

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 990750-TP  
Petition by ITC^DeltaCom :  
Communications, Inc. d/b/a :  
ITC^DeltaCom for arbitration: :  
of certain unresolved issues: :  
in interconnection :  
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PROCEEDINGS: SPECIAL AGENDA CONFERENCE  
  
BEFORE: COMMISSIONER SUSAN F. CLARK  
COMMISSIONER E. LEON JACOBS, JR.  
  
DATE: January 11, 2000  
  
TIME: Commenced at 1:00 p.m.  
Concluded at 4:20 p.m.  
  
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Room 148  
4075 Esplanade Way  
Tallahassee, Florida  
  
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FPSC Commission Reporter  
(850) 413-6736

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1 PARTICIPATING:

2 DIANA CALDWELL and BETH KEATING, FPSC

3 Division of Legal Services.

4 WALTER D'HAESELEER, SALLY SIMMONS, CALVIN

5 FAVORS, SUE OLLILA, JONATHAN AUDU, CAYCE HINTON,

6 MICHAEL BARRETT, LENNIE FULWOOD, and DAVID DOWDS, FPSC

7 Division of Communications.

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## P R O C E E D I N G S

(Hearing convened at 1:00 p. m.)

**COMMISSIONER CLARK:** Commissioner Jacobs, how do you want to proceed? Shall we go issue by issue?

**COMMISSIONER JACOBS:** Yes. That probably will be best, unless there are some that -- I looked through --

**COMMISSIONER CLARK:** I guess I will state my preference. I would like to go issue by issue because I have some questions on a number of them.

**COMMISSIONER JACOBS:** Some of the fall-out issues, I am assuming we can deal with those as we deal with the issues that are conditional. I'm thinking of the cost issues where we determine that certain items should be provided. We can deal with those very quickly after we deal with that issue, so that's fine with me.

**COMMISSIONER CLARK:** Okay. Ms. Caldwell, way don't you help us. Our first issue is 3(b)(1); is that right?

**MS. CALDWELL:** Yes, that is correct.

**COMMISSIONER CLARK:** I had some confusion as to why we are -- why we are deciding this issue in light of the fact that they have agreed on what parity

1 should be. And I guess that question goes for  
2 3(b)(1), (2), and then I think it was (5).

3 **MR. AUDU:** (5).

4 **COMMISSIONER CLARK:** Why can't we accept  
5 their resolution of this issue?

6 **MS. CALDWELL:** It wasn't that we didn't  
7 accept the resolution of the issue. We were informed  
8 after the hearing, and I think during the time the  
9 briefs were due, that the issue or the definition of  
10 parity had been resolved. They did not indicate to us  
11 that the rest of these issues had been resolved so we  
12 did the best that we could without -- and then we were  
13 not provided with the definition in parity. So Staff  
14 did the best they could as far as making a  
15 recommendation on the underlying issues.

16 **COMMISSIONER JACOBS:** Have we approved the  
17 stipulation that resolved issue -- the issue on  
18 parity?

19 **MS. CALDWELL:** Had we approved it?

20 **COMMISSIONER JACOBS:** Has that come before  
21 us?

22 **MS. CALDWELL:** No, it has not. That will  
23 come back when they come with --

24 **COMMISSIONER JACOBS:** With the full --

25 **MS. CALDWELL:** With the full agreement.

1 When they come back with the agreement then we'll have  
2 that issue.

3 **COMMISSIONER CLARK:** Let's just deal with it  
4 in Issue (b)(1), for example. They're not contending  
5 that they can't -- they shouldn't provide OSS. There  
6 is a dispute as to what is parity; is that correct?  
7 What is parity with respect to provision of OSS?

8 **MR. AUDU:** That sounds correct.

9 **COMMISSIONER CLARK:** So if they have made a  
10 determination of what parity is, why do we have to  
11 decide this issue?

12 **MR. AUDU:** Commissioners, just like  
13 Ms. Caldwell was saying, for one, we did not have any  
14 prior knowledge of which of the issues had been  
15 settled prior to receiving the briefs. When we did  
16 receive the briefs, I mean, we noticed that the  
17 Issue 3(a), which had defined parity, had been  
18 resolved, but we were not furnished that definition.

19 **COMMISSIONER CLARK:** But you weren't  
20 furnished it?

21 **MR. AUDU:** We were not.

22 **COMMISSIONER CLARK:** Why didn't you ask for  
23 it?

24 **MR. AUDU:** I mean, this was -- the briefs  
25 were the --

1                   **COMMISSIONER CLARK:** You're saying it was  
2 outside the record?

3                   **MS. CALDWELL:** Yes.

4                   **MR. AUDU:** Yes.

5                   **COMMISSIONER CLARK:** Well, if that's the  
6 case, why isn't our determination, yes, you have to  
7 provide OSS service and it'll be pursuant to the  
8 definition of parity you have agreed to? Why isn't  
9 that our recommendation?

10                   **MR. AUDU:** I would probably say for the fact  
11 that we didn't really know what they had agreed to. I  
12 mean, in my opinion, that was a little bit a  
13 non-answer.

14                   **COMMISSIONER CLARK:** Well, here's my concern  
15 is that you have -- you have put something as to, in  
16 effect, a definition of parity in your recommendation.  
17 Is it the same as what they've agreed to? And if it's  
18 not the same, have we, in effect, developed a conflict  
19 that they'll just come back to us and say, "it's  
20 different, we've agreed to what parity is, that's what  
21 it should be"?

22                   **MS. CALDWELL:** I don't think -- I think  
23 Staff was just trying to work with what they had in  
24 trying to answer these issues, but I don't think  
25 there's anything wrong with this Commission coming

1 back and saying, since you have settled and determined  
2 in your minds what the issue of parity is, then simply  
3 provide OSS and these other elements consistent with  
4 your definition of parity and I don't think there's  
5 anything wrong with the Commission recommending that.

6 **COMMISSIONER JACOBS:** My concern is I'd want  
7 to make sure that definition is also consistent with  
8 the terms of the Act. Having not seen it, I wouldn't  
9 want to have to come back here and say, well, do we  
10 know for sure that this definition -- I'm assuming  
11 that because they both -- they've agreed to it and it  
12 probably is, but, I think we ought to have that as a  
13 caveat in whatever we say.

14 **COMMISSIONER CLARK:** Well, my concern there  
15 though is that it's not -- if they've agreed to it  
16 it's not an issue for us to arbitrate.

17 **COMMISSIONER JACOBS:** But, quite frankly,  
18 even having decided that there is a standard for  
19 parity in each of these subsequent issues, I came away  
20 asking myself, okay, what does that mean with regard  
21 to OSS. I looked at the discussion and I saw the  
22 issues that were raised by ITC and the responses of  
23 BellSouth and then we say, okay, guys, go do parity in  
24 resolving these issues.

25 I'm not sure that there is some consensus or

1 even that there is a reasonable understanding of what  
2 that means with regard to these issues that were  
3 raised in OSS.

4 For instance, I asked myself, does it mean  
5 in the -- let's look at the issues. I pulled out  
6 three. There may be more.

7 Does it mean that in preordering that ITC  
8 would have an error check option that they can be --  
9 that will validate their order transactions and that  
10 will include address validation? Does parity mean  
11 that? That was one of the issues that was a central  
12 discussion point in ITC's testimony as you recounted  
13 it.

14 Number 2, does it mean that there would be  
15 effective integration of preordering and ordering?  
16 What I came away is that the recommendation is that  
17 the parties engage in TAG or use TAG for this. Then I  
18 saw discussion that, well, TAG does provide  
19 integration but it has some limits as to the scope of  
20 transactions it can handle and the complexity of  
21 transactions that it can handle.

22 Is then the resolution of this issue that  
23 the parties will use TAG then equal parity for  
24 purposes of OSS? I wasn't clear on that.

25 In other words, if they've agreed that

1 parity -- the definition of parity then, does that  
2 also mean that they've agreed to accept the limits of  
3 TAG as -- for OSS as meaning parity? I wasn't clear  
4 on that at all.

5           And then thirdly, the -- well, I guess I  
6 wrapped the third one into that and that has to do  
7 with the capability of processing meaningful scope of  
8 orders without fallout. That was a point of  
9 discussion that the complex orders, sounds like, are  
10 designed to fall out of the process for CLECs. I  
11 wasn't clear if they are designed to fall out of the  
12 process for BellSouth. If they're not designed to  
13 fall out of the process for BellSouth and we say that  
14 parity equal TAG for CLECs, what have we said? I'm  
15 particularly concerned with that given that we're in  
16 the process of having our test of TAG.

17           **MS. SIMMONS:** Commissioner Jacobs, that was  
18 one thing I wanted to point out. I don't see this as  
19 passing judgment on the adequacy of what BellSouth is  
20 providing. It's merely an attempt to make a statement  
21 as to what we believe should be provided, not whether  
22 or not that particular standard has been met.

23           Another point I wanted to make is that going  
24 back to some of the earlier questioning, why isn't the  
25 answer, yes. And I guess it could be that simple.

1           We were trying to be as specific as we could  
2 without knowing what the parties had agreed to as the  
3 definition of parity. I wanted to point out that  
4 we've had circumstances where parties have come back  
5 before the Commission with their agreement and  
6 sometimes there are provisions that are different than  
7 what was in the Commission's order. And if the  
8 parties do agree, we've said, fine. I want to make  
9 you aware of that just so you can consider that.

10           **COMMISSIONER CLARK:** Are you suggesting that  
11 if we agree with what Staff has said and it's  
12 different than what they agreed to was parity, that  
13 when they came back with their agreement and it is  
14 different, then we'll accept it?

15           **MS. SIMMONS:** We would find that acceptable  
16 so long as we don't find anything that's in violation  
17 of the law.

18           **COMMISSIONER CLARK:** So even if it was in  
19 conflict, they can resolve that?

20           **MS. SIMMONS:** Right. I'm just saying we  
21 have handled matters like this before, you know. We  
22 have an order from an arbitration, sometimes when the  
23 parties come back with their agreement it's not  
24 totally in keeping with the order and so long as  
25 there's agreement among the parties and it's what

1 they've agreed to is lawful, we've allowed them to do  
2 that.

3 **COMMISSIONER CLARK:** Let me ask this other  
4 question. Did parties agree that these issues were  
5 still in dispute? I mean, they still briefed these  
6 issues?

7 **MS. CALDWELL:** Yes.

8 **MR. AUDU:** Yes.

9 **COMMISSIONER JACOBS:** So the answer to my  
10 question, I guess -- it was a long-winded question.  
11 For instance, let me go to one particular point on  
12 Page 9 of the recommendation. And let me condition my  
13 discussion with what I perceive to be your  
14 recommendation is that BellSouth should provide OSS in  
15 a manner that is in parity with what it provides to  
16 itself?

17 **MS. SIMMONS:** Correct.

18 **COMMISSIONER JACOBS:** Now, I want to try and  
19 track that with how we anticipate resolving the  
20 discussion that begins here, the first full paragraph.  
21 It says, the ITC witness contends that his company is  
22 not receiving nondiscriminatory access to the  
23 preordering capability because they cannot access the  
24 information and parse it into their ordering system.  
25 And then BellSouth comes back and gives a rebuttal to

1 that and basically argues that what is being provided  
2 through TAG, if the company does this, should be  
3 adequate. I didn't get the impression that there was  
4 agreement on these two witnesses on this.

5 **MS. SIMMONS:** Right, I would agree. I don't  
6 think -- and Mr. Audu, please jump in if you feel you  
7 need to. But it seems to me, that it's premature to  
8 try to answer that question you just posed. I see  
9 that kind of question being answered through the  
10 third-party OSS testing.

11 **COMMISSIONER JACOBS:** I can agree with that.

12 **MR. AUDU:** There was a contention about  
13 whether TAG is capable of passing the preordering  
14 information on or not. But the other dilemma is that  
15 there was no firsthand experience that we could  
16 utilize so that became a contention in the sense that  
17 BellSouth, I mean -- asserts that TAG is capable of  
18 proceeding the orders. ITC refutes that they have  
19 some secondhand or thirdhand information that says  
20 it's not capable. But there was no firsthand --  
21 on-hand experience that says this is what we did, this  
22 is what came out, reconciled it to.

23 And so what we went with is best on the  
24 record -- I mean, TAG is by far adequate compared to  
25 what is currently existent and that's basically what

1 we're coming out of this.

2           **COMMISSIONER JACOBS:** That's exactly my  
3 point. Is that, don't we run the risk of, if we  
4 resolve this issue, to say we go with the record of  
5 this proceeding and determine that parity means these  
6 provisions. Don't we run the risk of somewhat  
7 prejudging what we'd come out of that later proceeding  
8 with?

9           **MS. SIMMONS:** Commissioner Jacobs, it's my  
10 position that I don't think it -- and at least I  
11 was -- did not have this in mind. I don't see this  
12 vote as being one of passing judgment on the adequacy  
13 of what BellSouth is providing.

14           **COMMISSIONER JACOBS:** Okay.

15           **MS. SIMMONS:** I see that a matter to be  
16 resolved in the third-party OSS test.

17           **COMMISSIONER JACOBS:** Okay.

18           **MS. SIMMONS:** I think that goes beyond what  
19 this issue calls for in the way of a response.

20           **COMMISSIONER JACOBS:** I understand. I'm  
21 being overly cautious. I admit.

22           **COMMISSIONER CLARK:** I'm not sure I don't  
23 agree with Commissioner Jacobs that it will have some  
24 impact at least on the OSS because it says -- or maybe  
25 my issue is really that I don't think what we put here

1 resolves anything.

2           **MS. SIMMONS:** It really doesn't resolve  
3 anything.

4           **COMMISSIONER CLARK:** The only real  
5 resolution, whether OSS is being provided in a way  
6 that complies with the law, will be what we decide as  
7 a result of the third-party testing.

8           **MS. SIMMONS:** That's my belief, yes.

9           **COMMISSIONER CLARK:** That being the case,  
10 why don't we just say, go back to what I suggested and  
11 that's say that, yes, you will provide OSS system in  
12 accordance and consistent with the definition of  
13 parity you have agreed to.

14           **MS. SIMMONS:** I don't think there is any  
15 harm with doing that. I just wanted to mention that  
16 there was another option. I wanted to make you aware  
17 that if the -- if you did vote out the Staff  
18 recommendation, that it would be possible for the  
19 parties to agree to something else, and typically  
20 we've allowed them to put that into their agreements.  
21 I just wanted you aware of that.

22           **COMMISSIONER CLARK:** Let me ask it a  
23 different way. If we agree with the Staff's  
24 recommendation here in that somehow in what comes out  
25 of the generic third-party testing is a definition of

1 parity that may entail something less than we  
2 recommended in here, will that mean that DeltaCom has  
3 a higher -- has a better access?

