address OSS costing and
13 pricing issues.

14 Lastly, staff recommends a denial of the request
15 for rulemaking to establish procedures for expedited
16 dispute resolution relative to interconnection
17 agreement disputes. Staff believes that the parties
18 can already request expedited treatment for complaints
19 under the existing Commission procedure and practice.
20 In addition, such procedures would put, we believe, an
21 inordinate demand on the Commission's time and
22 resources, and accordingly the request should be
23 denied.

24 Commissioners, Chairman Garcia, we are available
25 for any questions, and I believe there are a number of

1 parties here to address you.

2 CHAIRMAN GARCIA: Commissioners, do you want to
3 hear from the parties? Okay. Mr. Carver.

4 MR. CARVER: Thank you. Phil Carver on behalf of
5 BellSouth. Let me begin by saying that I'm not going
6 to spend a lot of time talking about the technical
7 legal question of whether the petition is sufficient
8 or whether the motion to dismiss is well taken. I
9 believe that sort of analysis is appropriate when one
10 party files a complaint against another, because
11 essentially then you have a private action and you
12 have to look at it and see if the party who has filed
13 the complaint has set forth all the necessary elements
14 of a claim.

15 Here what we have is a little bit different.
16 What we have here is a petition to institute one or a
17 series of generic proceedings, and I believe that from
18 a legal standpoint the Commission has very broad
19 discretion to either hold generic proceedings or not
20 to hold generic proceedings. To put it a different
21 way, no party has a vested right to demand or to
22 require from the Commission a generic proceeding. So
23 regardless of what the petition says, if in your
24 discretion you don't believe generic proceedings are
25 necessary, then you can simply elect not to have them.

1 At the same time, you can have generic proceedings
2 even if no one files a petition.

3 So I think what the issue really comes down to is
4 not so much a technical legal question, but it's
5 really more a question of from a rational standpoint
6 do you need to have generic proceedings. And I think
7 the factors that come into play are some of them that
8 staff discusses in their Issue 2 in the
9 recommendation.

10 I will also say at the outset that BellSouth
11 vehemently disagrees with much of what is in the
12 petition. I think, though, that we have set forth our
13 disagreement pretty plainly in our motion to dismiss,
14 so rather than recapping all of that, what I would
15 like to focus on in my comments is the staff
16 recommendation, because the staff recommendation is
17 sort of the middle ground. It's not exactly what the
18 petitioners have asked for and it's not exactly what
19 BellSouth wants, either. But there are some good
20 points there.

21 First of all, I will say that in the main
22 BellSouth agrees with a lot of what is in the staff
23 recommendation. Not surprisingly, we believe that you
24 should accept the recommendation not to go forward
25 with rulemaking that would allow LECs to have special

1 expedited treatment.

2 In our view, that constitutes giving them a
3 preference over other parties that come before the
4 Commission. As it stands now, if an ALEC wants
5 expedited treatment all they have to do is prove a
6 special case that entitles them to it, and the
7 Commission has the discretion to give them that. We
8 believe it's valuable to have it structured that way
9 as opposed to giving them an automatic right to
10 expedited treatment.

11 Secondly, staff has recommended that you continue
12 with the OSS workshops and with those proceedings, and
13 we have no objection to going forward with that
14 process. Some of the things in the petition that we
15 oppose, such as third-party testing, will likely be
16 discussed there, but we anticipate that we will have
17 the opportunity to voice our opposition in those
18 workshops and go from there.

19 The main area in which we disagree with the staff
20 recommendation is the recommendation to immediately
21 begin a UNE pricing docket at this point. And we
22 disagree with that for essentially three reasons.

23 First of all, if you look at the staff
24 recommendation --

25 COMMISSIONER JOHNSON: Let me ask you a question

1 before you go through that analysis. The UNE pricing
2 versus the deaveraging, do we look at those as two
3 separate issues or is it one in the same?

4 MR. CARVER: I think it's really one in the same.
5 When I say UNE pricing, I think there were three
6 different elements to it. There is the pricing of
7 individual UNES, there is the pricing of combination
8 of UNES, and then I think necessarily the deaveraging
9 question and the pricing questions come together.

10 If you have an average price, that's one thing.
11 If you have a deaveraged price it's another, but it
12 really would all have to be -- I'll put it this way,
13 if you want to look at deaveraging as an option, that
14 really has to be done in the context of the same
15 pricing docket, I believe.

16 COMMISSIONER JOHNSON: Okay. And this will be
17 the last interruption, but it's just one so that you
18 can kind of handle it in your presentation.
19 Understanding -- and I don't know if they acted last
20 week, but the FCC's order on deaveraging going into
21 the three zones, that they may be issuing at least an
22 order saying they are going to stay their rule for a
23 couple of months and give states and industry the
24 opportunity to respond and let them know how their
25 deaveraging rules will impact the state.

1 Knowing that that is coming, could you react. If
2 this isn't the proper forum, what would be the proper
3 forum, and how would we get to some resolution of
4 those issues to address the FCC that will have the
5 authority on these kinds of issues? And that is for
6 all of the participants, because that is one of my
7 concerns. We know that they are getting ready, given
8 the Supreme Court decisions, to kind of address this
9 issue, and I wouldn't want us to be caught off guard,
10 and how do we get up to speed and provide an analysis
11 as to how we might be impacted.

12 MR. CARVER: Actually I was going to address in
13 my comments our position that for the Commission to do
14 something now would be premature, and I think your
15 question probably falls into that. So I'll try to
16 cover it there.

17 I want to clarify one other thing I said in
18 response to your question. I think if you want to
19 take up deaveraging it should be part of the pricing
20 docket. We don't advocate that you take it up,
21 though. BellSouth's position is that you should not
22 deaverage at this time, but if that is something you
23 would look at that would be the place to look at it.

24 Essentially, we disagree with staff on the UNE
25 pricing docket for three reasons. Two of them have to

1 do with, I think, fundamental assumptions that are
2 reflected in the recommendation that we just don't
3 agree with.

4 First of all, on Page 11 of the recommendation,
5 it is stated essentially that negotiation just doesn't
6 work. I think the way staff has put it that in the
7 past three years there hasn't been any evidence of
8 real negotiation. BellSouth disagrees with that very
9 much. We have over 100 interconnection agreements
10 that we have negotiated with parties that have been
11 approved by the Commission. In the last three years
12 we have had about ten arbitrations.

13 Now, I understand that from the Commission's
14 perspective or staff's perspective it may seem that
15 BellSouth or other ILECs or ALECs are coming before
16 you frequently arguing about 251 or 271 issues. But
17 if you look at the numbers, what we find is that for
18 every one time there is an arbitration there are ten
19 times that an agreement is reached. So we believe
20 that that is an appropriate process.

21 Is my microphone cutting out? It seems like it's
22 doing something funny. Sorry. Let me know if you
23 can't hear me.

24 We believe that that is an appropriate process,
25 and more to the point, it is the process that the act

1 contemplates. And we believe that to the extent you
2 move away from that, and begin to have generic
3 proceedings, although I can't say that the act
4 specifically prohibits that, if it is going to
5 undercut the negotiation process, then we don't
6 believe it is appropriate.

7 Secondly --

8 COMMISSIONER DEASON: Mr. Carver, let me ask you
9 a question on that point. Given the FCC's position
10 and the court's interpretation, I guess, basically
11 substantiating that decision on pick and choose, or in
12 the words you have -- that a company has the option of
13 picking the most favorable provisions of a
14 negotiation or an agreement and have that apply to
15 them. Do you know what I'm talking about?

16 MR. CARVER: Yes, sir, I do.

17 COMMISSIONER DEASON: Given that, is that going
18 to have a dampening effect on negotiations in the
19 future?

20 MR. CARVER: Gosh, it's hard to say. I think it
21 may well. I mean, at this point I'm just
22 conjecturing. I think there is certainly a
23 possibility that it will. I think it's premature and
24 it would not be prudent at this point to assume that
25 it's going to have such an effect that it will chill

1 negotiations to the point where we simply shouldn't
2 have them anymore.

3 COMMISSIONER DEASON: Well, is it going to have
4 the effect that you are going to have one least common
5 denominator or one agreement that is ultimately going
6 to fall out for everybody, because if everybody can
7 pick the most favorable thing from anybody else's
8 agreement, you are actually going to end up with one
9 agreement for everybody in the long-run. Is that
10 going to happen or not?

11 MR. CARVER: Over time I think there is a good
12 chance that will happen. Because certainly if parties
13 can pick and choose, you can anticipate that they will
14 go back and ask for what other ALECs got that they
15 didn't get through the negotiations. So over time it
16 might well sort out that way.