4 **MS. SIMMONS:** That may, in theory, be a  
5 possibility, but I think in practice the  
6 recommendation statement is sufficiently broad that I  
7 think the likelihood of that is very remote in  
8 practice because the recommendation statement is  
9 certainly subject to interpretation.

10 Commissioners, I just wanted you aware that  
11 it seemed to me like there were two routes that you  
12 could take on this.

13 **COMMISSIONER JACOBS:** Could I -- I think I'm  
14 inclined to go with your suggestion. Could you  
15 restate it for me?

16 **COMMISSIONER CLARK:** Well, I guess, I would  
17 modify -- I would -- I guess it would be that the vote  
18 on Issue 1 would be, yes, BellSouth should be required  
19 to provide OSS service consistent with the definition  
20 of parity that the parties have agreed to.

21 **COMMISSIONER JACOBS:** My only hesitancy is  
22 that we don't know what they've agreed to. So -- and  
23 I guess --

24 **COMMISSIONER CLARK:** I guess that it has  
25 this advantage over us putting this one out is, you

1 have the two parties who have agreed to it and we  
2 haven't agreed to it and we will, in fact, presumably  
3 adopt a standard in our generic proceeding --

4 **COMMISSIONER JACOBS:** Can we say --

5 **COMMISSIONER CLARK:** -- on the third-party  
6 testing.

7 **COMMISSIONER JACOBS:** Can we say subject to  
8 our -- we can't premise this docket on that, can we?

9 **MS. SIMMONS:** There may be another issue,  
10 too, and maybe the lawyers want to speak up on this.  
11 But, you know, strictly speaking, Ms. Keating reminded  
12 me and is correct that the purpose of the third-party  
13 OSS testing is really for purposes of 271 approval. I  
14 think there will be some carryover, you know, effects.  
15 But that was -- that is the main purpose for that  
16 testing.

17 **COMMISSIONER CLARK:** Well, presumably for  
18 the purpose of 271 it, in effect, sets the minimum.  
19 Parties can agree to something greater.

20 **MS. SIMMONS:** Well --

21 **COMMISSIONER CLARK:** Can they agree --

22 **MS. SIMMONS:** Maybe the lawyers can help me  
23 here. I'm not sure it's necessarily a minimum. You  
24 know, 271 check list, I mean, is what is required for  
25 purposes of obtaining interLATA authority.

1           **COMMISSIONER JACOBS:** Let me suggest this  
2 approach. I think, go with your language subject to a  
3 reopener, i.e., the Commission can review the parties'  
4 agreement in light of the decision we make in the  
5 attesting and for the specific purposes of assessing  
6 parity. In other words --

7           **COMMISSIONER CLARK:** See, I'm not sure I  
8 would do that because it seems to me -- let me put it  
9 this way.

10           If we made a determination with respect to  
11 OSS and it would be better than what they agreed to  
12 here, wouldn't DeltaCom be entitled to use a 271, in  
13 effect, order -- let me put it this way.

14           Presumably the OSS that's going to be  
15 provided is going to be uniformly provided everyone.

16           **MR. D'HAESELEER:** Maybe yes. Maybe no.  
17 What they're not telling you is that there is a next  
18 step after OSS and that is permanent performance  
19 measurements. That would be -- well, I don't know the  
20 schedule yet, but that would be the ultimate decision  
21 where everybody would be treated the same way or if  
22 there are variances, it would be so identified.

23           But I think in this one -- and the reason  
24 why I'm familiar with it is we had some discussions,  
25 and I would argue the way the issue is written, it's

1 not answerable in terms of what's going on with OSS  
2 and other things. So what the Staff was trying to do  
3 was be responsive and then be so loosely responsive so  
4 that subsequent actions, you know, wouldn't  
5 countermand what we were doing. And that's why you  
6 see the quote according to the FCC order.

7 And that order goes into a lot of detail  
8 about what transparency is all about. So that's why  
9 this is a compromise. And, you know, my reaction  
10 would be, if you can't answer the issue, don't answer  
11 it. But this is kind of a compromise.

12 **MS. CALDWELL:** Commissioner, also the  
13 third-party testing, my understanding is that there's  
14 not going to be a definition of parity coming out of  
15 that proceeding. It's just -- there might be some  
16 benchmarks or guidelines, but there will not be a  
17 definition, this is parity. So I think that there's  
18 not a conflict between this.

19 **COMMISSIONER CLARK:** What does 271 require?

20 **COMMISSIONER JACOBS:** I thought that was the  
21 premise of 271. No, it's not.

22 **MS. SIMMONS:** I mean, Commissioners, we'll  
23 look it up specifically, but generally speaking it's  
24 nondiscriminatory access.

25 **COMMISSIONER CLARK:** It's the same thing.

1 So if you agree they meet that standard then you have,  
2 in effect, defined parity.

3 Walter, let me just quiz you a little bit  
4 more while they're looking that up. Here's how I  
5 understand what you have said is that what you're  
6 recommending here puts a little more flesh on the  
7 bones as to what parity is.

8 **MR. D'HAESELEER:** Yes. It's as defined in  
9 that order.

10 **MS. SIMMONS:** It's Staff's attempt to make  
11 an interpretation of what parity is based on what the  
12 FCC has said about it.

13 **COMMISSIONER CLARK:** For this particular  
14 type of UNE? Is it a UNE? I get confused.

15 **MS. SIMMONS:** Yes, it is.

16 **COMMISSIONER CLARK:** It is a UNE. Okay.  
17 Okay.

18 **COMMISSIONER JACOBS:** Maybe we can expedite  
19 this. I'm okay with your recommendation except for  
20 this blind reliance on whatever the parties -- I don't  
21 mean to imply that we should be all that concerned. I  
22 just want something that will hold it to the standards  
23 of the Act which ultimately should wind up being what  
24 we decide in our docket anyway. And so I can move  
25 your --

1           **COMMISSIONER CLARK:** Well, I've begun to be  
2 persuaded we should do what the Staff suggests here  
3 for this reason. That if it is inconsistent with what  
4 they agreed on parity, they can come back with that in  
5 the agreement we have to prove. This at least  
6 provides more direction with respect to what parity is  
7 for this particular element.

8           **COMMISSIONER JACOBS:** I going to -- I was  
9 going to go middle ground. So if you're there -- I  
10 was going to use your reference to the Act and tie  
11 that to that, but if you're okay with that I'll second  
12 it. I'll move it, rather.

13           **COMMISSIONER CLARK:** Let me just ask one  
14 thing further. Suppose we put this, this is what we  
15 require them to put in their agreement with respect to  
16 what -- what they are required to provide with respect  
17 to OSS to be considered providing it at parity. We  
18 have our OSS proceeding, our third party, and it's  
19 something more, it's something different. What are  
20 DeltaCom's options?

21           **MS. SIMMONS:** Well, I think as  
22 Mr. D'Haeseleer mentioned, beyond the third-party  
23 testing there is another phase in terms of permanent  
24 performance measures and that is what would have the  
25 generic application would be our expectation.

1           **MR. D'HAESELEER:** That would be the vehicle  
2 for DeltaCom to have input into the process.

3           **COMMISSIONER CLARK:** But what I'm saying is  
4 if the process results in a system that is better than  
5 what results from this agreement from their  
6 standpoint. For instance, with respect to saying --  
7 being able to parse -- let me put it this way.

8           One of the difficulties is parsing it,  
9 right, because you have to manually enter something as  
10 opposed from taking it from one database directly and  
11 putting it in another? That's not available now, is  
12 that right, in one of those processes, ordering or  
13 preordering?

14           **MR. AUDU:** In LENS it's not available right  
15 now.

16           **COMMISSIONER CLARK:** Now, as a result of our  
17 third-party testing, we say it comes back to us. In  
18 order for us to conclude that your OSS is acceptable  
19 at 271 you have to provide that parsing.

20           **MR. D'HAESELEER:** Or in our permanent  
21 measurements, yes, we would require that.

22           **COMMISSIONER CLARK:** I guess --

23           **MR. D'HAESELEER:** Well, Staff is right.  
24 OSS, the third-party verification, only involves  
25 BellSouth. There are other parties that provide UNEs.

1 Sprint, General --

2 **COMMISSIONER CLARK:** Okay.

3 **MR. D'HAESELEER:** So we're going to have to  
4 develop some generic testing procedures that involve  
5 all of them and I would think if DeltaCom has problems  
6 that would be their vehicle, and I would argue even  
7 OSS, that --

8 **COMMISSIONER CLARK:** Walter, I'm saying they  
9 persuade us that parsing has to be there and it's not  
10 what -- assume it's not what they're getting under  
11 their agreement. I would presume they're not held to  
12 this agreement and that they can get the parsing.

13 **MR. D'HAESELEER:** I think -- well, I think  
14 so.

15 **MS. CALDWELL:** Commissioner Clark, my -- I  
16 think in the collocation docket there was -- it was  
17 ordered or there was a provision in there that said  
18 these collocation requirements will apply to the  
19 current agreements and any subsequent agreement. So  
20 that in the proceeding for OSS or subsequent things  
21 the Commission could order that they apply to all  
22 current agreements and subsequent agreements.

23 In addition to that, there may be some  
24 provision within that particular agreement that says  
25 that if there is a change in the law that we will

1 abide by the changes, anything will change.

2           **COMMISSIONER CLARK:** So would it be your  
3 recommendation that we do something like add some sort  
4 of language in this provision to cover that?

5           **MS. CALDWELL:** I was going by what was in  
6 the collocation docket. I don't think that there  
7 would be a prohibition for you to say --

8           **COMMISSIONER CLARK:** When we decide in the  
9 OSS, when we say, by the way, for everything in  
10 existence now that this new definition of what parity  
11 or this new further explanation of what parity is, is  
12 applicable?

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

14           **COMMISSIONER CLARK:** I'd rather sort of give  
15 them a heads up now and specifically include it so we  
16 don't have to deal with the argument of impairing a  
17 contract later on.

18           **MS. CALDWELL:** I think that you could, in  
19 this particular -- like in your recommendation, I  
20 mean, amend the recommendation so that they include a  
21 provision in their contract to include any kind of  
22 changes to --

23           **COMMISSIONER CLARK:** Parity.

24           **MS. CALDWELL:** -- parity.

25           **COMMISSIONER CLARK:** That result from

1 generic dockets pending before the Commission?  
2 Because there may be other areas that -- they didn't  
3 put that before us to arbitrate. But we could make  
4 it -- we could make it with respect to each individual  
5 item. Specifically with this we could say -- we could  
6 go with your recommendation and then say something to  
7 the effect that however --

8 **COMMISSIONER JACOBS:** Nondiscriminatory --  
9 I'm sorry.

10 **COMMISSIONER CLARK:** To the extent a  
11 different definition of parity --

12 **MS. CALDWELL:** At such time that the  
13 Commission resolves any generic -- not generic, but a  
14 definition that applies consistently to all companies  
15 then that definition would subsequently apply in  
16 this -- or would apply in this particular proceeding.

17 **COMMISSIONER JACOBS:** I think we would have  
18 two means of addressing that. One, unless I'm  
19 mistaken, the term nondiscriminatory in 271 means both  
20 as between CLECs and BellSouth, but also across  
21 companies. So BellSouth can come out with a provision  
22 in OSS that it provides to everybody who got it after  
23 our test and then say, we won't give it to anybody  
24 else, could they?

25 **MS. SIMMONS:** No. They've got to be

1 nondiscriminatory.

2           **COMMISSIONER JACOBS:** So you would have that  
3 option.

4           **COMMISSIONER CLARK:** You're sort of saying  
5 it's self-enforcing.

6           **COMMISSIONER JACOBS:** I would anticipate it.  
7 The problem with that is the history of this whole  
8 arena is that so often when you say self-policing, we  
9 wind up seeing four and five dockets to get  
10 self-policing done. But that would be my first  
11 position.

12           And secondly, these parties -- well, most  
13 specifically, ITC would want to ensure that they --  
14 they could put some kind of limiting factor or  
15 actually a term in the contract that says, you know,  
16 upon 30 days notice and the completion of this docket,  
17 you know, we want to come back here and review this  
18 provision, which is similar to what you say. Maybe  
19 the same thing, in fact. But I think you could  
20 address that in several ways I guess is my point.

21           **MS. KEATING:** Commissioners, I think I  
22 understand your concerns, but I just want to reiterate  
23 something that Ms. Caldwell said earlier. In the OSS  
24 testing docket there will not be a language definition  
25 of parity that results. That's what you're talking

1 about here. That's what was at issue in this docket,  
2 is a worded definition. There may be standards that  
3 are set but there's not going to be parity is such and  
4 such. What we're going to be using in that case is  
5 just the language and the definitions that are in the  
6 FCC's order.

7 **COMMISSIONER JACOBS:** And what we're  
8 essentially discussing here is how do we modify what  
9 these parties agree to in this agreement to encompass.

10 **MS. KEATING:** There should not be a need to  
11 modify.

12 **COMMISSIONER JACOBS:** If there was  
13 self-policing, I agree. If what comes out of that  
14 docket is self-policing and they get access to it, I  
15 agree, and if I hear that, then I'm okay. Otherwise,  
16 I have concerns with simply saying, I won't accept the  
17 agreement of the parties that we haven't even seen to  
18 review for terms of resolving parity in this docket  
19 and then run the risk of their having some conflict  
20 with what would come out of the other docket that  
21 these parties then will be needing to resolve.

22 **MS. KEATING:** I guess maybe I'm somehow  
23 missing what you're saying because regardless of what  
24 you may or may not say parity is, whether you pick  
25 Staff's definition or you decide to approve what the

1 parties agreed to, what happens in the OSS testing  
2 docket should not have an impact on what somebody's  
3 definition of parity may be in their agreement. They  
4 will still have to provide -- OSS --

5 **COMMISSIONER CLARK:** Wait a minute. What  
6 does 271 require regarding OSS?

7 **MS. KEATING:** They must provide OSS on a  
8 level of parity, you know, nondiscriminatory access to  
9 it.

10 **COMMISSIONER CLARK:** Right. And by  
11 determining in that docket in the third-party testing  
12 what is going to be the adequate process that  
13 establishes parity you, in effect, effect the  
14 definition of parity. You actually describe a process  
15 that you would consider parity, therefore, 271.  
16 That's not the case?

17 **MS. KEATING:** Not exactly. What will happen  
18 is Staff and KPMG will conduct tests of BellSouth's  
19 system. They will compare how BellSouth provides one  
20 system to itself with how it occurs -- how it provides  
21 it for ALECs. If it's provided differently, different  
22 time frames, anything like that, BellSouth will have  
23 to correct how they provide the service to the ALEC.

24 **COMMISSIONER CLARK:** Right. And you will  
25 come --

1           **MS. KEATING:** To bring it up to --

2           **COMMISSIONER CLARK:** You will come up with a  
3 process that you say is equivalent or on par with what  
4 BellSouth is and you, in effect, define the process as  
5 to what accomplishes the definition of parity.

6           **MS. KEATING:** That's correct, but I still  
7 don't think --

8           **MR. D'HAESELEER:** Without having defined it.

9           **MS. KEATING:** Right.

10          **COMMISSIONER JACOBS:** Well, you do.

11          **COMMISSIONER CLARK:** By saying what the  
12 process is.

13          **COMMISSIONER JACOBS:** From the back door you  
14 set up all the components and put all the "I"s in  
15 place.

16          **COMMISSIONER CLARK:** I think parsing is a  
17 good issue. I mean, if it comes out that you have to  
18 be able to parse it in the same way to be -- to have  
19 parity, that you can't require the manual input of  
20 data, you, in effect, have said, parity includes  
21 parsing.

22          **COMMISSIONER JACOBS:** I understand that now  
23 there is a -- at least two tiers, maybe more. But the  
24 users of EDI get access to certain functions but no  
25 ordering. I'm sorry. No preordering. But the users

1 of LENS get other stuff, but no back end.

2 That, I would expect, would be resolved in  
3 our testing process. Okay. I am not sure yet to what  
4 extent then those users of LENS are going to then be  
5 able to move into this new environment equitably,  
6 i.e., at the cost levels and everything else that will  
7 now be out there in order to take on all this  
8 functionality under the new TAG, whatever it is that  
9 comes out.

10 So if there is a medium or small sized CLEC  
11 who says, well, I can't pick up the tab for this new  
12 level system so I got to stay on LENS, what have we  
13 said to them about parity? Which would exactly be --  
14 if we said, guys, what you describe here is okay and  
15 they reach that decision point after our test, the  
16 only thing they have is what they agreed here.

17 **MS. KEATING:** Commissioner, I can understand  
18 your concerns, but I think that where you're going is  
19 a little bit down the line from what the parties  
20 asked --

21 **COMMISSIONER JACOBS:** I accept that. I have  
22 no argument with that.

23 **MS. KEATING:** -- the Commission to  
24 arbitrate.

25 **COMMISSIONER JACOBS:** I want to look down

1 the line right now and I want to ensure that I don't  
2 foreclose an option for this company that potentially  
3 could be available to them there.

4 **COMMISSIONER CLARK:** Well, I guess, getting  
5 back to my question as to if we go with the Staff's  
6 recommendation and the parties don't like it or they  
7 feel their agreement on parity is okay and they agree  
8 to something else, they come back in and you discover  
9 they agree, then that's the end of the issue.

10 Now, if they put in it what we've directed  
11 them to put in it, and subsequently, through our  
12 third-party testing we establish a standard for OSS  
13 that is different they would have the option -- and  
14 maybe even it's a different system. They would have  
15 the option of going to that system regardless of what  
16 they're agreement said, wouldn't they?

17 **MS. SIMMONS:** I think that --

18 **COMMISSIONER CLARK:** They're entitled to  
19 nondiscriminatory as between other ALECs.

20 **MS. SIMMONS:** I believe that's what  
21 Ms. Caldwell indicated previously.

22 **COMMISSIONER CLARK:** So that being the case,  
23 I think we don't have that kind of issue. I mean, it  
24 will be a cost factor in terms of whether they want to  
25 move to a different system, but they'll have that

1 issue anyway.

2           **MS. CALDWELL:** I think they would have that  
3 issue because, you know, here the question that we're  
4 answering is, should BellSouth be required to provide  
5 OSS at parity. They've come up with one definition of  
6 parity. We've used this definition of parity from the  
7 FCC. Through a subsequent proceeding the Commission  
8 may decide what parity is, either through guidelines  
9 or coming up with a definition.

10           To me, it still is a business decision on  
11 ITC's part to determine if they want to expend the  
12 cost to get it. I mean, they may not want it --

13           **COMMISSIONER CLARK:** I just don't want to  
14 preclude them from choosing to obtain the services  
15 through an agreement -- through something other than  
16 their agreement. And by that I mean, pursuant to what  
17 we may direct BellSouth to do as a result of the  
18 third-party testing, or as a result of, not what they  
19 we tell them to do, but say, if you want 271 approval  
20 you got to do this.

21           **MS. SIMMONS:** Just one point of  
22 clarification I wanted to make as far as the testing  
23 is concerned. Also, I think it's important to keep in  
24 mind that through this testing not necessarily every  
25 system that an ALEC could possibly use will be -- will

1 actually be nondiscriminatory, but the question is  
2 whether or not BellSouth is making available  
3 nondiscriminatory access. But, it won't be a matter  
4 of necessarily that every system will be complying.

5 **COMMISSIONER CLARK:** Correct. But at least  
6 there will be one system that will be considered at  
7 parity and they would have the option of moving to  
8 that system regardless of what they previously had and  
9 regardless of what they agreed to under this  
10 agreement.

11 Okay. I think it's covered then and I can  
12 live with what Staff has recommended.

13 **COMMISSIONER JACOBS:** With that explanation,  
14 I move Staff.

15 **COMMISSIONER CLARK:** Show Issue 3(b)(1)  
16 or -- 3(b)(1) approved.

17 We are on Issue 3(b)(2), is that correct?

18 **MR. FAVORS:** That's correct.

19 **COMMISSIONER JACOBS:** This is a bit similar  
20 but a bit different is what I see.

21 **MR. FAVORS:** That's correct.

22 **MR. AUDU:** Commissioners, just a quick one.  
23 I have a correction to make with the footnote on  
24 Page 14. On the second line of that footnote, I said,  
25 "namely OSS and IDLC." That was a typo. It's suppose

1 to be OSS and loops. Thank you.

2 **COMMISSIONER CLARK:** I guess I'm not clear.  
3 Do you mean that your recommendation only applies to  
4 these two issues?

5 **MR. AUDU:** What I was arriving at was that  
6 the decisions -- basically the record under reflects  
7 activities to these two issues. However, those two  
8 issues do not define the universe of what is out there  
9 as an UNE. So it's not impossible that while the  
10 record might reflect one thing or another, there might  
11 be something that was not otherwise in the record that  
12 could refute whatever the record has provided us. So  
13 our decision, I mean, is strictly based on the content  
14 that is in the record.

15 **COMMISSIONER CLARK:** Well, let me just be  
16 sure. The same recommendation would apply to other  
17 UNEs even though they weren't specifically discussed  
18 in the evidence.

19 **MR. AUDU:** To the effect that ITC is the one  
20 ordering that, I would say yes. But, I mean, in the  
21 process that both parties focus on this particular two  
22 UNEs to basically argue the issues --

23 **COMMISSIONER CLARK:** They were illustrations  
24 of their point.

25 **MR. AUDU:** That's correct.

1           **COMMISSIONER CLARK:** Okay.

2           **COMMISSIONER JACOBS:** I don't understand all  
3 the technical details, but as I am able to cull out of  
4 this, ITC wants to ensure that for what it is looking  
5 to provide, BellSouth gives us a loop and a port --  
6 let's narrow it to that for now -- that is of like  
7 quality and functionality as BellSouth will provide a  
8 service similar to that. Is that a fair statement?

9           **MR. AUDU:** That's close enough, yes.

10          **COMMISSIONER JACOBS:** And specifically the  
11 examples were given -- I don't know if it was in this  
12 issue or the next one -- of loops that an ALEC might  
13 get which might prove problematic for data  
14 transmission because of the technical specifications  
15 of that loop as opposed to what would have been used  
16 by BellSouth to provide a similar service. Is that --

17          **MR. AUDU:** That example was used, yes.

18          **COMMISSIONER JACOBS:** So when we say that we  
19 would expect there to be parity in providing of UNEs,  
20 we're essentially saying -- let me finish my point.  
21 We're essentially saying that BellSouth makes sure  
22 that if you provide a service like this or similar to  
23 this that the ALECs and CLECs have access to  
24 facilities of like technical standards.

25          **MR. AUDU:** Within the provision of the

1 technical standards we do expect that whatever they  
2 provide to ITC -- and I mean, in this particular like  
3 case, would be such that it's up to par with what  
4 BellSouth otherwise --

5 **COMMISSIONER JACOBS:** Now, BellSouth makes  
6 two points. First of all, they indicate that they  
7 don't generally break out pieces in order to provide  
8 the service so it's difficult to determine that?

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

10 **COMMISSIONER JACOBS:** And second of all,  
11 they indicate that it's -- they are geared to industry  
12 standards and so when they provision something they're  
13 looking to make sure it adheres to industry standards  
14 and parties generally have options that they can buy  
15 the generic or they can buy the top of the line brand  
16 and that should be the standard that we adhere to  
17 here. How do we respond to that, to both of those  
18 arguments? First of all, that they don't break it out  
19 so how do we determine what the prevailing standard  
20 would be. And second of all, that the parties should  
21 have to pay for top of the line versus generic.

22 **MR. AUDU:** There are instances, quite all  
23 right, I mean, according to the record that it's  
24 clearly illustrated that BellSouth doesn't provide  
25 that for itself. And that -- I mean, that becomes an

1 issue that we cannot basically talk of a retail  
2 operation that mimics that.

3 On the other hand, the case could be made  
4 that they still -- that BellSouth still uses the same  
5 element, just by defined that the elements are not  
6 broken up.

7 So, I would be hard pressed to say that the  
8 argument goes that all the way through that BellSouth  
9 hardly uses any element that is provided as a UNE.  
10 And somewhere, I believe on the last few paragraphs of  
11 my recommendation, I did indicate that the case can be  
12 made that BellSouth uses the same elements as those  
13 that they offer for UNES while the under wire -- we  
14 don't have anything in the record to say A, B, C and D  
15 is equally used as a UNE. That is definitely the  
16 illustration of that.

17 And the other case of higher grade provision  
18 versus the generic industry standard is something that  
19 if the industry group, I mean, basically says that  
20 this is what it cost to be acceptable in the industry  
21 and then you come in as an ALEC to one modern world  
22 industry describes, I don't have anything in the  
23 record that goes directly to address that.

24 **COMMISSIONER JACOBS:** In fact, I would  
25 expect it to be the opposite. I would expect that

1 there would be these generic minimums, but that  
2 industry standards kind of hover around something  
3 above the generic minimum, particularly with the fast  
4 pace of technology.

5 I would expect that while, yes, you could  
6 technically do a service over a generic loop, that  
7 industry standards are migrating towards  
8 sophistication on that loop. Is that --

9 **MR. AUDU:** That sounds logical. The only  
10 thing is that there is nothing that I saw in the  
11 record that would allow --

12 **COMMISSIONER JACOBS:** That would allow you  
13 to make that conclusion.

14 **MR. AUDU:** However, I would probably put it  
15 in that somewhere during the hearing Witness Varner  
16 did indicate the whole idea of equal or greater, I  
17 mean, so long as it's prefaced that it's not a  
18 requirement but it's something that if they're -- if  
19 ITC was willing to pay for or something of that, if  
20 they wanted a greater standard, he was -- I mean, he  
21 considered that there was a possibility. Now, that  
22 does not mean that is a given.

23 **COMMISSIONER JACOBS:** Going back to the  
24 first point. The analogy given, or maybe it was an  
25 example given, I believe, was that -- I keep going

1 back to data example and that's clear to me, where you  
2 have a loop that's designed to transmit data and in  
3 the instance where it transmits under BellSouth  
4 provisioning, you get a smooth flow or you get a bid  
5 rate that is high, but under the similar provisioning  
6 of that for the ALEC, you either get problematic  
7 transmission or you get bid rates that are low.

8 **MR. AUDU:** Yes, sir.

9 **COMMISSIONER JACOBS:** Are those reasonable  
10 measurements to look at in terms of parity, i.e., the  
11 end user's experience?

12 **MR. AUDU:** Let me read on Page 17, I do  
13 believe, one of the quotes from Witness Hyde. He  
14 says, "only when BellSouth serves the customer  
15 currently with IDLC does ITC^DeltaCom want the IDLC  
16 equivalency. When BellSouth serves a retail customer  
17 with cooper pair, then we will be very happy with  
18 copper pair."

19 The particular case that you are talking  
20 about here, which probably comes directly to this  
21 court, sounds all right and straight. The only  
22 problem is that when you also go back in the testimony  
23 to look at it, IDLC in and of itself, is a technology.

24 Now, the connection has not been made  
25 whether -- I mean, to say that IDLC is a UNE and in

1 that case -- I mean, is that something that they are  
2 required to provide? I don't know. I mean, to  
3 provide as a UNE? I don't know. Because there has  
4 not been the definition that says IDLC is now a UNE.

5 **COMMISSIONER JACOBS:** My point is this.

6 **MR. AUDU:** So I'm a little bit -- I'm not  
7 sure if I can answer that question that that should be  
8 something -- I mean, you can talk of equivalency  
9 directly if one is a technology and we're talking  
10 about a UNE.

11 **COMMISSIONER JACOBS:** If I know that absent  
12 IDLC --

13 **MR. AUDU:** Yes, sir.

14 **COMMISSIONER JACOBS:** -- I try and provide  
15 similar data transmission service over a loop that  
16 is -- looks almost identical to what BellSouth would  
17 give and maybe my actual experience indicates that I  
18 don't get the bid transmission rate or whatever  
19 measurement standard you want to use. My point is,  
20 can -- should my measuring point be the end user's  
21 experience as opposed to what the minimum standard is  
22 or what the prevailing industry standard is for the  
23 technical specifications of that loop?

24 **MR. FAVORS:** I don't know if you can go  
25 right to the end user's specifications if you're

1 looking at a facility based ALEC because he's adding  
2 his own piece parts of the network in there at some  
3 point.

4 **COMMISSIONER CLARK:** They're building the  
5 machine?

6 **MR. FAVORS:** That's correct. So I don't  
7 know if you can use that as the determinate point, but  
8 that would be accurate.

9 **COMMISSIONER JACOBS:** Okay.

10 **COMMISSIONER CLARK:** I think that would be  
11 true if you were just reselling the service, not if  
12 you're building it of piece parts.

13 **MR. FAVORS:** Correct.

14 **COMMISSIONER CLARK:** I have a question on  
15 Page 21, the conclusion. You say, "based on the  
16 testimony in the record and provisions of the Act it  
17 appears that the quality of access to UNEs or the UNEs  
18 that BellSouth has provisioned of this proceeding do  
19 not provide ITC^DeltaCom with a meaningful opportunity  
20 to compete." They haven't provisioned anything in  
21 this proceeding.

22 **MR. AUDU:** Basically what I was focusing on  
23 was the OSS which has been defined as a UNE and then  
24 the loops that were discussed.

25 **COMMISSIONER CLARK:** I guess I was having

1 trouble understanding how that language was part of  
2 your conclusion.

3 **MR. AUDU:** The language of meaningful  
4 opportunity to compete?