17 COMMISSIONER DEASON: So you really have no
18 incentive to make a special concession for one company
19 because of some unique circumstance, if they are
20 willing to give you something somewhere else that you
21 want and have an agreement for your company and that
22 company, because if you do, as soon as you make that
23 concession then everybody else is going to want the
24 same thing.

25 MR. CARVER: I agree with you, and that's exactly

1 why we oppose the pick and choose rule.

2 COMMISSIONER DEASON: And that's why I think --
3 I think the Commission opposed it generally, too. I
4 know I opposed it. I think the Commission opposed it.
5 But my question is given that is going to be the
6 scenario in the future, and that was one of the
7 reasons why this Commission had a policy of this was
8 on an agreement-by-agreement basis, that we wanted to
9 foster good negotiations and for companies to be able
10 to sit down and tailor for their own situation what is
11 best for the incumbent company as well as the new
12 entrant.

13 But given this new policy from the FCC that has
14 been endorsed by the court, why don't we just get
15 everybody in one big room at one time and go ahead and
16 determine what that least common denominator is going
17 to be and be done with it?

18 MR. CARVER: Well, I can give you a legal answer
19 to that, which is that I don't think that's what the
20 act contemplates. I think the act still says what it
21 says.

22 COMMISSIONER DEASON: Well, why did the court say
23 that it did?

24 MR. CARVER: Well, I can't really justify that
25 decision. I mean, again, we argued very much against

1 that. We believe that the pick and choose rule as the
2 FCC has structured it was something that would chill
3 negotiation. But in terms of why the court ordered
4 it, I think in general the court's decision was a
5 product of a finding that the statute as drafted was
6 somewhat ambiguous.

7 And to the extent it was ambiguous, the FCC had
8 the authority to make interpretations, and they had a
9 great deal of discretion and the court did not find
10 that they abused their discretion except in one or two
11 instances. So I don't think the court really endorsed
12 the pick and choose rule as much as they simply said
13 it was within the FCC's jurisdiction and within their
14 power to make that rule.

15 I think, though, if you take that to the next
16 step and say that given the existence of the pick and
17 choose rule there is simply not going to be any
18 negotiations, so we should give up on the act, I think
19 that is going too far too soon. So I have to agree
20 with you there likely will be some chilling effect,
21 but my point is that simply at this juncture to say
22 that because that exists and because it has the effect
23 -- perhaps the possibility for a detrimental effect on
24 negotiation we should abandon negotiation, I think
25 that is going too far at this juncture.

1 The second thing that I wanted to note and,
2 again, this is, I think, an assumption that staff is
3 making, and, again, it's on Page 11 of the
4 recommendation. They say that because the Supreme
5 Court endorsed or at least allowed the FCC's approach
6 to pricing that this signals a sort of overall
7 endorsement of generic proceedings, or at least
8 signals a move in that direction. And that,
9 therefore, it's more appropriate now or apparently the
10 Supreme Court has given some clarification that it is
11 appropriate to have generic proceedings. And we
12 disagree with that interpretation of the Supreme
13 Court's order.

14 And to that specifically, if you will indulge me,
15 what I would like to do is read a very brief passage
16 of the order. It occurs at the end of Section 2 of
17 the order, and in the context of ruling on the FCC's
18 rules on pricing, this is what the court said. "While
19 it is true that the 1996 act entrusts state
20 commissions with the job of approving interconnection
21 agreements, these assignments, like the rate
22 establishing assignment just discussed, does not
23 logically preclude the commissions' issuance of rules
24 to guide the state commission judgments."

25 So I think what the Supreme Court had in mind is

1 not that the agreement-by-agreement process would be
2 abandoned, but rather the FCC rules would go into
3 place and that those would serve as guidance to the
4 states as they continued to go about this process as
5 they have before. Again, that is our interpretation
6 of that section.

7 And the last point I want to make, and perhaps
8 this is the most important one, is that even if you
9 are inclined to have a generic proceeding, the timing
10 is very important, and at this point I don't think
11 that there is really a meaningful way to have a
12 pricing docket to decide what needs to be decided.
13 Because in the wake of the Supreme Court decision at
14 this particular point we don't even really know what
15 UNEs are going to be available, and we don't know what
16 combinations are going to be available.

17 And I say that because in the Supreme Court
18 decision it made it very clear that the FCC on remand
19 had to apply Section 251 in a meaningful way. That it
20 could not simply say that if an ALEC requests an
21 unbundled network element then they get it. Instead,
22 on remand the FCC is going to have to apply the
23 necessity test and they are going to have to apply the
24 impairment test and they are going to have to make
25 case-by-case determinations that particular UNEs need

1 to be made available by the incumbent LECs or that
2 they don't need to be made available.

3 And I'm not going to take up your time now to
4 read through the sections of the order, although if
5 you would like me to, I can point out a few that speak
6 to this. But I think the general language of the
7 order makes it very clear that the court anticipates
8 that there are going to be some UNEs that will no
9 longer be offered when this analysis is done in a more
10 thorough way and in the way that the FCC has been
11 required to do it.

12 Given that, as we sit here today we don't even
13 know what UNEs are going to be offered. We don't know
14 what UNE combinations will be offered, because
15 obviously if you -- let's say, for example, if you
16 need six particular UNEs to recreate local service,
17 and the FCC rules that three of those six don't have
18 to be offered because it doesn't meet the standard of
19 251, then recreating local service with the other
20 three becomes impossible.

21 So the UNE combination issues really aren't ripe.
22 We don't know what combinations are possible, we don't
23 know -- we don't know what UNEs will be offered.

24 Now, the FCC -- and, Commissioner Johnson, I hope
25 this addresses your question. I know that recently

1 I'm aware that Chairman Kenard (phonetic) has made
2 statements to the effect that the FCC will probably
3 issue an order giving the states a certain amount of
4 time in the future to come into -- to come into line
5 on the deaveraging question and some of the other
6 pricing questions. They also will, of course, be
7 reconsidering their pricing rules to the extent that
8 they have to on remand.

9 I think it would certainly be valuable for state
10 commissions to have input into that process, but I
11 think you have to have input into that process by
12 filing comments as appropriate with the FCC. But
13 ultimately there are decisions that they have to make.

14 Prior to their making those decisions, I don't
15 see any way that you can have a UNE pricing docket
16 now. Because if you do then you are going to be in
17 the position of setting prices for UNEs in
18 combinations that may not even be available. To put
19 it simply, anything you do now you may very well have
20 to redo in a few months or in a number of months.

21 So, I will just end by saying that to the extent
22 you are inclined to go forward with the pricing on a
23 generic basis, we would urge you to wait until after
24 the FCC has done its work. In the staff rec, the
25 staff makes the statement that the Commission will be

1 in a better position to provide more specifics on the
2 scope of this docket after the FCC has done its work.

3 We agree with that, although BellSouth would
4 state it a little more strongly. We believe until the
5 FCC has done its work you really don't have enough
6 information to go forward with the docket. So we
7 would just request that if you are inclined to do this
8 that you wait until the FCC is finished. Thank you.

9 COMMISSIONER JOHNSON: Let me ask Mr. Carver one
10 question. That's an interesting position to me coming
11 from Bell. So that you would rather us -- how would
12 we provide any constructive comments to the FCC, and
13 that's kind of the question, but let me give you the
14 backdrop of where I'm coming from.

15 It strikes me that if we are holding whether it
16 is a workshop or a rulemaking, I don't know if we are
17 doing permanent pricing or what, but that we would
18 have a better understanding of how the pricing would
19 impact particularly our local exchange companies so
20 that our advocacy before the FCC would be based on
21 facts.

22 This would happen if you have three zones. If
23 you unbundled six versus eight elements, this is the
24 result. This is how Florida citizens and Florida
25 companies would be positively or negatively impacted

1 by some of your decisions so that if we have a more
2 concrete example we can provide and have a better
3 advocacy as the FCC is developing their rules.

4 And in my mind that enures -- well, I don't want
5 to prejudge the issue, but it could enure to the
6 benefit of our companies and our customers for us to
7 be able to say what the impact of those decisions
8 could possibly have on our providers. I saw that as a
9 good thing. Instead of BellSouth having one forum and
10 that is before the FCC, you know, with an
11 articulation, you have the opportunity to present case
12 in fact here so that we can be a part of whatever the
13 advocacy might be at the FCC level.