5 **COMMISSIONER CLARK:** Well, it seems to me  
6 you've made a conclusion that they have not been  
7 providing something when what we're trying to  
8 determine here is what they'll provide in the future.  
9 I mean, maybe it's the use of your words, "has  
10 provisioned in this proceeding do not provide." Maybe  
11 it's the UNEs that BellSouth has proposed in this  
12 proceeding. But really we're just talking about what  
13 is the standard going to be, not whether or not a  
14 particular action has met it. I think that's where my  
15 confusion is.

16 **MR. AUDU:** Okay. I believe I see what  
17 you're talking about. Talking of a standard versus  
18 the -- judging the actions. I do agree with what  
19 you're saying.

20 **COMMISSIONER CLARK:** I don't have any  
21 problem with the notion that the quality of unbundled  
22 UNEs and access to UNEs has to be the same as any  
23 other requesting carrier. I think that's pretty clear  
24 and that's what the FCC order requires and I think  
25 it's probably pretty clear what the Act requires. And

1 I think it's -- I'm comfortable with the notion that  
2 parity means it's parity with any equivalent functions  
3 which it performs in the provision of retail service.

4 The real problem is going to be -- is  
5 assessing when, in fact, they provide that in the  
6 retail service and I suppose that's going to be the  
7 basis of a lot of complaints. But I don't know that  
8 we have anything else -- I don't know that we can do  
9 anything else except adopt that kind of language. And  
10 I think the discussion we had with respect to OSS  
11 would apply. I mean, to the extent -- for instance, a  
12 particular service they had previously maintained they  
13 didn't have a functional equivalent, but then they say  
14 they do, it would have to be provided under this  
15 standard.

16 **COMMISSIONER JACOBS:** So we need to clarify  
17 and say --

18 **COMMISSIONER CLARK:** I think your microphone  
19 is off.

20 **COMMISSIONER JACOBS:** We would clarify the  
21 recommendation to state that rather than a meaningful  
22 opportunity to compete --

23 **COMMISSIONER CLARK:** Yes. That wasn't in  
24 the recommendation, but it's in the conclusion and  
25 that somewhat confused me. It seems to sort of take

1 issue with an action or past provisioning when what  
2 we're trying to do is deal with a contract. I'm  
3 comfortable with what the recommendation actually  
4 says. The conclusion kind of confused me.

5 **COMMISSIONER JACOBS:** That goes somewhat to  
6 some of the concerns I had as well.

7 **MS. SIMMONS:** Commissioners, I just wanted  
8 to mention, as in the earlier issue, I don't really  
9 see us passing judgment on the adequacy of what  
10 BellSouth is providing. It's a matter of what should  
11 they be providing.

12 **COMMISSIONER CLARK:** Right. What the  
13 standard will be.

14 **MS. SIMMONS:** And I couldn't agree with you  
15 more. I mean, it's generic. It's about all UNEs so  
16 the recommendation is generic and I fully expect there  
17 could be issues down the road in terms of, well,  
18 what's an equivalent function and what isn't. But  
19 this was the best we thought we could do in terms of  
20 trying to provide some specificity.

21 **COMMISSIONER CLARK:** I'm just concerned that  
22 I think that part in the conclusion shouldn't be part  
23 of the -- our conclusion in accepting your  
24 recommendation. Do you agree, Ms. Caldwell?

25 **MS. CALDWELL:** I agree and I think that when

1 we do the order we can change it so that it says  
2 BellSouth's has proposed not to provide ITC^DeltaCom.  
3 And I, in doing the order, can revise it to say that.

4 **COMMISSIONER CLARK:** Well, no.

5 **MS. CALDWELL:** Do you wish us to go further?

6 **MR. AUDU:** Commissioners, I don't believe  
7 it's going to hurt the recommendation if we completely  
8 take that sentence out.

9 **MS. SIMMONS:** It might be cleaner just to  
10 take it out.

11 **COMMISSIONER CLARK:** I think all you really  
12 need to say is what you have in the recommendation.

13 **COMMISSIONER JACOBS:** I've can live with  
14 that.

15 **COMMISSIONER CLARK:** So there's a motion on  
16 3(b)(2) to approve Staff?

17 **COMMISSIONER JACOBS:** Yes.

18 **COMMISSIONER CLARK:** Show that adopted  
19 unanimously. I guess we're on 3(b)(5).

20 **COMMISSIONER JACOBS:** I don't really have  
21 questions on this issue.

22 **COMMISSIONER CLARK:** You know, I'm totally  
23 confused on this. I got the distinct impression that  
24 IDL loop carrier technology cannot be unbundled  
25 between the loop and the switch. It sounded to me

1 like it could not be unbundled.

2 **MR. BARRETT:** Commissioner Clark,  
3 BellSouth's testimony was that the IDLC would be  
4 unbundled, but it wasn't as discernible or it wasn't  
5 as clean as say unbundling just a straight copper  
6 loop. It could be unbundled.

7 **COMMISSIONER JACOBS:** If I'm not mistaken,  
8 you're not recommending per say that IDLC be  
9 unbundled, but that when possible, provide an  
10 alternative method of the functionality?

11 **MR. BARRETT:** Well, Commissioner Jacobs, the  
12 IDLC is a method of unbundling. It's not -- it's not  
13 a product of -- you know, they can't order IDLC out of  
14 a tariff, in other words.

15 What we're recommending is that, again,  
16 pursuant to the definition of parity, that the  
17 parties -- that BellSouth provision a UNE to DeltaCom  
18 that most nearly replicates what they provision to  
19 their own customers.

20 **COMMISSIONER CLARK:** I still don't  
21 understand. As I understood -- do you disagree with  
22 the idea that the IDLC technology comes about as a  
23 result of a loop and a switching function?

24 **MR. BARRETT:** I'm not sure I follow your  
25 question. Could you try to state it another way?

1           **MR. DOWDS:** Commissioner Clark, maybe I can  
2 confuse things a little bit further. What an  
3 integrated digital loop carrier is, it's a loop  
4 concentration device. And basically what happens is,  
5 from a neighborhood you have a lot of cooper loops  
6 that are terminated on a serving area interface that  
7 connects at the integrated digital loop carrier.

8           **COMMISSIONER CLARK:** Go slow. Where is  
9 the --

10          **MR. DOWDS:** It takes a lot of analog loops  
11 out in the field. It converts them into digital.  
12 Concentrates them --

13          **COMMISSIONER CLARK:** Where does it convert  
14 it into digital?

15          **MR. DOWDS:** At a digital loop carrier  
16 facility out in the field.

17          **COMMISSIONER CLARK:** Something that may be  
18 on the corner?

19          **MR. DOWDS:** Right. And there's one, for  
20 example, sitting over by the Department of Agriculture  
21 we went and visited about a year ago.

22                 And then from the digital loop carrier site,  
23 which is -- basically it has loop concentration  
24 equipment. Typically nowadays it runs a fiber optic  
25 couple pairs back to the central office.

1           **COMMISSIONER CLARK:** Hang on a minute. From  
2 the thing on the corner it then goes into a fiber  
3 loop. All the thing that's been concentrated into  
4 digital signals comes on to that fiber loop and goes  
5 to the central office.

6           **MR. DOWDS:** Right, which is typically a few  
7 pairs of fiber. Now, the problem is, if you're a CLEC  
8 and you want to unbundle loop and you -- and you, an  
9 existing Sprint, for example, customer, serve off of  
10 DLC, how do you do it.

11           **COMMISSIONER CLARK:** Right.

12           **MR. DOWDS:** That's the problem. And I  
13 believe on Page 25 of Mr. Barrett's recommendation he  
14 describes in the first paragraph -- I believe it was  
15 BellSouth Witness Milner, subject to check, describes  
16 six different, what I'll call, kludges or work  
17 arounds, because there is no -- as I understand it,  
18 there is no straightforward way to provide a "IDLC  
19 loop."

20           **COMMISSIONER CLARK:** There is no such thing  
21 as an IDLC loop.

22           **MR. DOWDS:** Not in the literal sense. The  
23 issue is, if the incumbent has IDLC widely deployed  
24 and you have a CLEC that wants to unbundle loop, how  
25 do you do it. And I believe there's -- Mr. Barrett in

1 the recommendation describes six different what I will  
2 through kludges or work arounds, and I don't mean that  
3 in the pejorative sense. It's just the technology is  
4 not designed to do what it's being asked to do.

5 **COMMISSIONER CLARK:** Right.

6 **MR. DOWDS:** So I think he has a certain  
7 specific recommendation which I will defer to him on.

8 **COMMISSIONER CLARK:** Well, but see, that's  
9 my point. I don't understand how you can unbundle the  
10 loop and have an IDLC loop. You can get the loop and  
11 then put it to your equipment, but you can't get an  
12 IDLC loop.

13 **MR. DOWDS:** Yeah. Let me give an example  
14 and, Mr. Barrett, correct me if I error on this. The  
15 preferred option I think is, what, the side door  
16 method? In essence, what's going on -- and I'm not an  
17 engineer so I'll probably mess this up a little bit so  
18 bear with me.

19 When the fiber optic facility comes into the  
20 central office it's going to be converted from light  
21 to an electrical signal and then demux to a DS1. Most  
22 local exchange companies --

23 **COMMISSIONER CLARK:** You mean it's going to  
24 go from -- in effect, it will go digital, analog and  
25 then analog back to digital?

1           **MR. DOWDS:** I think the answer is no. Let  
2 me start from an end user. You're out in the field.  
3 From the end user's -- my house -- or Sue Ollila's  
4 house is a better example. It's analogued to the  
5 digital carrier facilities. Then it's converted to an  
6 electric signal. Then converted to light and then it  
7 rides the fiber facility back to the central office.  
8 And then it's converted from light to an electrical  
9 signal and if it's at a high frequency like a DS3,  
10 which they often are, then it's demuxed into DS1.

11           **COMMISSIONER CLARK:** Demuxed. What do you  
12 mean?

13           **MR. DOWDS:** Demultiplex. It splits them  
14 back out into smaller piece parts. Now, normally the  
15 DS1, if it's a Sprint provided service -- or  
16 BellSouth. Sorry. Wrong docket.

17           We terminate directly on a digital switch.  
18 But here DeltaCom and other CLECs, they want to be  
19 able to strip off one voice equivalent channel from  
20 that DS1. And the side door methodology, which I kind  
21 of understand and kind of don't, is apparently a way  
22 to strip off from that DS1 without converting it back  
23 to analog, a voice grade equivalent channel. And I'm  
24 over my head right now.

25           **COMMISSIONER CLARK:** Well, all right. And

1 assuming that happens and you can do it that way, is  
2 the quality going to be the same as if it wasn't  
3 stripped off and it went through the whole system?

4 **MR. BARRETT:** The quality is going to --  
5 well, the testimony reflects that the quality would be  
6 virtually identical with the side door methodology.  
7 Each of the witness -- well, the ITC witness  
8 specifically delineated that what they really wanted  
9 was the equivalent, but absent getting the equivalent  
10 what they most preferred would be the side door  
11 method. And I did cite that in the rec.

12 **COMMISSIONER CLARK:** Okay. So you're saying  
13 ITC^DeltaCom should have the ability to have that line  
14 stripped off, the IDLC technology, and provided using  
15 a side door method?

16 **MR. BARRETT:** That is correct.

17 **COMMISSIONER CLARK:** And that side door  
18 method will be considered to be the same quality as  
19 the IDLC technology that BellSouth provides to its own  
20 customers?

21 **MR. BARRETT:** That is Staff's understanding,  
22 correct.

23 **COMMISSIONER CLARK:** And if the technology  
24 is not there, they don't have to provide it.  
25 BellSouth does not have to provide it. But

1 ITC^DeltaCom can then use the bona fide request for  
2 some other process to try and get an equivalent -- an  
3 equivalently useful loop, I guess, is the only way I  
4 can put it.

5 **MR. BARRETT:** Commissioner Clark, going back  
6 to the language in the rec statement --

7 **COMMISSIONER CLARK:** No. Would that be  
8 correct?

9 **MR. BARRETT:** No, not entirely correct.

10 **COMMISSIONER CLARK:** Okay.

11 **MR. BARRETT:** Going back to the language in  
12 the rec statement, and again in the body of the  
13 analysis, one thing that Staff recognizes is that the  
14 side door methodology may not be applicable in every  
15 central office platform that BellSouth provisions.  
16 And that's where we got the language of within their  
17 existing functionality, et cetera.

18 If there was a case where BellSouth could  
19 not provision a side door methodology, if ITC insisted  
20 upon a side door methodology, they would have to order  
21 that through the BFR process. That, I think, is the  
22 point we're trying to make.

23 **COMMISSIONER CLARK:** What you're saying is  
24 if we're going to consider the side door methodology  
25 functionally equivalent and it's going to be

1 considered providing a UNE at parity with what they  
2 provide themselves --

3 **MR. BARRETT:** That is correct.

4 **COMMISSIONER CLARK:** -- if the technology is  
5 not there in that particular switch or that -- if the  
6 technology isn't there in that particular locale to  
7 provide the side door, then ITC^DeltaCom can request,  
8 through a bona fide request, some other technology to  
9 obtain what they would consider equivalent service.

10 **MR. BARRETT:** That is Staff's  
11 recommendation, correct.

12 **COMMISSIONER CLARK:** Okay.

13 **COMMISSIONER JACOBS:** How would the BFR  
14 work? It sounds like that's going to be some type of  
15 additive process. Help me understand how that works,  
16 the BFR.

17 **MR. BARRETT:** The BFR, as I understand the  
18 BFR, that is kind of analogous to a menu. For  
19 instance, if you order -- if you wanted a hamburger  
20 without pickles and the hamburger normally came with  
21 pickles on it, you would request that there be no  
22 pickles.

23 **COMMISSIONER JACOBS:** Right. I understand.  
24 My question --

25 **COMMISSIONER CLARK:** I think what it is, is

1 it's something provided under the Act that you don't  
2 have to provide UNES in some cases or you don't have  
3 to provide a service unless you get a bona fide  
4 request.

5 **COMMISSIONER JACOBS:** My focus is really  
6 technically. If what you're saying is that in the  
7 interest where you're saying you should go through the  
8 BFR process, there would have been a determination  
9 that they came through the side door from that switch.

10 So, if we're saying you can't do it from  
11 switching from someone's serving office of that CLEC,  
12 what's different by them going to the BFR process?  
13 Are they going to serve them from a different switch?

14 **MR. BARRETT:** I think that would be  
15 something that BellSouth --

16 **COMMISSIONER JACOBS:** They just work out of  
17 the process.

18 **MR. BARRETT:** -- would technically work it  
19 out.

20 **COMMISSIONER CLARK:** And there are,  
21 according to the testimony, five other ways to  
22 accomplish it.

23 **COMMISSIONER JACOBS:** That's my question.  
24 Should we be saying one of those other five ways  
25 instead of the BFR?

1           **MR. BARRETT:** Yes. I had -- another way you  
2 might think of this, Commissioner Clark, is if you had  
3 all six of these methods and you were going to rank  
4 them in terms of most desirable to least desirable.  
5 It's Staff's opinion that the side door methodology  
6 would end up at the top of the list as most desirable.

7           **COMMISSIONER CLARK:** I'm comfortable with  
8 what the Staff has recommended.

9           **COMMISSIONER JACOBS:** I move Staff.

10          **COMMISSIONER CLARK:** All right. Show it  
11 approved unanimously. If it's all right with you, I'd  
12 like to take a break for about ten minutes.

13          **COMMISSIONER JACOBS:** Sounds good.

14                   (Brief recess.)

15                                   - - - - -

16          **COMMISSIONER CLARK:** Shall we call the  
17 agenda back to order. And we should go to Issue 7,  
18 right, which is separate? Do you have any questions  
19 on Issue 7?

20          **COMMISSIONER JACOBS:** That is -- let me get  
21 there.

22          **COMMISSIONER CLARK:** It's on the separate  
23 sheet.

24          **COMMISSIONER JACOBS:** I don't have any  
25 questions.

1           **COMMISSIONER CLARK:** Is there a motion?

2           **COMMISSIONER JACOBS:** Move Staff.

3           **COMMISSIONER CLARK:** Show Issue 7 approved  
4 unanimously.

5           Issue 8. 8(a), actually.

6           **COMMISSIONER JACOBS:** I don't have any  
7 questions on that.

8           **COMMISSIONER CLARK:** I wanted to understand  
9 specifically what our rationale was for this  
10 recommendation. It confused me on Page 18 as to -- at  
11 the bottom you say "for these" -- right before the  
12 conclusions you say "for these reasons Staff does not  
13 believe BellSouth should provide ITC^DeltaCom the EEL  
14 as a UNE. However, it has agreed to provide both the  
15 EEL and the loop/port as part of a separate  
16 agreement." What is our rationale for not requiring  
17 it specifically?

18           **MR. FAVORS:** What we're saying here is the  
19 EEL, which is really the only combination in  
20 dispute -- the only element in dispute is a  
21 combination. And the rules that required incumbents  
22 to combine elements for ALECs were vacated by the  
23 Eighth Circuit Court so there's no requirement on the  
24 incumbents to provide combinations. Now, in this  
25 instance BellSouth has agreed to combine these

1 elements for these folks under a commercial agreement.

2 **COMMISSIONER CLARK:** I guess I wanted to be  
3 clear. The extended loop is the loop and then the  
4 extra line between a remote office and a central  
5 office.

6 **MR. FAVORS:** It's two central offices,  
7 basically.

8 **COMMISSIONER CLARK:** Okay. But you avoid  
9 having to collocate or do something else. And we  
10 have -- are we concluding that that line between the  
11 two central offices is not a UNE?

12 **MR. FAVORS:** No, we did not make that  
13 conclusion. We're concluding that the two elements as  
14 a whole is not a UNE.

15 **COMMISSIONER CLARK:** Well --

16 **MR. FAVORS:** Because what ITC^DeltaCom is  
17 asking for is both elements; the loop from the end  
18 user premises to the serving central office and then  
19 to the extended portion to a different central  
20 office --

21 **COMMISSIONER CLARK:** Right.

22 **MR. FAVORS:** -- where the ALEC has a point  
23 of presence. They want both of those as one element.

24 **COMMISSIONER CLARK:** As one UNE?

25 **MR. FAVORS:** Yes.

1           **COMMISSIONER JACOBS:** Dedicated?

2           **MR. FAVORS:** Yes.

3           **COMMISSIONER CLARK:** And we're saying that  
4 an EEL is not a UNE?

5           **MR. FAVORS:** That is correct. Well -- let  
6 me rephrase it. We're saying that the combination is  
7 not.

8           **COMMISSIONER JACOBS:** That was my  
9 understanding that this can -- this wouldn't amount to  
10 an absolute discriminatory provisioning towards that  
11 company because there are options available to them to  
12 do that; is that correct?

13           **MR. FAVORS:** That is correct. They can get  
14 this. They just can't get it as an UNE. BellSouth  
15 will give them this, what they're asking for.

16           **COMMISSIONER JACOBS:** Well, but even beyond  
17 that, they could do other things than getting it  
18 directly from BellSouth; is that correct?

19           **MR. FAVORS:** There are other means of  
20 getting this functionality.

21           **COMMISSIONER JACOBS:** Right.

22           **MR. FAVORS:** Yes. Other than an extended  
23 loop.

24           **COMMISSIONER JACOBS:** That is the best --

25           **COMMISSIONER CLARK:** I guess, what you're

1 saying is ITC^DeltaCom has asked us to characterize an  
2 extended -- an EEL as a UNE in its entirety?

3 **MR. FAVORS:** That is correct.

4 **COMMISSIONER CLARK:** And it is not a UNE  
5 because that whole thing is not an element that  
6 BellSouth provides to itself. It never needs a UNE  
7 because it never needs to have that extension of a  
8 loop between central offices because the central  
9 office takes care of everything BellSouth would need.

10 **MR. FAVORS:** There are certain services that  
11 BellSouth does provide like private line services  
12 where they will make this combination for a customer  
13 and sell it to the customer.

14 **COMMISSIONER CLARK:** But that's using  
15 dedicated access, right?

16 **MR. FAVORS:** That would be a dedicated  
17 service that they would be providing, yes.

18 **COMMISSIONER CLARK:** I guess I'm not  
19 understanding what is our rationale for saying it  
20 shouldn't -- it's not required to be offered, but  
21 they've agreed to offer it. And the only way we can  
22 say it's not required to be offered is if we say it's  
23 not a UNE.

24 **MR. FAVORS:** That is -- yes, in a nutshell.  
25 There's two things here. One is, there's a

1 combination and while the two pieces that are --  
2 comprise an EEL, maybe UNEs, we don't know that  
3 because the list was vacated. But while they may be  
4 UNEs the combining of the two is something that an  
5 incumbent is not required to do.

6 **COMMISSIONER CLARK:** Okay. So it's not  
7 required to provide it as a single UNE?

8 **MR. FAVORS:** That is correct.

9 **COMMISSIONER CLARK:** And it's not required  
10 to provide it as a combined UNE?

11 **MR. FAVORS:** That is correct.

12 **COMMISSIONER CLARK:** Therefore, we are not  
13 going to require it but they can agree to provide it  
14 under the agreement and, in fact, they have and  
15 they'll negotiate the appropriate price?

16 **MR. FAVORS:** That is correct.

17 **COMMISSIONER CLARK:** All right. I agree  
18 with that rationale and my concern was it seemed to me  
19 we were saying, well, because it wasn't a UNE under  
20 the prior agreement, it's not going to be under this  
21 one.

22 **MR. FAVORS:** No, that's not the rationale we  
23 use.

24 **COMMISSIONER JACOBS:** Did the FCC leave open  
25 the option of defining it as one in this last order?

1           **MR. FAVORS:** I haven't gone through the  
2 order, but no, I think they are required under very,  
3 very limited circumstances.

4           **COMMISSIONER JACOBS:** Okay. That was it.  
5 Okay.

6           **COMMISSIONER CLARK:** I agree with it not  
7 being required if it's -- it can't be required as a  
8 UNE meaning the loop and the extension is not a single  
9 UNE, nor can we require it to be provided as a  
10 combined UNE because that part of the FCC order has  
11 been vacated, right?

12           **MR. FAVORS:** That is correct.

13           **COMMISSIONER CLARK:** Okay. I agree with  
14 that.

15           **COMMISSIONER JACOBS:** The only troubling  
16 part about this is, I wouldn't want this to be taken  
17 too broadly. I'm not of the opinion that simply  
18 saying that something is available on the alternative  
19 means, other than as UNEs, is adequate in all cases.

20           **COMMISSIONER CLARK:** I agree with that. I  
21 don't think that's what this is saying.

22           **COMMISSIONER JACOBS:** I agree. I thought --  
23 I just wanted to say that on the record. In all cases  
24 that wouldn't be the case.

25           **COMMISSIONER CLARK:** Is there a motion on

1 8(a)?

2 COMMISSIONER JACOBS: Move Staff.

3 COMMISSIONER CLARK: So that approved  
4 unanimately. 8(b).

5 COMMISSIONER JACOBS: I don't -- that's  
6 pretty straightforward. I don't have any questions on  
7 that.

8 COMMISSIONER CLARK: Show 8(b) approved  
9 unanimately. 23. Issue 23. Is that next?

10 MR. FAVORS: That's correct.

11 COMMISSIONER JACOBS: Yes.

12 COMMISSIONER CLARK: The recommendation here  
13 is consistent with what we've done with our previous  
14 decisions on reciprocal compensation; is that correct?

15 MR. FAVORS: That's correct.

16 COMMISSIONER CLARK: Okay.

17 COMMISSIONER JACOBS: I do have some  
18 questions on this. First, help me understand what the  
19 impact would be of allowing the existing language to  
20 continue to have effect for the terms of this  
21 agreement.

22 MR. FAVORS: Based on the understanding  
23 that's in the record or the information that we have  
24 in the record, ITC has been billing BellSouth for  
25 reciprocal compensation and BellSouth has been paying

1 a portion of that bill.

2 **COMMISSIONER JACOBS:** Okay. So that as  
3 arguably, the deficiency in -- at least in the  
4 agreement, but maybe even in the language that that is  
5 in the present agreement as it relates to reciprocal  
6 compensation?

7 **MR. FAVORS:** For Internet Service Providers,  
8 yes.

9 **COMMISSIONER JACOBS:** Okay. In your  
10 opinion, is there a requirement for BellSouth to pay  
11 reciprocal comp. or to compensate the CLECs for the  
12 cost they incur in terminating the traffic?

13 **MR. FAVORS:** Local traffic in general or  
14 Internet Service Provider traffic?

15 **COMMISSIONER JACOBS:** Let's focus in on ISP  
16 traffic.

17 **MR. FAVORS:** I think that based on the FCC  
18 declaratory ruling, I don't think that there's any  
19 definite requirement that an incumbent must compensate  
20 an ALEC for terminating reciprocal compensation -- I  
21 mean, terminating traffic to ISPs based on its recent  
22 declaratory ruling.

23 **COMMISSIONER JACOBS:** I guess I'm coming to  
24 a different conclusion on that. First of all, just  
25 holistically, I think it is a pretty well and accepted

1 proposition that where a party encouraged costs, that  
2 they entitled to compensation of those costs in any  
3 arrangement and I think there is express language in  
4 the Act that goes to that point. If I'm not mistaken  
5 in Section 253(a) of the Act specifically provides  
6 that a company should not go uncompensated for  
7 terminating traffic in an interconnection agreement.

8 **MR. FAVORS:** Section 253(a) of the Act?

9 **COMMISSIONER JACOBS:** 253, Subsection A.

10 And again, let me step back for a minute. My overall  
11 concern here has more to do with the broader impacts  
12 of the inability of the parties to come to a  
13 resolution of compensation here.

14 As I stated earlier, if in the event that  
15 the status quo is that compensation is not flowing for  
16 this traffic, there are real issues as to the  
17 competitiveness and the impacts on competition, so I  
18 start with that caveat. But it's my understanding  
19 that the party responsible for originating the call  
20 should be responsible for the cost of the call; is  
21 that correct? And that the provisions here of 253 are  
22 consistent with that?

23 I'm sorry. You had a point.

24 **MS. CALDWELL:** Commissioner Jacobs, I think  
25 going back on 253, as a general premise that

1 reciprocal compensation would be required under this  
2 Act or under this particular provision, I don't think  
3 it's required under this particular provision.

4           **COMMISSIONER JACOBS:** Okay. Let me go a bit  
5 further in how I get there. That provision states  
6 that, in a sense, that no state or local statute or  
7 regulation or other state or local legal requirement  
8 may prohibit the or have the effect of prohibiting the  
9 ability of any entity to provide any interstate or  
10 intrastate telecommunication service.

11           It is my understanding that particularly --  
12 and I'll just cut right to the chase. Particularly in  
13 the instance of ISPs, CLECs have come to rely on them  
14 as customers. That is a concentration of the  
15 customers for CLECs.

16           For the relationship between a CLEC that  
17 provides service to an ISP, its major customers will  
18 be ISPs. If it incurs cost for the majority of its  
19 customer, i.e., where those ISPs will be having  
20 traffic terminated to that CLEC switch from someone  
21 else, they are a substantial part of that CLEC's  
22 customer base, but that CLEC does not receive  
23 compensation for those costs, I think it goes directly  
24 to the ability of that company to provide that service  
25 to that CLEC -- I'm sorry. That CLEC to provide

1 service to that ISP. I think it has -- in my opinion,  
2 has a direct impact.

3 But, arguably for the moment, let's say that  
4 it is indirect. Let's argue that it is indirect.  
5 It's been my understanding that -- and now I'm going  
6 to go to the Act itself. I'm sorry. To the FCC's  
7 order itself. And the FCC's order dated February 26,  
8 1999, and it has the implementation of local  
9 competition provision and then specifically the ISP  
10 order. I'll read to you the language that I'm looking  
11 for so you don't have to look for it.

12 This is in Paragraph 26 of that order. And  
13 I'll read the language that I'm specifically looking  
14 at. "Although reciprocal compensation is mandated  
15 under Section 251(b)(5) only for the transport or  
16 termination of local traffic neither the statute nor  
17 our rules prohibit a State Commission from concluding  
18 that in an arbitration -- concluding in an arbitration  
19 that reciprocal compensation is appropriate and  
20 certain instances not addressed by 251(b)(5), so long  
21 as there is no conflict with governing federal law.

22 A State Commission's decision to impose  
23 reciprocal compensation obligations in an arbitration  
24 proceeding or a subsequent State Commission decision  
25 that those obligations encompass ISP-bound traffic

1 does not conflict with my Commission ruling regarding  
2 ISP-bound traffic. By the same token" -- and this is  
3 the sentence that I focus on.

4 "In the absence of governing federal law,  
5 State Commissions also are free not to require the  
6 payment of reciprocal compensation for this traffic  
7 and to adopt another compensation mechanism."

8 In my mind, what this provision says is,  
9 sure, you don't have to do reciprocal comp. for this  
10 traffic, for ISP traffic. Doesn't have to TAG it as  
11 local in order to get reciprocal comp. for it. But,  
12 if you don't do that you're required to provide some  
13 means of compensation for this traffic.

14 That's the only reading I can come away with  
15 that "and" from. Otherwise, it would simply say free  
16 not to require the payment of reciprocal compensation  
17 for this traffic. That is my interpretation of what  
18 our obligations are in this proceeding.

19 We do not have to come away with reciprocal  
20 compensation for this traffic, but if we don't, then  
21 we must provide some alternative means of compensating  
22 the CLEC for this traffic.