14 See, I'm a little nervous about deaveraging and
15 unbundling the network elements. And not only that,
16 but what price? I mean, what is the forward-looking
17 cost methodology? I would like to hear perhaps some
18 conversation here as to the proper forward-looking
19 cost methodology that should be applied, the elements
20 that need to be unbundled, and how companies will be
21 impacted by deaveraging so we can take that to them
22 and be a productive part of their dialogue, since they
23 are saying, look, we are all in this together. Before
24 we make decisions in the abstract, we want to know how
25 you all are impacted by those decisions.

1 Why wouldn't you all be supportive of that?

2 MR. CARVER: Well, I think you have a good point,
3 but I think we're talking about two different
4 processes. As I understand your comments, I think
5 what you're referring to would be sort of informal
6 workshops in which parties would come forward, they
7 would state their positions, they would give you the
8 support for their positions, and then you would use
9 that information as you see fit in making
10 recommendations or comments to the FCC. We have no
11 problem with that.

12 COMMISSIONER JOHNSON: But you're afraid that
13 staff is talking about permanent pricing as the end
14 result here?

15 MR. CARVER: Yes, ma'am. The rec specifically
16 says that you should initiate a formal 120.57
17 proceeding to set UNE prices, and that is what we
18 think is premature, to begin pricing UNES before we
19 actually know what the UNES are, or what the
20 combinations will be, or whether the deaveraging is
21 timely.

22 If what you are talking about is having a series
23 of workshops in which parties could, for example,
24 raise policy issues about deaveraging, or talk about
25 prices, or the availability of UNES, or the technical

1 aspects, I see no problem with that. And I think that
2 is something that BellSouth would support.

3 But, again --

4 COMMISSIONER JOHNSON: Actually you raise a good
5 question, because I had a question mark by us going
6 straight to a 120.57 hearing, so that is a question
7 for staff later.

8 MR. CARVER: Yes. I think perhaps the way it
9 should work, as I just try to put this together, is
10 that if you are inclined to have workshops, that's
11 fine. You would give your input to the FCC, the FCC
12 would finalize their rules, and then it would be time
13 for a generic pricing docket after you know what the
14 FCC is going to do. So we're really, I guess, talking
15 about two different steps in one process.

16 COMMISSIONER JOHNSON: Thank you.

17 CHAIRMAN GARCIA: Ms. Caswell.

18 MS. CASWELL: Thank you. The CLEC's petition
19 explicitly covered only BellSouth territory, and all
20 of the generic actions requested in that petition were
21 BellSouth-specific except for the generic dispute
22 resolution request. But now the Commission is
23 starting a -- thinking about starting a proceeding
24 including not just BellSouth, but GTE and Sprint, as
25 well.

1 Our point is that we don't believe there is any
2 reason, certainly no reason based on this petition to
3 start a generic proceeding including GTE. If you do
4 start such a proceeding, we would concur generally in
5 Mr. Carver's remarks, particularly about the timing of
6 that proceeding.

7 We don't necessarily oppose workshops and fact
8 gathering so that you can make recommendations to the
9 FCC, but we believe it would be premature to do a
10 120.57 proceeding before the FCC has settled issues
11 such as the UNE list and the pricing standard to be
12 used. Thank you.

13 CHAIRMAN GARCIA: Thank you. Ms. Canzano.

14 MS. McNULTY: Ms. Kaufman will be next.

15 MS. KAUFMAN: Thank you. I'm Vicki Gordon
16 Kaufman --

17 CHAIRMAN GARCIA: Sorry about that, Ms. McNulty.

18 MS. KAUFMAN: -- and with me is Joseph
19 McGlothlin. We are with the McWhirter Reeves law
20 firm. We are here today on behalf of the Florida
21 Competitive Carriers Association, one of the parties
22 that is a signatory to the petition. And we are also
23 here on behalf of the Telecommunications Resellers
24 Association, whose views on this item are the same as
25 the FCCA. Additionally, the other signatories to the

1 petition who are not here to speak also join in the
2 FCCA's comments.

3 I came here this afternoon prepared to talk to
4 you about the standards for a motion to dismiss and
5 why the motion to dismiss was not well taken. To cite
6 you case law, et cetera, et cetera. However, I think
7 Mr. Carver has now conceded that the Commission does
8 have the authority to take the action that we have
9 requested. It was BellSouth that filed the motion to
10 dismiss to which we responded, but it sounds to me
11 that we are now past that point.

12 I was also heartened to hear that BellSouth
13 agrees with many of the things that are in the staff's
14 recommendation. I guess the one issue that we have
15 some disagreement on is the UNE pricing issue and what
16 the Commission ought to do about that. Whether they
17 should go to a generic proceeding, a 120.57, workshop,
18 wait for the FCC. There is a range of choices.

19 In our petition we asked that you go to a 120.57
20 proceeding on the generic pricing/UNE issues. We
21 would think that that is appropriate. Commissioner
22 Johnson, certainly you could use that as a vehicle to
23 give the Commission's input to the FCC, and as you
24 said, you would have the facts in front of you so that
25 you could make an informed decision. You would have

1 the facts that are specific to Florida. We think this
2 presents you with just that opportunity.

3 We suggest that you move forward. That you don't
4 delay. The time has come to get some of these issues
5 settled, and in a generic proceeding you can get input
6 from all the parties at one time. We think that is
7 efficient and makes a lot of sense. So we are in
8 agreement with much of what is in staff's
9 recommendation.

10 Mr. McGlothlin has some comments to make on
11 certain substantive areas, but we believe that you
12 should move forward now and do the OSS proceeding, do
13 the UNE pricing proceeding, and kind of try to get a
14 jump start on local competition, which is what we
15 asked for in our petition.

16 COMMISSIONER JOHNSON: What about some of the
17 uncertainty with respect to -- BellSouth raised some
18 good points with respect to the uncertainty as to what
19 the FCC will ultimately conclude in terms of the
20 elements that will have to be unbundled, deaveraging,
21 whether it's going to be three zones, five zones, no
22 zones, whether they are going to retreat from those
23 kind of positions, and how that might impact any
24 pricing that we were to come up with, permanent type
25 pricing before the FCC acts.

1 How do we address that? Because candidly I was
2 kind of envisioning more workshop kind of information
3 gathering as opposed to 120.57(1), so I will need to
4 hear more argument as to why .57(1) would be the
5 appropriate vehicle.

6 MR. MCGLOTHLIN: May I try to address that?

7 COMMISSIONER JOHNSON: Oh, are you --

8 MR. MCGLOTHLIN: By way of quick explanation --

9 CHAIRMAN GARCIA: Why don't you introduce
10 yourself.

11 MR. MCGLOTHLIN: Yes. I'm Joe McGlothlin, also
12 with McWhirter Reeves law firm, also here for the
13 FCCA. And it was not our intent to double up on the
14 other parties this morning. Ms. Kaufman and I had
15 this very orderly division of labor plan. She was
16 going to argue against the motion to dismiss and after
17 that motion had been dealt with, I was going to talk
18 about substantive things. So it appears we
19 overplanned somewhat, but I will be very brief.

20 It's clear that the staff has given much careful
21 thought to the Competitive Carriers petition and they
22 have proposed several very positive measures that we
23 endorse and support, and I refer specifically to the
24 UNE pricing docket, to what some call workshops and
25 what we hope to convert into a competitive forum on

1 OSS issues, during which there will be an opportunity
2 to address our proposal on third party testing, the
3 collocation docket, and the OSS pricing docket.

4 I want to take a moment to particularly commend
5 the staff for its willingness to take stock of the
6 current situations and gauge the value of proceeding
7 on some of these fronts in a generic proceeding. I
8 have only a couple of comments with respect to the
9 balance of the recommendation, and one of those
10 comments is by way of clarification, I believe. And
11 that is we agree that it is appropriate to include
12 GENTEL and Sprint in these matters, but we would hope
13 that staff contemplates that there would be phases and
14 subphases.

15 We have proposed or have contemplated going
16 forward with BellSouth first and then addressing the
17 other companies in sequence. And I believe in terms
18 of pursuing an orderly proceeding and avoiding
19 something that would be unnecessarily cumbersome and
20 unwieldy, we could approach this so that we don't find
21 ourselves in a hearing room on the same day dealing
22 with cost studies of three large local exchange
23 companies. I hope that we could phase those or
24 stagger those activities so that it's more manageable
25 in that regard.