23 And my reading of the testimony here, that  
24 position was taken by ITC^DeltaCom and specifically  
25 the cite -- they cite a Maryland order from the

1 Maryland Public Service Commission which is consistent  
2 with that position and that reading of the FCC's order  
3 and the interpretation of this clause in that order.

4           The Maryland Commission specifically held  
5 that to not provide for compensation in an agreement  
6 for this traffic is, in essence, to run the risk of  
7 violating the Act.

8           My concern here -- and I just pose this  
9 question to you. In the face of at least arguable  
10 authority that to leave this agreement in the -- in  
11 the condition that there is possibility that the CLEC  
12 would not receive compensation for this traffic, seems  
13 to put us at risk of violating these revisions of the  
14 Act; certainly as interpreted by the FCC. Let me  
15 allow you, if you had a response to that.

16           **MS. CALDWELL:** Commissioner, in short, I  
17 would respond specifically to your citation to the  
18 Order 99-38 and the last sentence that you read. And  
19 the way I would interpret it, and I think probably  
20 this Commission in prior decisions has interpreted  
21 this, is that State Commissions are also free; one,  
22 not to require the payment of reciprocal compensation  
23 for this traffic, and; two, State Commissions are also  
24 free to adopt another compensation mechanism.

25           So I would believe that it's not a mandate

1 to adopt another method; that they are free to do so.  
2 And I would -- so that I don't think it's -- under the  
3 FCC's interpretation of reciprocal compensation, this  
4 Commission would not be required to and so that in the  
5 prior instances where this issue has come up, that's  
6 what this Commission has chosen not to do in the past.

7           **COMMISSIONER JACOBS:** That is not an  
8 unreasonable alternative view of that statute and I  
9 may be running a bit far afield here, but I do not  
10 think so. I just became aware of this decision in the  
11 last day or so. You probably don't have copies of it  
12 but I will make sure that I give you all the relevant  
13 language, and that is the decision of the Ninth  
14 Circuit Court of Appeals and it's an appeal of the  
15 California Commission's decision.

16           Now, I'll say it up-front. This decision is  
17 easily distinguished here. It had to do with a paging  
18 company getting reciprocal comp. And the issue there  
19 was whether one-way traffic was subject to the  
20 reciprocal compensation provisions. Easily to  
21 distinguished on those grounds.

22           However, let me postulate for you here.  
23 First of all, I think the Court made some very broad  
24 rulings here and very broad findings in this case, and  
25 I'll read those for you specifically. And let me give

1 you even a bit of background here. Give you a bit of  
2 background here.

3 The California Commission rejected an  
4 arbitration agreement between the ILEC and the paging  
5 company because the parties were at odds on reciprocal  
6 comp, could not come to an agreement on it and would  
7 not put it in there. So it was not approved.

8 That decision was appealed to the U.S.  
9 District Court. U.S. District Court affirmed the  
10 California Commission's decision, and then it wound  
11 its way then to the Federal appellate level.

12 And in the ruling of that decision, the  
13 Court came down to the main argument raised by the  
14 ILEC, which is Pacific Bell, that the California  
15 Commission erred including -- in concluding that it  
16 was required to enter into a reciprocal compensation  
17 arrangement with a paging carrier. That generates no  
18 traffic or termination by Pac Bell.

19 And the Court further found that, in  
20 essence, to leave an agreement in the condition where  
21 in this instance one-way traffic would receive no  
22 compensation was running risk of violating the Act and  
23 that the California Commission should have disapproved  
24 that agreement on its face.

25 Now, here's where I am. If we choose to

1 approve an agreement where, number one, the parties  
2 already are in privity and there is at least a dispute  
3 and arguably inadequate compensation for traffic on  
4 another whole set of facts and we now come to this  
5 agreement where they are at an impasse or certainly  
6 can't agree on how this traffic could be compensated  
7 for it and we say, now, operate under the provisions  
8 and terms of that old agreement where you can't agree  
9 on how to be compensated for this traffic, and we'll  
10 approve that agreement; sounds at least that based on  
11 the plain reading of the FCC's order, I would  
12 respectfully disagree with your interpretation. And  
13 certainly based on reasonable interpretations of that  
14 order from two other Commissions, we run some risk of  
15 violating the Act.

16 **MR. D'HAESELEER:** Commissioner, here's my  
17 problem. The Commission, I think, has made a decision  
18 in either one or two cases very similar to this and I  
19 think we should, in this case, follow that current  
20 procedure. But, on the other hand, I understand where  
21 you're coming from and maybe what we need to do is  
22 generically look at this issue where all the parties  
23 have an opportunity to research and give the  
24 Commission the benefit of their views on this subject.

25 I hate to switch direction when we've just

1 had these two parties and without the Staff having  
2 researched what other Commissions are doing or their  
3 interpretations or if there are other jurisdictions  
4 that have decided one way or another.

5 **COMMISSIONER JACOBS:** I assume that we  
6 don't -- let's set this out for the moment, all the  
7 federal law and all of the interpretations of that  
8 federal law.

9 Do we have an opinion as to the competitive  
10 effects of coding -- at least allowing uncertainty as  
11 to the compensation for this traffic? Do we have an  
12 opinion on that? And you can base it on the record  
13 here. Do we have any indication as to the competitive  
14 effects of not requiring there to be compensation for  
15 this traffic between these parties?

16 **COMMISSIONER CLARK:** I want to be clear.  
17 Does the existing agreement provide they won't be  
18 compensated?

19 **MS. CALDWELL:** No.

20 **COMMISSIONER CLARK:** The existing agreement  
21 provides they will be compensated at the local rate.

22 **MS. CALDWELL:** That is correct.

23 **COMMISSIONER CLARK:** And we're just  
24 continuing that and letting the FCC be the entity that  
25 makes -- that finally cuts off that kind of reciprocal

1 compensation because after all, they're the ones that  
2 said it's not local but you can continue to treat it  
3 as you had until we make a decision, as I understand  
4 it.

5 **MS. CALDWELL:** I wanted to make two points  
6 in response to Commissioner Jacobs. One, that this  
7 last decision, we don't have in the record and did not  
8 have the -- have the interpretation as part of the  
9 analysis.

10 In addition to that, I think going back to  
11 what Commissioner Clark had said, there -- in order to  
12 provide reciprocal compensation you have to go back to  
13 the premise that the traffic is local. And here we go  
14 to making an assumption, either taking the FCC is  
15 going to have to make the assumption or this  
16 Commission is going to have to make the assumption  
17 that ISP traffic is local. And this Commission has  
18 not made that decision and neither has the FCC to  
19 date.

20 So they are saying you can treat it as  
21 local, but we haven't gotten that far yet so I think  
22 we're safe in our analysis of not making that  
23 assumption and just going on and saying, let's wait  
24 until the FCC has spoken.

25 **COMMISSIONER JACOBS:** Let me ask you this.

1 Are you of the opinion that other provisions for  
2 compensating of this traffic is an option that we  
3 have? At least under your interpretation of Paragraph  
4 26 we can do that?

5 **MS. CALDWELL:** I don't believe that  
6 paragraph -- yes, I do.

7 **COMMISSIONER JACOBS:** You said that we could  
8 either do one or we could do the other.

9 **MS. CALDWELL:** Based on Paragraph 26.

10 **COMMISSIONER JACOBS:** I think that totally  
11 forgets the "and", but let's move beyond that. So we  
12 could require, under our existing authority, that  
13 there be an alternative means of compensating for this  
14 traffic other than the reciprocal compensation  
15 provisions.

16 **MS. CALDWELL:** We could, but then we have to  
17 go back to the record and there hasn't been anything  
18 else that's provided for in the record to provide any  
19 other alternative compensation.

20 **COMMISSIONER JACOBS:** If I'm not mistaken,  
21 Mr. Rozycki's testimony said that you could -- as a  
22 starting point you could go from whatever the existing  
23 formally is. That would be at least a starting point,  
24 if you were to choose an alternative. On page --

25 **MS. CALDWELL:** I would put to you that

1 that's effectively what we're doing is using the  
2 agreement as a starting point and saying just use that  
3 for right now for your reciprocal compensation.

4 **COMMISSIONER JACOBS:** It's my understanding  
5 that at minimum the existing agreement is unclear,  
6 first. Otherwise, there would be no dispute. But  
7 even if it were clear, the parties -- there is not an  
8 effective agreement amongst those parties because the  
9 traffic is not being properly compensated.

10 Now, I'm stepping -- I'm purposely stepping  
11 outside of the evidence in this docket because I want  
12 to show you a point here. I see no evidence here that  
13 speaks to the level of compensation that is occurring  
14 under the old agreement, is there?

15 **MS. CALDWELL:** I'm sorry. I missed the  
16 question.

17 **COMMISSIONER JACOBS:** Do we have evidence  
18 here that substantiates the compensation that's  
19 occurring under that old agreement?

20 **MR. FAVORS:** Yes. We know what they're  
21 doing. Now, whether it's in dispute, we know that  
22 apparently there is some dispute.

23 **COMMISSIONER JACOBS:** So the record here  
24 supports that BellSouth is required to pay  
25 ITC^DeltaCom a certain amount of a certain minutes for

1 reciprocal compensation?

2 **MR. FAVORS:** That is correct. It is .9  
3 cents per minute under the old agreement.

4 **COMMISSIONER JACOBS:** And the record here  
5 supports that when billed for that BellSouth pays  
6 those amounts.

7 **MR. FAVORS:** The record supports that they  
8 pay a portion of the bill. ITC submits to BellSouth a  
9 bill and BellSouth pays a portion of that bill.

10 **COMMISSIONER JACOBS:** Okay. So we don't  
11 belabor that, I accept that. That still, I believe,  
12 supports my position that the record here does not  
13 support the idea that this company would receive  
14 adequate compensation for the cost it incurs to  
15 terminate ISP traffic.

16 **COMMISSIONER CLARK:** Well, I think their  
17 remedy is to come to us and complain under their  
18 existing agreement that they are not being paid what  
19 was agreed to be paid, and then that would carry  
20 forward to this agreement, but the ball is in their  
21 court.

22 **COMMISSIONER JACOBS:** If I'm not mistaken,  
23 that docket is already open, isn't it?

24 **MR. FAVORS:** That is correct.

25 **COMMISSIONER JACOBS:** So now we say to them,

1 finish out that docket, figure out what happens there  
2 and then that is automatically -- they're going to  
3 automatically have to compensate them under this  
4 docket.

5 **MR. FAVORS:** That would be correct based on  
6 the recommendation.

7 **COMMISSIONER JACOBS:** I would argue with you  
8 that when we get there -- if we get there -- when we  
9 get there it would -- that decision will be on the  
10 terms of that agreement, and if we're going to do that  
11 then let's say nine cents a minutes here for exactly  
12 all the traffic that these parties -- and let's hold  
13 it in escrow. Let's hold it under escrow here because  
14 in my mind to say simply abide by the provisions of  
15 that old agreement as to whether or not that should  
16 be -- as to whether or not there should be  
17 compensation, I say, let's make the decision that  
18 there should be compensation and then what the terms  
19 of that compensation would be, we can work that out.  
20 That's what the unclarity is over that agreement.  
21 We're saying here as to whether or not there should be  
22 compensation under this agreement, look to the old  
23 agreement.

24 I can't understand how we can -- we meet the  
25 provisions of the Act which says that if -- and again,

1 I'm arguing my position. If you don't give them  
2 reciprocal comp. for the traffic that occurs under  
3 this agreement you must give them an alternative  
4 method of recovering those costs.

5 I argue that to simply say to them, to pick  
6 up on a flawed definition that is an existing dispute,  
7 doesn't meet that standard. And to say so in my mind  
8 takes the very meaning of those words in that  
9 provision in the FCC's order and certainly extends  
10 them beyond what I think they were intended to do. I  
11 can't imagine that the FCC would have intended that  
12 where parties have -- already can't agree on how to  
13 compensate for this traffic, keep them under those  
14 provisions. I can't imagine that that's what they  
15 were asking us to do in our arbitration proceedings.

16 **COMMISSIONER CLARK:** I would point out,  
17 probably in the first agreement there was no  
18 disagreement specifically with respect to reciprocal  
19 compensation for local traffic.

20 **MR. FAVORS:** That would be my understanding,  
21 yes.

22 **COMMISSIONER CLARK:** And the dispute only  
23 arose when BellSouth said, it isn't local and we're  
24 not going to pay it. And the disputes have come to us  
25 and said, what was -- was it local at the time it was

1 entered into, and we have said, yes, it was. At that  
2 time it appeared that ISP traffic was intended to be  
3 included under the terms of reciprocal compensation.

4 Really all we're saying is that is going to  
5 continue here until the FCC finally gets on a stick  
6 and gets it decided so we don't have to deal with  
7 this. Whatever problem with compensation has  
8 developed, in my view, is a fault of the FCC, not us.

9 **COMMISSIONER JACOBS:** I don't think we have  
10 any fault in that either. I think the whole matter of  
11 confusion here, certainly I would concur with you on  
12 that.

13 However, I think we have an obligation as  
14 put forward in the arbitration authority that we've  
15 been given. I think we have an obligation as put  
16 forward in the express terms of the FCC's order, and I  
17 think we have an obligation as agreed and I would  
18 argue that other Commissions have agreed that we do  
19 not leave these companies in the can of uncertainty  
20 that exists between them now.

21 **COMMISSIONER CLARK:** We didn't do it. The  
22 FCC did it. And only the FCC has the ability to  
23 resolve that uncertainty. The fact that they want  
24 to -- they -- by way of what you've interpreted a  
25 mandate want to put that burden on us, the fact

1 remains they're the only entity that can solve this  
2 and they, in fact, have reserved that resolution to  
3 themselves.

4           **COMMISSIONER JACOBS:** I don't take the  
5 language in 26 to be a mandate for reciprocal  
6 compensation. I guess --

7           **COMMISSIONER CLARK:** It's a mandate for some  
8 form of compensation.

9           **COMMISSIONER JACOBS:** That -- I was going to  
10 just modify my statements to say that it's a mandate  
11 for some form of compensation, which I think is  
12 absolutely reasonable. Reciprocal comp -- if this  
13 were a mandate for reciprocal compensation for this  
14 traffic, I would probably find myself even more --  
15 probably persuaded more back towards, you know, this  
16 language that you propose. But it's not. It is a  
17 mandate that the compensation be given for this  
18 traffic. And when I see parties already in dispute  
19 and already at odds about how to do that, and I say go  
20 back and get guidance from that. That strikes me as  
21 being problematic.

22           And I guess I'm fundamentally unwilling --  
23 and then the factor that I then add to that is, here  
24 is a perfect opportunity. I can't imagine a more  
25 opportune time for the parties to sit down and resolve

1 this issue, but for this proceeding. Couldn't have  
2 been a more opportune time to sit down and say, well,  
3 we blew it there. Couldn't come to agreement. We  
4 were miss -- FCC came in and did things that we didn't  
5 expect. That agreement is now going to be under the  
6 bridge. Perfect opportunity to come in and address  
7 those very real issues and come to some very  
8 significant solutions of this issue.

9           The mere fact that they are at odds in this  
10 proceeding and cannot come up with evidence enough to  
11 support any compensation method, be it reciprocal  
12 comp. or others, defines my unwillingness to go back  
13 to the prior agreement.

14           **COMMISSIONER CLARK:** You know, I guess my  
15 view is that when we have a tie vote it goes to the  
16 Chairman for him to resolve and it appears we have a  
17 tie vote on this one and I think we should just move  
18 on.

19           **COMMISSIONER JACOBS:** Yes. I'm okay.

20           **COMMISSIONER CLARK:** Item 24. That can be  
21 resolved separate, right? That is not.

22           **MS. OLLILA:** Yes, it can, Commissioner.

23           **COMMISSIONER CLARK:** Questions on 24?

24           **COMMISSIONER JACOBS:** No.

25           **COMMISSIONER CLARK:** Is there a motion?

1                   **COMMISSIONER JACOBS:** In fact, I can move  
2 Staff on that.

3                   **COMMISSIONER CLARK:** All right.

4                   **COMMISSIONER JACOBS:** On Item 36 --

5                   **COMMISSIONER CLARK:** I had a question on 24,  
6 I think. I have some notes and I want to make sure I  
7 don't have a question.

8                   Basically Staff is saying that we don't have  
9 evidence to support what BellSouth has proposed or  
10 ITC^DeltaCom and it would be prudent to follow what  
11 we've already authorized for this particular -- these  
12 two particular companies.

13                   **MS. OLLILA:** That's correct.

14                   **COMMISSIONER CLARK:** Okay. Item 36.

15                   **COMMISSIONER JACOBS:** The recommendation  
16 here -- no questions. Move Staff. I was going to go  
17 back to the discussions we had. I remember there was  
18 a discussion that -- and I came away from that  
19 discussion thinking there was no real reasonable  
20 factors that went against the shorter period, other  
21 than BellSouth just said it would tax them in terms of  
22 resources. Was that my accurate recollection of that  
23 discussion?

24                   **MR. FAVORS:** There was really no  
25 insufficient evidence to suggest that this case --

1 this collocation could be provided within 30 days as  
2 ITC requests.

3 **COMMISSIONER JACOBS:** Okay.

4 **COMMISSIONER CLARK:** And we're going with  
5 what we have previously approved in a generic docket.

6 **MR. FAVORS:** There was previously approved  
7 in an arbitration proceeding.

8 **COMMISSIONER CLARK:** Okay. But that we are  
9 looking at it in a generic docket.

10 **MR. FAVORS:** We are looking at this issue in  
11 the generic docket. That will be going to hearing on  
12 tomorrow and Thursday.

13 **COMMISSIONER CLARK:** And presumably that  
14 what comes out of there would be available to ITC.

15 **MR. FAVORS:** That would be correct.

16 **COMMISSIONER JACOBS:** Okay. I move Staff.

17 **COMMISSIONER CLARK:** Issue 38.

18 **COMMISSIONER JACOBS:** This takes me back to  
19 our old discussion. I think if we can come away with  
20 the understanding that we're consistent with the  
21 earlier issue, I'm okay here.

22 **COMMISSIONER CLARK:** We're just saying that  
23 this will be determined on a generic basis and in that  
24 order we'll determine who pays what.

25 **COMMISSIONER JACOBS:** All right.

1                   **COMMISSIONER CLARK:** Okay.

2                   **COMMISSIONER JACOBS:** I can move Staff on  
3 that.

4                   **COMMISSIONER CLARK:** Show it approved  
5 without objection.

6                   Let me ask a question on Page 76. I guess  
7 it's the -- starting with the second full sentence in  
8 the first full paragraph. "Certainly Staff believes  
9 there is little or no substantive testimony in this  
10 proceeding on whether or not the cost methodology used  
11 by BellSouth conforms to current state law.  
12 Therefore, Staff cannot conclude in this proceeding  
13 whether BellSouth's cost methodology is inappropriate  
14 given the current law. Therefore, Staff recommends  
15 that BellSouth's cost methodology be viewed as  
16 appropriate for purposes of this proceeding." It  
17 strikes me that on the one hand you're saying it's not  
18 appropriate but we accept it. Have I missed  
19 something?

20                   **MS. OLLILA:** That isn't what I meant to say.  
21 If that's how it appears -- in looking at the evidence  
22 both for and against whether BellSouth's cost  
23 methodology as ordered by this Commission in a  
24 previous proceeding meets the state of the law, there  
25 wasn't evidence to my way of thinking one way or the

1 other. We did have an older docket, an order in  
2 960833 which is the BellSouth, AT&T, MCI arbitration,  
3 where the Commission found that BellSouth's cost  
4 methodology is appropriate and that the methodology  
5 that was used, the Commission didn't find a  
6 significant difference between that and the FCC's  
7 TELRIC. But what it comes down to is that while there  
8 wasn't sufficient evidence, I don't believe, to say  
9 that the -- I'm going to start over again.

10 I didn't find a great deal of testimony that  
11 was persuasive in that regard, and given that we have  
12 a generic proceeding going on, that the Commission has  
13 previously approved a methodology that it kept in --

14 **COMMISSIONER CLARK:** Let me see if I can  
15 help you out. You're saying that we approved a  
16 methodology in another case with respect to AT&T and  
17 MCI?

18 **MS. OLLILA:** That's correct.

19 **COMMISSIONER CLARK:** And found that  
20 methodology to be appropriate in that case?

21 **MS. OLLILA:** Oh, yes.

22 **COMMISSIONER CLARK:** All right. There was  
23 no testimony in this case on the issue of the  
24 appropriateness of the methodology but that was the  
25 methodology that was used here with appropriate inputs

1 to this case?

2           **MS. OLLILA:** Yes. Although, Witness Wood  
3 for ITC^DeltaCom did argue that the law had changed  
4 and that the methodology the Commission had previously  
5 approved was in conflict but he really recommended  
6 interim rates because he understood that there was a  
7 generic proceeding.

8           **COMMISSIONER CLARK:** He didn't substantiate  
9 the basis on which he recommended a different  
10 methodology than what was previously approved in  
11 another order and used by BellSouth in this one.

12           **MS. OLLILA:** No, and in fact, it wasn't so  
13 much that he recommended a different methodology. He  
14 recommended adjustments to be made as a way to move  
15 what he saw as the Commission's approved methodology  
16 closer to what the FCC had approved.

17           **COMMISSIONER CLARK:** But our view is he  
18 didn't support that sufficiently in his testimony.

19           **MS. OLLILA:** That's correct.

20           **COMMISSIONER CLARK:** So we believe it's  
21 appropriate to use the BellSouth methodology with  
22 inputs appropriate to this case.

23           **MS. OLLILA:** That's correct.

24           **COMMISSIONER CLARK:** Okay. Just so I'm  
25 clear, there is no such loop as 4 wire ADSL/HDSL

1 compatible loops.

2 **MS. OLLILA:** There is no such loop as a 4  
3 wire ADSL. There is a 4 wire HDSL.

4 **COMMISSIONER CLARK:** So we didn't establish  
5 rates for a 4 wire ADSL even though it's part of this  
6 issue, right?

7 **MS. OLLILA:** That's correct. Both parties  
8 agreed that it didn't exist.

9 **COMMISSIONER CLARK:** All right.  
10 Commissioner Jacobs, do you have other questions?

11 **COMMISSIONER JACOBS:** No. I won't raise  
12 them now. My questions should have been raised way  
13 back at the hearing.

14 When I looked at this again, I realized a  
15 lot of questions that I had about the inputs and so  
16 forth on the costing, but given what we have in the  
17 record, I think Staff's recommendation is on point and  
18 very reasonable.

19 The one -- I couldn't remember that I saw it  
20 when I went through this before. I just wanted to  
21 look for the efficiency issue. And I think I asked  
22 this question earlier. To the extent that we begin to  
23 see technology brought into the network, that is, that  
24 brings about economies of scale and scope, we're going  
25 to then see that reflected in these figures, were we

1 not? The parties can come in and ask or at the turn  
2 of their agreements these cost studies are flexible  
3 and fungible; is that correct?

4 **MS. OLLILA:** Certainly as technology  
5 improves the price generally comes down, so -- and a  
6 party certainly has the opportunity to come in and say  
7 that because of this technology or this change the  
8 cost should be less.

9 **COMMISSIONER JACOBS:** Now -- but, if I  
10 recall that was -- normally they have the automatic  
11 kind of factors, if you will, through the efficiency  
12 factors, and if I remember, that there was testimony  
13 that they didn't think the efficiency factors were  
14 prevalent here or were too low. Do you recall that?

15 **MS. OLLILA:** I'm not sure which efficiency  
16 factors you're speaking of.

17 **COMMISSIONER JACOBS:** I'm way beyond my  
18 expertise, but if I recall, when -- in the cost  
19 studies, there was this factor that says, we  
20 anticipate that over time there will be these  
21 economies of scale and scope and we'd like to put this  
22 into the costing methodology and that's what this  
23 factor represents and I thought there was testimony in  
24 this case that disputed the adequacy of those factors.  
25 I may be incorrect and I may have gotten them confused

1 with another docket.

2 **MS. OLLILA:** The only factor that I can  
3 think of probably relates more to fill factors and  
4 that really relates to how much of the technology is  
5 being used at any given time.

6 **COMMISSIONER JACOBS:** Okay. I'm mistaken  
7 then. I have no other questions.

8 **COMMISSIONER CLARK:** I have a question on  
9 Page 90. I guess it's after the quote from the  
10 auditor. It says, "Staff does not find ITC^DeltaCom's  
11 argument to exclude ACAC time to be at all persuasive.  
12 Even if ITC^DeltaCom believes that the ACAC does any  
13 work on unbundled network elements it has not provided  
14 any documentation supporting its claim."

15 **MS. OLLILA:** There should be a not.

16 **COMMISSIONER CLARK:** That's what I thought.

17 **MS. OLLILA:** Thank you.

18 **COMMISSIONER CLARK:** You believe that --  
19 that ACAC charge, what is that? I forget.

20 **MS. OLLILA:** It's the Access Customer  
21 Advocacy Center charge.

22 **COMMISSIONER CLARK:** Right. It shouldn't be  
23 included in any -- at any loop except SL2; is that  
24 right?

25 **MS. OLLILA:** That's right.

1           **COMMISSIONER CLARK:** And why should it be  
2 included in there when we excluded it in the other  
3 order?

4           **MS. OLLILA:** One of BellSouth's witnesses  
5 described what the ACAC does with the SL2 loop and  
6 Staff -- I found that to be persuasive.

7           **COMMISSIONER CLARK:** How do you reconcile  
8 that with what we did in the other order?

9           **MS. OLLILA:** Well, I looked back at the  
10 other order to see what we actually said and in terms  
11 of OSSs, both mechanical as well as electronic that  
12 were developed for the use -- that were developed for  
13 the specific use of the cost, should be excluded and I  
14 need to get the order out to quote that.

15           The previous order, PSC-98-0604 stated that  
16 all ordering charges, manual or electronic, shall be  
17 excluded from the nonrecurring rates in these  
18 proceedings. And then in looking at what BellSouth  
19 provided for the SL2 loop, the description of the  
20 activities showed that -- this really persuaded me  
21 that this is a necessary function.

22           And I do understand your concern about what  
23 we previously decided and I'd also like to point out  
24 that nonrecurring costs are going to be dealt with in  
25 the generic proceeding, so that to the extent that

1 there's a better case, either for or against this in  
2 the generic proceeding, it can be resolved.

3 **COMMISSIONER CLARK:** So does it make sense  
4 to keep it consistent?

5 **MS. OLLILA:** I think that would certainly be  
6 one way to go. I just happened to find this argument  
7 persuasive in this proceeding.

8 **COMMISSIONER CLARK:** Well, I guess my --  
9 you're convinced that they have to do it.

10 **MS. OLLILA:** Well, I'm persuaded that they  
11 have to do it which is actually perhaps not as strong  
12 as convinced. There was not a case made by  
13 ITC^DeltaCom that I found persuasive that they didn't  
14 need to do it.

15 **COMMISSIONER CLARK:** Well, let me ask you a  
16 question. On Page 92 where is that element? Where  
17 can I find the charge for the customer charge of the  
18 ACAC in this chart?

19 **MS. OLLILA:** It's not in this chart and  
20 that's because of the way BellSouth did their cost  
21 studies. Witness Caldwell provided cost studies with  
22 the proposed times. And another part of her cost  
23 study there was an exhibit DDC-5 which showed the  
24 effect of excluding the ACAC charge from the rates.  
25 And in Witness Varner's rate proposal he included the

1 ACAC charge. And I believe in the recommendation I  
2 mention the time.

3 MR. DOWDS: On Page 89. Second full  
4 paragraph, I believe, is what you're referring to,  
5 Ms. Ollila.

6 MS. OLLILA: Yes. That's right.

7 COMMISSIONER CLARK: What Paragraph?

8 MS. OLLILA: The second -- it's actually the  
9 second full paragraph from the bottom.

10 COMMISSIONER CLARK: Okay. It's not in this  
11 chart --

12 MS. OLLILA: No, it's not.

13 COMMISSIONER CLARK: -- of their proposed  
14 rates?

15 MS. OLLILA: No, because of the way they  
16 submitted their cost study. They submitted their  
17 actual cost study to meet the order that this  
18 Commission issued in the other arbitration. They  
19 added the ACAC because they thought it was  
20 appropriate.

21 COMMISSIONER CLARK: And that's in a  
22 different --

23 MS. OLLILA: It's in a different --

24 COMMISSIONER CLARK: -- chart?

25 MS. OLLILA: It was in a different exhibit.

1 It's not actually in the chart in the recommendation.  
2 I just put the times in that particular paragraph.

3 **COMMISSIONER CLARK:** Which is over here?

4 **MS. OLLILA:** Yes.

5 **COMMISSIONER CLARK:** Okay.

6 **MS. OLLILA:** Unfortunately, including the  
7 ACAC or excluding it became one of those judgment  
8 issues and I can certainly understand excluding it in  
9 order to remain consistent.

10 **COMMISSIONER CLARK:** On Page 93, you talk  
11 about additional work times.

12 **MS. OLLILA:** Yes. That's for additional  
13 loops.

14 **COMMISSIONER CLARK:** So it should be  
15 additional line work times?

16 **MS. OLLILA:** Or loop, yes. That would make  
17 it more clear.