1 We continue to commend to you the proposed
2 rulemaking. We think that such rules would send a
3 strong message and signal to the local exchange
4 companies that this Commission intends to permit no
5 delay in its path towards competition, but in the
6 event you decide not to go forward with that request
7 for rulemaking, we hope that you will express that
8 resolve in other ways, perhaps in a context of ruling
9 on specific requests for expedited proceedings.

10 Commissioner Johnson, with respect to the UNE
11 case, it is certainly valid and smart to try to mesh
12 these activities with the FCC activities, and I hope
13 that among other things, when you vote you will
14 instruct the staff and parties to work out the most
15 efficient and most intelligent schedule that will
16 accomplish as much coordination as possible. But I
17 also hope that you go forward immediately and that you
18 not delay at least the initiation of these dockets.

19 There is much work to be done, there is much work
20 that can be done now, and where we have a situation,
21 for instance, with unfinished business in the form of
22 the combination pricing and the deaverage pricing and
23 where market experience reveals that Florida has
24 switching costs and nonrecurring costs that are orders
25 of magnitude higher than other states that present a

1 severe obstacle to the implementation of competition,
2 that we not delay in getting at those problems and
3 those subjects. To the extent that it's possible to
4 coordinate with the FCC's own schedule, we think that
5 should be done, but we see no reason why we can't get
6 started in the initiation of the dockets immediately.

7 MS. McNULTY: Donna McNulty on behalf of MCI
8 WorldCom. I would just like to say that MCI WorldCom
9 joins in the FCCA's comments.

10 CHAIRMAN GARCIA: Very good.

11 COMMISSIONER JOHNSON: I just kind of had a
12 question for staff, and maybe David also with respect
13 to -- I know we have -- or Will or whomever. We
14 stated here that with respect to the deaveraging
15 issues and the UNE pricing issues we should go to the
16 120.57(1) type proceeding. Share with me your
17 thoughts or your analysis as to why we should go ahead
18 and do that before the FCC acts.

19 I know that the competitors raised some issues
20 with respect to particular elements, the switching
21 costs and some costs that they think are maybe way out
22 of line, at least in their opinion, and that those
23 should be addressed. But isn't it somewhat of a
24 cumbersome process to go through and to set -- we
25 already have some pricing, and to set some more

1 permanent pricing only to perhaps those prices changed
2 by the FCC in less than a year. I'm wondering what
3 that does to the market and stability of our system
4 and why you think that is a good idea.

5 COMMISSION STAFF: Well, I'll start in on it and
6 let David chime in. First off, we don't contemplate
7 getting rid of the entire negotiation/arbitration
8 process. We believe that the issues that we are
9 talking about here of UNE pricing combinations and
10 deaveraging are issues that, one, the FCC is requiring
11 us to address and, two, in the act are very important
12 issues. And we feel like the best way to address them
13 is to allow everyone to participate, so we are not
14 trying to get rid of the negotiation/arbitration
15 process that we have already put in place through the
16 act and the FCC's rules and our own statute.

17 We feel that it is important to get things in
18 play for several reasons. We are now seeing, or in
19 the last six to eight months we have seen a number of
20 the initial agreements come and pass and new
21 arbitrations and negotiated agreements have come in,
22 and there has been concern about doing anything until
23 the FCC comes out with its rules.

24 But we do realize that carriers need to continue
25 to do business and these issues we feel are important

1 enough that we should go ahead and start at least
2 moving forward on addressing these types of pricing
3 issues. That is one reason that we have felt it was
4 appropriate.

5 And we did mention in the recommendation that we
6 are going to take into consideration -- we would
7 recommend the Commission take into consideration the
8 timing of the FCC's rules. We are not requiring that
9 this happen tomorrow. We said immediately; we felt
10 like it should move forward immediately, but not
11 necessarily have a hearing in two months.

12 We felt a hearing is appropriate because, for
13 one, I'm not quite sure where we would go with
14 workshops. We could go with workshops and then maybe
15 a PAA at the end. Hopefully we would have at least
16 some of the issues resolved on certain pricing issues.

17 But based on experience with these arbitrations,
18 I'm not sure how many of those issues we are going to
19 resolve through workshops and putting that in a PAA.
20 I think we might end up back in the same place dealing
21 with a protest and here we have lost a little more
22 time. Those are some of my thoughts on it. David, do
23 you have any?

24 MR. DOWDS: I echo most of his comments. With
25 respect to UNE pricing, first, I think it would be a

1 waste of time to go workshop because nobody will ever
2 agree, because there is money on the table. With
3 respect to the OSS workshop, what we are proposing, in
4 essence, there was two difference phases. One is a
5 series of workshops to figure out what needs to be
6 provided, what are the problems, how should the
7 interfaces work, the nuts and bolts type things. And
8 then downstream would probably be a formal 120.57 to
9 set the prices. Similarly for collocation.

10 The reason we anticipated going directly to a
11 120.57 on UNE pricing was predicated on our assumption
12 and/or fear, depending on one's characterization, that
13 the FCC would make us do it pretty quickly. Now,
14 there are certain wild cards, and I agree with a lot
15 of the comments that the industry has made today,
16 notably Mr. Carver, and the issue is one of timing.

17 It appears, unless drastic changes occur, that
18 the FCC will require deaveraged UNE rates, and absent
19 significant change it's going to happen. The question
20 is when. He is absolutely right that we don't know
21 exactly what UNES will need to be provided forward
22 going because of the remand of Rule 319.

23 However, it's my understanding that all the LECs,
24 including BellSouth, agreed to maintain, quote,
25 business as usual, unquote, until the remand of the

1 rules has been resolved. So we know what they have
2 been providing, and presumably for the foreseeable
3 future they will and have to provide at least those
4 UNEs. The issue of combos is still up in the air,
5 though.

6 Again, we know enough to proceed cautiously.
7 There are some major issues that, as you know, we do
8 not know the answer to, such as what does TELRIC
9 really mean. That's the one that gives me heartburn
10 in particular. But we know enough in terms of likely
11 candidates for UNEs, and I give you one example is the
12 business as usual agreement by the LECs, and the
13 second one is it would be a fairly good assumption
14 that those that they are in 271 would appear to be a
15 good starting point, as well.

16 So, it's not as though we don't know -- although
17 we don't know everything we need, we know enough to
18 move forward if you so desire.

19 COMMISSIONER JOHNSON: I raised that because
20 David and his staff, they have been working on kind of
21 the issues like what does the Supreme Court decision
22 mean now, what does it mean to UNEs, what does --
23 forward-looking cost methodologies, what does that
24 really mean? What kind of method must we use, is what
25 we used before sufficient or will the FCC be requiring

1 something else?

2 And, Commissioners, they were going to -- working
3 with Mark Long and his group, they were going to try
4 to tee up the big issues for the Commissioners to
5 review, and then meeting with the FCC, saying
6 deaveraging is one thing, but what are the underlying
7 costs, and what method are you asking us to use, and
8 what unbundled elements must be unbundled and in what
9 combinations.

10 So there were a lot of outstanding questions that
11 we just discussed a couple of weeks ago, and I
12 understand that staff is kind of working on a letter
13 for the Commissioners to look at at an Internal
14 Affairs to send to have some of these things answered.
15 And that's why I had my initial pause as to whether or
16 not it was premature with a lot of uncertainties
17 standing out there.

18 But, Mr. Dowds, if you believe we have enough
19 certainty in terms of elements -- we still don't
20 understand the costs, but if you think there is enough
21 certainty to go forward with a 120.57(1), then --

22 MR. DOWDS: I don't think we need to do something
23 precipitous. In other words, I don't think we need to
24 go to hearing in six or eight weeks.

25 COMMISSIONER JOHNSON: Gotcha.

1 MR. DOWDS: Needless to say, our procedures are,
2 depending upon one's frame of reference, occasionally
3 somewhat cumbersome and time consuming. It probably
4 would not hurt to at least sketch out a likely
5 schedule of when we think we will probably have to
6 address ourselves to things. That's where I'm coming
7 from.

8 It doesn't have to be in August; it could be
9 later in the year. I don't know the exact schedule.
10 That is basically -- it's a semi-educated guess as to
11 when we will have to react to certain things and when
12 certain uncertainties will be clarified, if ever. Or
13 not if ever, but if in the short-term.

14 COMMISSIONER JACOBS: How do we avoid -- if we do
15 that, how do we avoid preemption -- actually the FCC
16 coming out and actually narrowing the scope of our
17 proceeding?

18 COMMISSION STAFF: Well, I think what Mr. Dowds
19 was alluding to, that we would try to schedule this
20 with that under consideration so that we hopefully
21 would avoid those problems. But we wanted to put it
22 as a priority for the Commission to address these
23 issues, and so that would mean we will keep abreast of
24 what is going on at the FCC and we will try to
25 schedule things accordingly.

1 COMMISSIONER JACOBS: If we set up an issue in
2 our docket and they come out with something on that,
3 that resolved the issue in our docket?

4 MR. DOWDS: Let me give you an example. Let's
5 assume that they come out with a very particular
6 highly specific characterization of what TELRIC
7 pricing method -- strike that, TELRIC costing
8 methodology is, and what the various states must
9 follow. And to assume it is that prescriptive, then
10 we will have to do whatever they say. We will have no
11 choice.

12 Now, it is a matter of gradations in terms of how
13 detailed, how specific are their ultimately modified
14 rules going to be, and we just don't know. They may,
15 for all we know, basically endorse the approach that
16 this Commission has employed over the last couple of
17 years in prior proceedings to set UNE rates -- I'm
18 sorry, determine the costs for UNE pricing.

19 They may make minor modifications, they may make
20 radical modifications. But the issue is do we do
21 nothing and wait and then only have three months, or
22 do we do something in way of preparation, and if so,
23 when do we start. And that's the puzzle as I see it.

24 COMMISSIONER JACOBS: I guess, Commissioner
25 Johnson, let me ask you this. I'm persuaded that we

1 do something, but my opinion is precisely because of
2 the level of ambiguity that exists there is an
3 opportunity here, and I would want us to proceed in
4 view of the opportunity more so than in trying to
5 capture some shot in the dark.

6 And if we want to do -- so that we should proceed
7 here with some level of intelligence and some level of
8 initiative, and I guess my question to you is is your
9 perception that there may be some fertile ground at
10 the FCC on doing this? I would think that they would
11 be -- they may have an interest in working through
12 these very issues, and perhaps we can maybe assert
13 some leadership here.

14 COMMISSIONER JOHNSON: No, I agree with you
15 wholeheartedly. It's trying to determine the best
16 vehicle. And listening to David saying that we
17 probably couldn't get that far in a workshop, and that
18 a 120.57 may be the better approach.

19 It could be -- that could be a positive step,
20 because one of my concerns was, Commissioner Jacobs,
21 that we be in a position to provide the FCC with our
22 thoughts and our position on some of the pricing
23 issues, or a lot of different issues on the TELRIC,
24 and whether what we are doing is sufficient, on how
25 many elements should be unbundled, on deaveraging, and

1 how we might be impacted by deaveraging. And I just
2 wanted a process whereby we could get input from all
3 of the parties so we could make some intelligent
4 comments to the FCC.

5 Because what they are saying right now is sure,
6 we are going to put out some national rules, but in
7 putting out those national rules we are going to
8 listen carefully to what the states say and how the
9 states might be impacted by those rules. And if we
10 need to have -- if we need to tailor the rules in such
11 a way to accommodate certain states and certain
12 circumstances, if there is sufficient advocacy, we
13 will listen and could perhaps do that. So there may
14 be an opportunity, I just didn't know the right
15 vehicle.

16 COMMISSIONER CLARK: Well, I have a question
17 along those lines. Haven't we done that? I guess we
18 went through all of these arbitrations, we went
19 through TSLRIC and we set prices. We have kind of had
20 our say and looked at what we thought was appropriate
21 and that is what we should be advocating. And I guess
22 I'm having -- I'm trying to understand why we would do
23 anything in advance of knowing the rules from the FCC.
24 What would we be doing differently than we did in
25 those proceedings?

1 COMMISSIONER JOHNSON: Well, we haven't
2 deaveraged.

3 COMMISSIONER CLARK: Well, I know that, and that
4 is a huge concern to me, because it strikes me that if
5 we deaverage we are going to be forced into some
6 rebalancing and addressing rates. But on the other
7 hand, unless you know -- I'm trying to envision what
8 would we be doing with respect to deaveraging. Would
9 we would be saying to the companies, all right, assume
10 you have to deaverage, how would you do it, and then
11 have people respond, or -- I agree with you that may
12 be one area which we might want to pursue.

13 But with respect to the others, we have kind of
14 taken our stand, and we have done what we thought
15 should be done, and that is what we should be
16 advocating. And I don't see the benefit of doing
17 anything in advance of hearing back from the FCC now
18 that the decision is out. But I may be missing
19 something.

20 But I do agree with respect to deaveraging. That
21 has, as I see it, a huge potential to be very -- to
22 precipitate an adverse impact with respect to local
23 rates, and we need to be aware of what the magnitude
24 of that potential is.

25 COMMISSIONER JOHNSON: One of the things and

1 maybe BellSouth, Mr. Carver kind of answered my
2 question, can we unbundle these and look at
3 deaveraging, and I thought his response was like,
4 well, gee, you shouldn't look at any of it, but if you
5 are going to do deaveraging, you need to do it in a
6 comprehensive way with all the other pricing issues.
7 So I guess that's kind of what I'm dealing with.

8 Can you do it in the abstract, and if we are not
9 going to -- it's either an all or nothing kind of
10 proposition. And I would like for us to be able to
11 provide some input to the FCC on the deaveraging
12 issue. And I don't know -- and I don't know, you
13 raise a good question, because I'm not sure where
14 staff is going to come from on the stuff that we have
15 already done. Are we going to be looking back at our
16 costing model? I don't think so.

17 COMMISSIONER JACOBS: We have not done OSS
18 testing, we have not done collocation, on a broad
19 scale collocation issues and those sorts of things.

20 COMMISSIONER CLARK: But I was only talking about
21 the UNE pricing --

22 COMMISSIONER JACOBS: I'm sorry.

23 COMMISSIONER JOHNSON: The pricing stuff.

24 COMMISSIONER CLARK: Those other things I think
25 we might want to do, but I don't see any reason to do

1 anything more on the UNES with the exception of trying
2 to get some handle on what deaveraging might mean.

3 MR. CARVER: May I make one additional comment?
4 I basically agree with what Commissioner Clark has
5 said, that when you go down the road of deaveraging of
6 wholesale rates, which in a way is what UNE pricing
7 would be, when you deaverage UNES, I think that should
8 precipitate deaveraging of retail rates. The two
9 should be coupled together to avoid arbitrage and to
10 avoid basically an anticompetitive effect.

11 So I think that once you begin to go down the
12 road of deaveraging, there are much larger
13 ramifications. I think that's one of the reasons why
14 you want to do this prudently and why you want to do
15 it in a way that is very well-reasoned and take the
16 time that it takes.

17 To go back, Commissioner Johnson, to your
18 question earlier. What I understood your question to
19 be was can you, I guess, in a 120.57 proceeding have a
20 ruling on deaveraging without having a ruling on
21 pricing. And I think the answer to that is, no, you
22 can't, because to set deaveraged prices necessarily
23 means to set prices.

24 Now, if you want to have workshops in which
25 parties would give input to the Commission about

1 deaveraging and the ramifications of that, or how it
2 should take place, or whatever, I think you could talk
3 about that in concept and you could get input from the
4 parties in workshops that will give you something to
5 take back to the FCC if you are inclined to do so.
6 And you could do that without having a full-blown
7 pricing docket.

8 The last comment I want to make is I also agree
9 with Mr. Dowds, I don't think anyone is going to agree
10 in a workshop on these issues. But to the extent you
11 are looking for input and you are looking for the
12 position of the parties, the workshops would just be a
13 way to give you some additional information.

14 But I think you are in a situation where to have
15 a resolution of this ultimately you are going to have
16 to have a 120.57 hearing, and I don't think you can do
17 that even if the stage were set for it, and even if
18 you knew what the UNEs were going to be, you can't
19 really get that done quickly enough to impact the FCC
20 decision. So I think if you want to go through some
21 process to gather information to take back to the FCC
22 in a short time frame, although obviously workshops
23 aren't perfect, it's the only alternative that I see.

24 COMMISSIONER JACOBS: Two things. One important
25 aspect of the UNE question was the converse of the

1 issue we have before us today, that is how do you
2 enunciate those UNEs that do not constitute existing
3 products of the ILECs.

4 But then the question that has always jumped out
5 at me on this is how in the world -- let's say we
6 defer doing anything on pricing. How in the world are
7 we going to have a national UNEs pricing docket? I
8 mean, because that's what we are deferring to, is that
9 correct? If we defer doing anything we are saying the
10 FCC is going to do some kind of national perspective
11 on UNE pricing, is that not correct?

12 MR. DOWDS: Well, it's our understanding and/or
13 belief that what they will do is they will at some
14 point in time, presumably in the next six to twelve
15 months, is clarify their existing UNE pricing rules,
16 which according to the Supreme Court they have had the
17 right to promulgate. Now, I don't know the details,
18 but it is my understanding that they are on remand to
19 the Eighth Circuit as to the merits.

20 COMMISSIONER JACOBS: I understand what the
21 technical legal words say. What I'm asking you is
22 practically. When they put those words on paper, what
23 -- I'm asking you as a reasonable person. There could
24 be any unreasonable result. What would be the
25 reasonable result the FCC is going to have to do when

1 they do that?

2 MR. DOWDS: Well, I presume -- speaking with my
3 lawyer hat -- that one of two things is going to
4 occur. If some party does not like what the
5 Commission does in terms of its interpretation of the
6 Commission's rules, it is going to go the FCC and it's
7 going to ask the FCC under, I believe, it's 253(A) to
8 preempt what the state did and substitute its judgment
9 for the state commission.

10 Alternatively, I guess the Commission could do
11 nothing and it would default to the FCC to set rates.
12 But I doubt that would happen.

13 COMMISSIONER JACOBS: You answered my answer in
14 the reverse, but the likelihood is that the first
15 choice of the FCC is to defer to the states, and then
16 if I don't like it, preempt it.

17 MR. DOWDS: Certainly. But the issue is to what
18 extent are we handmaids of the FCC. In other words,
19 is our duty purely ministerial? And the answer, I
20 guess, is we don't know until they finish writing the
21 rules.

22 We know the rules as they currently exist. We
23 are not sure we understand them, but we know them. So
24 it's just a matter of do you wait for further guidance
25 or do you move forward and take your best shot. And

1 it's a judgment call, obviously.

2 CHAIRMAN GARCIA: David, go right ahead.

3 MR. DOWDS: One other little comment about
4 deaveraging. Onerous as this may sound, I think you
5 could make progress on the notion of deaveraging
6 without actually ever setting prices, because this
7 Commission has never really addressed itself to it,
8 such as which UNEs does it even make sense to
9 deaverage?

10 Do you want to have deaveraged UNE rates for
11 physical collocation? Collocation is a UNE under the
12 FCC guidelines. Do you want to have different UNE
13 physical collocation rates depending upon what county
14 you are in? I mean, you can get kind of ridiculous
15 under the notion of deaveraging if you take it
16 literally.

17 Perhaps looking into what does it make sense to
18 deaverage. How would you -- what is a rational way of
19 deaveraging, putting aside the ultimate rates may have
20 merit. I'm sorry, Chairman.

21 COMMISSION STAFF: I have one suggestion maybe,
22 based on what I've heard everyone say, is that maybe
23 we go with workshops that would provide some substance
24 for comments that the Commission could provide to the
25 FCC, and then later after the FCC has come out with

1 whatever they are going to come out, we could have
2 that 120.57 hearing if at that time we deemed it was
3 appropriate.

4 COMMISSIONER CLARK: Well, just by way of
5 comment, you need to be careful with respect to using
6 a 120.57(1) hearing, because if it is limited to
7 BellSouth you can probably do it, but if you do a
8 generic proceeding you've got to put it in rules. I
9 mean, if it is going to be applicable to everyone. I
10 guess the pricing is not going to be applicable to
11 everyone.

12 MS. BROWN: Commissioner Clark, we have not felt
13 that we needed to put everything in rules when we
14 implemented the act because of 120.80.

15 May I make one other suggestion? Mr. Carver
16 started out with the understanding that you all have a
17 lot of flexibility to set up your own procedural
18 processes. When we were trying to figure out how to
19 deal with this petition, one suggestion was that we
20 reverse some order of some of the things that we do
21 and that we start with certain of the requests in the
22 petition that were not as sensitive to the Supreme
23 Court decision and the actions that the FCC has to
24 take now. That would be collocation, some of the
25 policy issues that are involved in collocation, some

1 of the OSS workshops.

2 And there was a suggestion that we do that first
3 and then move on to the UNE pricing matters and the
4 collocation pricing matters after everything was a
5 little bit clearer. Some of the dust had settled. So
6 that's another --

7 COMMISSIONER JOHNSON: Is that how it's set up in
8 here?

9 MS. BROWN: No, it isn't, because then we became,
10 I think, as I understand it, we became aware of some
11 concern that we need to hurry and deal with
12 deaveraging. So I think the staff sort of reversed
13 the order in order to accommodate that. But that is
14 another option for you.

15 CHAIRMAN GARCIA: Thank you, Martha.

16 MS. RULE: Marsha Rule for AT&T. Commissioners,
17 I hear you trying to address two separate questions.
18 The first question is why should you look at UNE
19 pricing, and the second question is if you decide to
20 do so, what UNE prices should you look at. And I
21 think you have to separate those two issues.

22 You shouldn't refuse to look at UNE pricing
23 because the FCC has not yet determined the complete
24 list of UNES to be offered. At a minimum, you have
25 the list of UNES listed in Section 271 of the Telecom

1 Act. You know those aren't going to go away. It will
2 always be a fruitful exercise to look at those.

3 In addition, I have not understood that the FCC
4 is going to make up new UNES. The question I believe
5 they are addressing is whether ILECs will have to
6 offer particular UNES. At worst, if you look at
7 pricing across the range of UNES that are offered now
8 and the FCC says that the ILECs need not or that
9 BellSouth need not offer that combination, or need not
10 offer that element, then all you have to do is decide
11 not to vote that issue at the end of the hearing.

12 COMMISSIONER CLARK: Let me just -- I thought we
13 had done that. We have done the UNE prices, we have
14 done what UNES we think should be included. Why don't
15 we just advocate what we have done?

16 MS. RULE: That goes to the separate issue of why
17 you should look at it, not what you should look at.
18 And what I hear BellSouth saying, and what I hear GTE
19 saying is, gee, you shouldn't do anything because you
20 don't know what to do. I agree with BellSouth that
21 the final list of UNES that BellSouth will have to
22 offer is not yet firm. However, the --

23 CHAIRMAN GARCIA: (Inaudible, microphone not
24 on.)

25 MS. RULE: You mean Ms. Brown's suggestion is

1 kind of reversing the order? I think that has a lot
2 of merit. But I would like to say Commissioner
3 Johnson raised a very interesting point. If you're
4 talking about deaveraging, what is it you are going to
5 deaverage? Are you talking about rates that you set
6 several years ago? If you are going to deaverage
7 them, I think it certainly makes sense to look at the
8 cost allocations that were made at that time.

9 But in any event, if you begin a 120.57
10 proceeding and you gather information and the FCC
11 comes out with a decision, you are ahead of the game.
12 If you begin a series of workshops with a 120.57
13 hearing to come later, you are going to double your
14 staff's work. You are going to go through the same
15 series of workshops then you're going to do it in a
16 120.57 hearing.

17 CHAIRMAN GARCIA: Couldn't we distill some of the
18 issues there and what precisely we're going to look at
19 after having the workshop?

20 MS. RULE: I'm sorry, I didn't hear you.

21 CHAIRMAN GARCIA: Won't we have distilled some of
22 the issues and know exactly what it is that we will be
23 looking at if we have to go to a formalized hearing?

24 MS. RULE: I think the issues are perfectly
25 distilled now and they are perfectly clear.

1 COMMISSIONER JOHNSON: One of the things that it
2 appears -- and maybe you said that while I was a
3 little distracted. It strikes me that -- I know we
4 are looking at some of this in the context of the
5 Supreme Court decision, but one of the things I think,
6 Ms. Rule, that even as provided in your petition and
7 as stated by staff, that maybe, I don't know where the
8 Commissioners are going to come down on this, but that
9 some of the pricing in general that we have set some
10 of the rates need to be reviewed, period.

11 I'm kind of saying that at least that will be you
12 all's opinion, that when you cite examples of our
13 switching rates or, you know, the highest in the
14 southeast and the highest in the country, that doesn't
15 mean they are wrong, but I think what you are saying
16 is it's time to review those things.

17 And that perhaps you all are asking -- and you're
18 saying review them on a generic basis, and that's
19 probably a big step, but I think that issue is clearly
20 on the table for us to consider. And as I read the
21 petitions, I think you all may be -- that may be part
22 of the advocacy.

23 MR. McGLOTHLIN: That is certainly correct,
24 Commissioner, and just to put in our perspective,
25 again, the reason why we have made this request

1 relates to the absence of local competition and our
2 conviction that the absence of cost-based UNE rates is
3 in the way of competition.

4 And with respect to deaveraging, I would like to
5 point out that the discrepancy between the varying
6 costs that the local exchange company experiences with
7 respect to UNEs based on geography and location, and
8 the uniform prices that a competitor has to pay is
9 reason enough in terms of the competitive impacts to
10 go forward with deaveraging as far as you can.

11 And with respect to combinations and deaveraging
12 is a matter of unfinished business, I believe. And
13 with respect to some of the other things that we
14 mentioned, the nonrecurring costs, we have the benefit
15 of market experience. We have the benefit of the
16 separate docket in which the Commission concluded that
17 the cost of migrating customers is \$1.45 compared to
18 \$178 of the nonrecurring costs.

19 So there is plenty of evidence in terms of
20 experience under our belts, collective belts now to
21 warrant revisiting some of these things. And to
22 harken back to the staff's suggestion, if the
23 Commission decides to shift some priorities and move
24 collocation up, I hope it would also go forward with
25 the UNE pricing, at least initiate the docket and

1 identify those tasks that can be undertaken now so
2 that the Commission is in a position to act as quickly
3 as circumstances would allow.

4 And I believe already we have identified so many
5 substantive pieces of work that we can all tell it's
6 going to be a time consuming endeavor and why not
7 start now so that we don't find ourselves further
8 behind later down the road.

9 COMMISSIONER JOHNSON: That's what I was hearing
10 Mr. Dowds kind of saying. I'm sympathetic to that
11 position.

12 MR. CARVER: May I respond to one aspect of that?
13 I just heard Mr. McGlothlin say that there is no
14 competition because of an absence of cost-based UNE
15 rates. I don't think that's accurate. There are
16 cost-based UNE rates and they have been set by this
17 Commission. So to the extent they are making the
18 argument they they disagree with what you have done
19 previously in arbitrations, that should not be a basis
20 to have a UNE pricing docket. If you are going --

21 COMMISSIONER JOHNSON: I agree with you there. I
22 ignored that comment.

23 MR. CARVER: I think the only real issue is
24 whether the FCC has or will exercise their
25 jurisdiction in a way that creates conflicts with what

1 you have done previously. And to the extent they do
2 that, you may need to redo some things that you have
3 done already. And I think that would be the real
4 reason for having a UNE docket.

5 I also want to say I'm a bit puzzled by Ms.
6 Rule's suggestion that even though you don't know
7 exactly what UNES are going to have to be priced, you
8 can get a jump on things by going forward anyway. I
9 mean, it just seems to me logically if you go ahead
10 and price 50 UNES and then the FCC decides that 25 of
11 them don't have to be made available, then you have
12 wasted half of the labor in the case.

13 And it seems to me like it would be much more
14 reasonable and much more efficient to have a brief
15 delay to allow the FCC to determine what they are
16 going to do and then you can go about trying to price
17 the UNES that remain as opposed to doing too much now.

18 CHAIRMAN GARCIA: Thank you, Mr. Carver.

19 MS. SIMMONS: Commissioners, I just wanted to
20 make one comment. I think Commissioner Clark on a
21 couple of occasions has mentioned, you know, this idea
22 of supporting what the Commission has done previously.
23 I just wanted to make the observation, I think
24 whenever we are taking a look at deaveraging rates and
25 we are looking at deaveraged costs, I think it

1 inherently brings into question the cost basis that
2 the Commission used previously to set rates.

3 So I really see that as the connection. We are
4 going to learn something in the context of looking at
5 deaveraged costs that may cause us to come to a
6 different conclusion as to overall prices than we
7 might have done previously.

8 CHAIRMAN GARCIA: Thank you. Commissioners, is
9 there a motion? Hang on, let's see if we can get a
10 motion.

11 COMMISSIONER JOHNSON: I'm prepared to move
12 staff.

13 COMMISSIONER CLARK: Well, let me ask a question.
14 What will come first? Will we do -- I think we should
15 do OSS first, for one thing.

16 COMMISSION STAFF: That's at the same time. That
17 is already more or less in play.

18 COMMISSIONER CLARK: Okay. Collocation. That
19 would be -- collocation, UNEs, and deaveraging would
20 all be part of --

21 COMMISSIONER JOHNSON: Collocation is separate
22 from the pricing issues.

23 COMMISSION STAFF: Ideally we would like to do
24 them all at once, but we just realized we don't have
25 the resources to do all of those at once.

1 COMMISSIONER CLARK: So I guess it would be my
2 suggestion that you kind of do those things where we
3 don't anticipate much impact from the changes that
4 might be made with respect to UNEs and schedule it
5 that way.

6 MS. BROWN: I don't want to take any more time,
7 but I wanted to make the Commission aware of the fact
8 that we have in-house now a petition from ACI, I
9 think, to do a generic proceeding on collocation
10 matters. There is considerable interest in getting
11 some of these major collocation questions resolved,
12 and I know for some companies that is their main push.
13 I just wanted to let you all know.

14 COMMISSIONER JOHNSON: I guess what I was hearing
15 from David was that even if we open this docket it
16 would be at least his professional opinion that we
17 won't be too far ahead of the FCC as we are trying to
18 get the issues resolved and going through the
19 discovery and those kind of things anyway.

20 And that this may be a cumbersome and pretty long
21 process defining the issues, and getting through the
22 methodology, and getting the discovery and those kind
23 of things that we might need. And I think I was
24 somewhat comforted by the fact that we probably won't
25 be in a position to decide this before the FCC gives

1 us some indication anyway.

2 And at least in this kind of docket we can look
3 at some of the issues that I think the incumbents will
4 be concerned about, I think, and you can help me out
5 on this, when we start going through this there will
6 be issues or could be issues of -- I'm not going to
7 prejudge -- but universal service type issues. Some
8 if then issues. Some rate rebalancing issues may come
9 up in the context of this kind of a formal docket, and
10 that may be the most appropriate place to handle them
11 as opposed to through workshop.

12 COMMISSION STAFF: Yes, definitely. And also we
13 may be put in a reactive posture anyway as to exactly
14 what things it makes the most sense to deal with. An
15 example is the recent 706 order where they already
16 made some decisions for the states on collocation.

17 COMMISSIONER JOHNSON: True.

18 COMMISSIONER DEASON: Let me ask a question.
19 Have we given any thought to the possibility there may
20 be something that comes out of this legislative
21 session which is going to put demands on staff
22 resources and time and how that relates to this what I
23 consider to be a very ambitious recommendation from
24 staff to go forward with these matters?

25 MS. SIMMONS: Commissioner Deason, the only way I

1 can respond to that is to say that I would see us
2 laying out a schedule. I believe if we do have
3 legislation that has to be implemented, that would I
4 would expect directly affect personnel that we would
5 otherwise be using on pricing matters in this docket.
6 That would be my expectation. We just have to adjust
7 later.

8 Something would have to give in the schedule is
9 my belief if we have legislation to implement. As far
10 as operational issues, we don't typically use
11 personnel that work in those sorts of areas, usually
12 not the same people that we have implementing
13 legislation.

14 COMMISSIONER DEASON: Well, what do you consider
15 operational, OSS?

16 MS. SIMMONS: Yes. That's one example. We
17 talked about collocation and access to loops. Really
18 what I was trying to do in terms of how to organize
19 these into phases. We do have things happening in
20 parallel, but for a particular phase I was trying to
21 ensure that we had kind of an operational area we were
22 working on as well as the pricing area, because we do
23 have different people we tend to use.

24 CHAIRMAN GARCIA: Okay.

25 COMMISSIONER JOHNSON: The motion stands.

1 COMMISSIONER DEASON: Well, when you say you move
2 staff, are you talking about what is on black and
3 white as written down or what they have said here
4 today, because I'm not sure they are exactly the same
5 thing. And if there is differences between what has
6 been said and what is in black and white on the paper,
7 I need to know what is being moved and what is staff's
8 position right now.

9 COMMISSIONER JOHNSON: Yes, I was assuming that
10 staff was -- I know Will had brought up one idea and
11 so had Martha, but I was looking at the four corners
12 of what was drafted as their recommendation and that's
13 what I was moving.

14 COMMISSIONER CLARK: Can I make a suggestion that
15 we move on the motion to dismiss, but not with respect
16 to how that we would structure we would go forward.
17 Perhaps let the staff meet with you or the Chairman
18 and decide what is the most expeditious way to
19 proceed, which items should we handle first, what is
20 the calendar going to allow us to do, and then bring
21 back that kind of proposal.

22 Actually I think what has been suggested is
23 something we don't even have to vote on. That's
24 something you can do.

25 MS. BROWN: Commissioners, I was going to suggest

1 just a minute ago that the recommendation really is
2 pretty flexible in the way it's worded. What we are
3 really getting at is should we do this, these generic
4 proceedings and beyond. How we did it or when we did
5 it, or in what way is not definite.

6 CHAIRMAN GARCIA: It just makes sense what Susan
7 said. There are some logistical issues that we have
8 brought up here and we have discussed, and I think
9 Commissioner Deason has also brought up. It strikes
10 me as a good idea that we move on the issue of dismiss
11 and then you come back to us and present how we are
12 going to proceed on this and what format we are going
13 to use to proceed on this, just to make sure we can do
14 it, because we have sort of wavered.

15 COMMISSIONER CLARK: Yes. My suggestion is we
16 just simply say move staff on Issue 1. With respect
17 to the petition, I don't think you have to decide
18 anything on the petition right now. I mean, you can
19 decide what you want to do working with the Chairman
20 and with Commissioner Johnson, and then come back with
21 a proposal that we grant or deny and here is the basis
22 on which we think we should go forward.

23 MS. SIMMONS: Commissioners, I hate to prolong
24 things, but one thing does occur to me, and that is
25 that staff was advocating that we not go forward on

1 expedited dispute resolution.

2 MS. BROWN: And, Commissioner Clark, it seems to
3 me that the concern is with just the timing of this,
4 which goes first, not with whether or not the
5 Commission should grant this petition to go forward.
6 So there are two different things going on here.

7 The recommendation is that you grant the petition
8 to deal with these things, it's not that thou must do
9 it in some particular way. So I believe you could
10 approve staff's recommendation on the second issue and
11 grant the petition and then tell us that the timing
12 and the actual procedural organization of it we could
13 bring back to you.

14 COMMISSIONER DEASON: Why even grant the
15 petition? As you said already, this is something
16 within our discretion, we can move forward on our own
17 motion when the time is right. And it appears that
18 staff is in agreement that some of these things need
19 to be looked at, it's a question of logistically how
20 we are going to go forward with the timing, how it
21 relates to the FCC, if and when there is going to be
22 any legislation in Florida impacting our resources.

23 You know, maybe it's six of one and half a dozen
24 of the other whether you grant or deny, but it looks
25 to me like you are saying that staff has got a lot of

1 flexibility built into the recommendation. These are
2 things we are going to do anyway, you know, and we
3 probably would have been recommending at some point
4 that we do some of these things even if we had not
5 even gotten this petition. That's what I hear you
6 saying.

7 MS. BROWN: Well, I think that is true, but we
8 haven't. And I think it needs to be granted or
9 denied. I mean, it is before us.

10 COMMISSIONER DEASON: By granting it do we give
11 it some special status then that if we don't do
12 something that we said we were going to do that we
13 have denied somebody their due process or something?

14 COMMISSION STAFF: I don't think so. I think
15 also we could remove the phases part if you would
16 like, and that would give you even more flexibility by
17 saying you can order these at the direction of the
18 Chairman as he sees fit in calendaring these events,
19 or -- I mean, that's sort of what I was thinking, just
20 eliminate the phases, that way you would have a little
21 more discretion.

22 COMMISSIONER JOHNSON: And I guess what I was
23 trying to accomplish is to move forward on the issues
24 raised by staff, the pricing issues which included the
25 UNEs, and the deaveraging, and in the 120.57(1) type

1 proceeding procedurally to be worked out with the
2 Chairman, and to move forward on the workshops that
3 included OSS, collocation, and I'm leaving something
4 out. I can't find it. There was something else. Oh,
5 to not do the expedited proceedings.

6 I guess we have to kind of answer some of the
7 questions raised in the -- we can deny the petition
8 and do all of this stuff, but I would like to do the
9 stuff that was teed up by staff, because I think staff
10 -- not because the competitive providers raised them,
11 but because staff legitimately believes that these are
12 issues that we need to address, need to be addressed.

13 The format and procedure, leave that up to the
14 Chairman and to the staff to come up with something
15 that is workable under their time schedules and their
16 time constraints and our resources. But I did want to
17 on these issues get the ball rolling and have the
18 appropriate forums whereby they could be addressed.

19 CHAIRMAN GARCIA: We have a motion. Do we have a
20 second?

21 COMMISSIONER JACOBS: Susan's motion is the one
22 we are on? I'm sorry, Commissioner Clark.

23 CHAIRMAN GARCIA: No, we are on Commissioner
24 Johnson's motion.

25 COMMISSIONER JOHNSON: I don't remember what

1 Susan -- I know it was the --

2 COMMISSIONER CLARK: Well, I guess, you know, I'm
3 comfortable with the notion of not granting the motion
4 with respect to the arbitration. I think we -- or
5 dispute. I think we have covered that. So I would be
6 comfortable with denying that.

7 With respect to granting it, I would think it
8 would be appropriate not do it at this point but have
9 you look at how you want to do it and bring back the
10 proposal that says we want to grant it and we want to
11 do it -- this is the road map we want to use.

12 COMMISSIONER JOHNSON: What more are you
13 expecting to receive from staff in terms of direction?

14 COMMISSIONER CLARK: Well, the timing of it, when
15 they expect the FCC to act, what are some of the
16 issues that would be considered. I don't have a
17 strong opinion one way or the other on this, but it
18 struck me that went more to the not granting the
19 petition but procedural on how you would handle it.

20 CHAIRMAN GARCIA: Commissioner, just to let you
21 know where my vote is, I agree with that. I just want
22 staff to come back to us and let's discuss those
23 issues perhaps as quick as the next agenda or two
24 agendas.

25 There is some question, and Commissioner Deason

1 raised some of these issues of things that we have
2 decided, that maybe we don't need to look at and
3 discuss those. The ones we haven't and we need to do,
4 tell us what those are and the time frame that we need
5 to do that.

6 The ones that the FCC we feel is about to make a
7 decision on, all we are asking is give us another
8 agenda or two to look at those, walk us through those
9 so that we have a better understanding, because this
10 is a big task. And just to give you all some comfort
11 on your work, I agree with the recommendation. I just
12 want to get a better understanding of where we are
13 going from here.

14 If that gives you any comfort level, I hope it
15 gives the parties a comfort level. We are not
16 postponing this, we just want to get a better
17 understanding of where we proceed from here. So if
18 you will accept that, I guess, as a friendly amendment
19 and a second from Commissioner Clark.

20 COMMISSIONER JOHNSON: I can accept that, but
21 what is the that? Is this a deferral, then, or is it
22 a denial?

23 COMMISSIONER CLARK: No, I guess move staff on
24 Issue 1, on Issue 2 deny the motion with the petition
25 with respect to the expedited -- let's see, expedited

1 dispute resolution, and not take action on granting
2 the petition with respect to the other issues pending
3 staff coming back to us at an agenda with greater
4 detail about what to be considered, the sequence in
5 which they would be considered, how the FCC's decision
6 might impact those things, and more detail on how we
7 would procedurally handle them. And then I would move
8 staff on 3.

9 COMMISSIONER JOHNSON: I'm fine with that. But I
10 guess the one thing, that will allow staff to do is
11 more of an analysis like on the deaveraging to kind of
12 give the Commissioners some comfort as to why we
13 should be concerned, and on the pricing issues doing
14 some -- some of the same stuff, David, that we did in
15 my office a week and a half ago.

16 MR. DOWDS: We could provide more specifics then.
17 We were just trying to give discretion at this point
18 and not to pin us into anything at this point because
19 of the uncertainty.

20 COMMISSIONER DEASON: And one thing you need to
21 consider, are we going to try to do all of this in one
22 docket under one docket number? I mean, it's going to
23 be some CASR.

24 COMMISSION STAFF: That's how we contemplated it,
25 having separate proceedings within the one monster

1 docket.

2 CHAIRMAN GARCIA: Well, that will be one of the
3 issues that we will consider. We have a motion and a
4 second, and hopefully staff will get back to us in
5 quick order, maybe two agendas from now. All those in
6 favor signify by saying aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN GARCIA: Very good. It's unanimous.

9 * * * * *

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

CERTIFICATE OF REPORTER

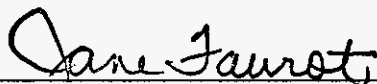
STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 65 are a true and correct record of the proceedings.

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

DATED THIS 5th day of April, 1999.



JANE FAUROT, RPR
P. O. Box 10751
Tallahassee, Florida 32302