18 **COMMISSIONER CLARK:** Okay. I guess what  
19 might be confusing me is you indicate here -- this is  
20 additional line work times. You say, "based on the  
21 record, Staff recommends that BellSouth propose  
22 nonrecurring rates less the ACAC charge for SL1 loop  
23 be approved." From what rate do you subtract that  
24 from on this chart or --

25 **MS. OLLILA:** The rate I subtract from is

1 Witness Varner's Exhibit AJV-1.

2 **COMMISSIONER CLARK:** Okay. All right.

3 **COMMISSIONER JACOBS:** Do we -- again, this  
4 is one of those instances where I wish -- do you agree  
5 or disagree with the position of Mr. Hyde that the  
6 cost studies really haven't even confirmed  
7 Ms. Caldwell's conclusions as to the second loop and  
8 all those other issues?

9 **MS. OLLILA:** I didn't feel that Witness Hyde  
10 provided evidence -- persuasive evidence. It was the  
11 50% reduction he based on what he thought was  
12 appropriate, but he did say he had no cost studies to  
13 support it.

14 **COMMISSIONER JACOBS:** That, again, goes to  
15 the point as I hope there will be an opportunity to  
16 come back in and look at those.

17 **MS. OLLILA:** That's correct.

18 **COMMISSIONER CLARK:** Commissioner Jacobs,  
19 I'm inclined to go with the Staff's recommendation  
20 with the exception of the customer charge. I guess,  
21 while that testimony may have been persuasive, we have  
22 in a generic proceeding not allowed that. If it is,  
23 in fact, something that should be included, I suspect  
24 it will be taken up and thoroughly discussed in the  
25 generic proceeding and I think it would be appropriate

1 to wait until then to include that element.

2           **COMMISSIONER JACOBS:** The discussion on  
3 Page 89 is what you're talking about?

4           **MS. OLLILA:** You're referring to the ACAC?

5           **COMMISSIONER CLARK:** Right.

6           **COMMISSIONER JACOBS:** Right. The first full  
7 paragraph after the quote.

8           **COMMISSIONER CLARK:** Yes. I would exclude  
9 the ACAC charge even for the SL2.

10           **COMMISSIONER JACOBS:** Okay. I move that.

11           **COMMISSIONER CLARK:** Okay. Show it approved  
12 unanimously. We don't have to vote on 40(a); is that  
13 right?

14           **MS. OLLILA:** That's correct.

15           **COMMISSIONER CLARK:** 40(b).

16           **COMMISSIONER JACOBS:** I don't really have  
17 any questions.

18           **COMMISSIONER CLARK:** In Issue 40(b) we are  
19 talking about -- on Page 98 where you say, "consistent  
20 with Staff's recommendation in Issue 39, Staff  
21 recommends that the additional ACAC charge be  
22 eliminated from this rate." Was that the rate for the  
23 specified conversion?

24           **MS. OLLILA:** BellSouth included or  
25 Mr. Varner included in his proposal the ACAC charge,

1 both for the loop order coordination time.

2 **COMMISSIONER CLARK:** We're talking about  
3 here in Issue 40(b), the two-wire --

4 **MS. OLLILA:** In 40(b) we're talking about  
5 the two-wire SL2 which is actually where Staff  
6 recommended the ACAC time be included.

7 **COMMISSIONER CLARK:** Right.

8 **MS. OLLILA:** BellSouth proposed that it be  
9 included in the SL1 loop as well as the loop order  
10 coordination charge.

11 **COMMISSIONER CLARK:** I guess it struck me  
12 that your recommendation in this issue was at odds  
13 with what you recommended in 39 because I thought in  
14 39, with respect to the SL2 loop, you said keep it in,  
15 but here you say it should be eliminated.

16 **MS. OLLILA:** I apologize. The  
17 recommendation in Issue 39 is the one that I meant to  
18 say. This is a mistake. At least my recommendation,  
19 I think the SL1, SL2 loops must have confused me.

20 **COMMISSIONER CLARK:** But anyway, it should  
21 be a consistent decision?

22 **MS. OLLILA:** That's correct, and my  
23 recommendation in Issue 39 was my recommendation.  
24 This is an incorrect statement.

25 **COMMISSIONER CLARK:** Okay. But now it's

1 correct with what we done?

2 **MS. OLLILA:** That's correct.

3 **COMMISSIONER CLARK:** Okay. All right.  
4 Without objection 40(b) is approved?

5 **COMMISSIONER JACOBS:** So moved.

6 **MS. OLLILA:** Commissioner, if I might, that  
7 last paragraph on Page 98, that actually refers to the  
8 loop order coordination time, not the SL2 loop.

9 **COMMISSIONER CLARK:** Okay.

10 **MS. OLLILA:** So -- sorry.

11 **COMMISSIONER CLARK:** Go ahead.

12 **MS. OLLILA:** It really isn't inconsistent.

13 **COMMISSIONER CLARK:** Okay. Because in the  
14 paragraph above you were talking about the specified  
15 conversion, the coordination, not just the loop?

16 **MS. OLLILA:** That's correct.

17 **COMMISSIONER CLARK:** Okay. All right.

18 **COMMISSIONER JACOBS:** I was on 41.

19 **COMMISSIONER CLARK:** Yes.

20 **COMMISSIONER JACOBS:** Are we being clear  
21 enough as to exactly what those charges are going to  
22 be -- administrative costs are going to be?

23 **MR. HINTON:** That was not part of the issue,  
24 to establish what costs, what charges would be. It  
25 would just be whether they are entitled to charge for

1 disconnection.

2           **COMMISSIONER JACOBS:** Is this one of those  
3 deals where having made that determination they can go  
4 back and reasonably assess what these would be?

5           **MR. HINTON:** Yes, I would imagine they have  
6 charges established. This issue is just regarding  
7 whether --

8           **COMMISSIONER JACOBS:** That --

9           **MR. HINTON:** (simultaneous conversation)  
10 -- costs can they charge.

11           **COMMISSIONER JACOBS:** Okay. That's it.

12           **COMMISSIONER CLARK:** It was not -- on Page  
13 102 and continuing over to 103, and you conclude that  
14 the soft dial tone is a nonissue. Is that because if  
15 ITC^DeltaCom requests that the line be disconnected  
16 for this particular customer but soft dial tone  
17 remain, then will they be responsible for recurring  
18 charges on that line?

19           **MR. HINTON:** Yes. ITC would remain the --

20           **COMMISSIONER CLARK:** It's not being  
21 disconnected with respect to --

22           **MR. HINTON:** To ITC^DeltaCom.

23           **COMMISSIONER CLARK:** -- ITC and BellSouth?

24           **MR. HINTON:** Correct.

25           **COMMISSIONER JACOBS:** Was there a question

1 as to whether or not that's being done? Did ITC --

2 **MR. HINTON:** I'm sorry. I'm not sure what  
3 you're asking.

4 **COMMISSIONER JACOBS:** Was there a dispute as  
5 to whether or not ITA can actually get provisioning of  
6 soft dial tone?

7 **MR. HINTON:** There is no dispute about it.  
8 I know that BellSouth was a little puzzled as to why  
9 they would want to in their testimony, but there was  
10 no actual dispute regarding soft dial tone.

11 **COMMISSIONER JACOBS:** So if they ask for it,  
12 BellSouth would do it?

13 **MR. HINTON:** Yes. They'll allow them to  
14 maintain that UNE. They would just be required to pay  
15 the recurring charges.

16 **COMMISSIONER JACOBS:** Okay.

17 **COMMISSIONER CLARK:** With respect to the  
18 disconnect and connect and Mr. Woods' concern that  
19 there is a duplication of charging for the same  
20 process, is it your position that it really -- it  
21 isn't the same process?

22 **MR. HINTON:** Correct.

23 **COMMISSIONER CLARK:** It's two different  
24 processes. Okay.

25 **MR. HINTON:** They may occur at the same time

1 but it is, essentially, billing-wise two separate  
2 activities.

3 **COMMISSIONER CLARK:** And it involves  
4 separate activities to connect it to one and  
5 disconnect it from one and connect it to another.

6 **MR. HINTON:** Correct.

7 **COMMISSIONER CLARK:** Any other questions on  
8 41?

9 **COMMISSIONER JACOBS:** Nope.

10 **COMMISSIONER CLARK:** Show it approved  
11 without objection.

12 **MR. FULWOOD:** I have a clarification for  
13 Issue 42. On the Table, Page 113, the single  
14 asterisks that says "represents a virtual collocator  
15 converting existing equipment to a cageless  
16 arrangement," what was left out is where the equipment  
17 remains in the same location in BellSouth's line-up.

18 **COMMISSIONER CLARK:** I'm sorry. Where are  
19 you again?

20 **MR. FULWOOD:** Page 113. The single  
21 asterisk.

22 **COMMISSIONER CLARK:** Yes.

23 **MR. FULWOOD:** And at the end of that  
24 statement it should say, "where the equipment remains  
25 in the same location in BellSouth's line-up," so they

1 are not moving the equipment.

2           **COMMISSIONER CLARK:** Okay. I wasn't sure  
3 what the significance of the cite was to -- I'm on  
4 Page 106 and the top of 107. It says, "physical  
5 collocation that does not require the use of  
6 collocation cages." And Witness Milner uses that to  
7 bolster his argument that cageless physical  
8 collocation is not like virtual collocation. And I  
9 have to say, the logic of that escaped me.

10           **MR. FULWOOD:** You're saying the logic  
11 that --

12           **COMMISSIONER CLARK:** It strikes me the fact  
13 that this quote says, "physical collocation does not  
14 require the use of collocation cages" is the basis for  
15 making a statement that it is not like virtual  
16 collocation and I don't understand that. It could be  
17 like virtual collocation even though it is -- it's  
18 described as physical collocation without cages.

19           **MR. FULWOOD:** Virtual collocation is a total  
20 different set up than a physical collocation. And  
21 this here, what you're reading, "physical collocation  
22 that does not require the use of collocation cages,"  
23 are you saying it's like virtual?

24           **COMMISSIONER CLARK:** Well, I think there was  
25 testimony that suggested it's certainly more like

1 virtual than it is like caged collocation.

2 **MR. FULWOOD:** I think they're talking about  
3 in a physical sense, where you can put your equipment  
4 as opposed to a cost sense. They say virtual, like  
5 virtual, but minus the maintenance in the cost. It  
6 physically can mirror a virtual type arrangement but  
7 not from a costing point of view. But --

8 **COMMISSIONER CLARK:** Okay. It seemed to me  
9 it did from this standpoint. The way I understood it  
10 to be described is the same equipment would be put in  
11 there, but it would be operated and maintained by  
12 BellSouth and, in effect, they do lease the use of it.

13 **MR. FULWOOD:** Well, no, that's where the  
14 virtual collocation BellSouth would operate it.  
15 But --

16 **COMMISSIONER CLARK:** I concluded yeah, it is  
17 like -- virtual is like cageless.

18 **MR. FULWOOD:** But in cageless you own your  
19 own equipment.

20 **COMMISSIONER CLARK:** Yes. I agree with  
21 that. But in terms of what you have to do to  
22 establish the presence, it struck me that it was more  
23 like virtual collocation than it was like physical  
24 collocation.

25 **MR. FULWOOD:** Well --

1                   **COMMISSIONER CLARK:** Maybe it doesn't  
2 matter.

3                   **MR. FULWOOD:** It shares both features and  
4 that's kind of what I addressed, that in a physical  
5 sense it does offer situations that are like virtual  
6 collocation where physical -- traditional physical  
7 collocation was more of a separate environment.  
8 You're over here. I'm over there. And caged does  
9 take down some of those walls -- a lot of those walls.  
10 And that's why in the chart, from a costing point of  
11 view, at some point when the equipment stays in  
12 BellSouth's line-up, then that's why there was a  
13 separation, a slight difference in charges.

14                   **COMMISSIONER CLARK:** I guess what I was  
15 concerned with is, I don't want the basis of us  
16 determining the charges to be that we think it's more  
17 like physical -- that it's more like one than the  
18 other. I really don't think that necessarily is  
19 dispositive of it. What it is is an analysis of what  
20 the similarity is in costs. And I don't want that to  
21 be sort of a rationale.

22                   **MR. FULWOOD:** I really don't think that's  
23 our rationale. In the BellSouth versus AT&T, MCI, in  
24 Order 98-0604, they separated the application fee and  
25 caging off the way the elements were separated it led

1 room to -- it kind of was like preempting cageless  
2 collocation in a way.

3 **COMMISSIONER CLARK:** Let me ask the question  
4 a little differently. We didn't say, all right, we're  
5 going to start from -- say, it's more like physical  
6 collocation and conclude what the charges should be  
7 based on that premise.

8 **MR. DOWDS:** Let me jump in a little bit.  
9 Let's go back to the 833. There was a rigid  
10 distinction between what --

11 **COMMISSIONER CLARK:** What's 833?

12 **MR. DOWDS:** I'm sorry. The AT&T, MCI,  
13 BellSouth arbitration.

14 **COMMISSIONER CLARK:** Okay.

15 **MR. DOWDS:** There was a very rigid  
16 distinction between -- there was only two kinds of  
17 collocation that was on the table back then. There  
18 was physical and virtual. And physical you go in, you  
19 rent floor space from a LEC, you build a cage and you  
20 put your stuff in it. You maintain it and you pay  
21 security escort fees all kinds of other nasty things.

22 In virtual collocation, basically what  
23 you're doing is you have a sale lease back arrangement  
24 with the LEC taking ownership and leasing you back and  
25 maintaining your equipment. The LEC has control of

1 where that equipment is located in the central office.  
2 They are -- it's kind of like they're operating on  
3 behalf of you.

4 Now, we have the, whichever advance services  
5 order, the first, which has this little blurb about  
6 that requires something called cageless collocation.  
7 Unfortunately, they don't define it, not in any rigid  
8 sense.

9 BellSouth Witness Milner contends, right or  
10 wrong, that basically cageless collocation was  
11 envisioned as physical collocation without the cage.

12 **COMMISSIONER CLARK:** And you're saying  
13 that --

14 **MR. DOWDS:** I think the record is not 100%  
15 clear one way or the other what it could ultimately  
16 be.

17 **COMMISSIONER CLARK:** And we will decide what  
18 it will ultimately be in the generic docket.

19 **MR. DOWDS:** Well, I have to defer to  
20 Mr. Fulwood as to the specifics on this issue. But,  
21 for example, if you opted to sustain the same rate you  
22 had in the prior arbitration, they have elements for  
23 each component.

24 For example, if you have cageless  
25 collocation that looks and smells like physical

1 without a cage, then one could argue that the only  
2 difference is you don't have any cage construction  
3 charges.

4 **COMMISSIONER CLARK:** Okay.

5 **MR. DOWDS:** Or if it actually looks and  
6 smells kind of like virtual and maybe you're actually  
7 renting space on a -- what do you call them? Rack?  
8 (Inaudible comments.) Thank you. On a BellSouth  
9 owned rack, that looks more like virtual --

10 **COMMISSIONER CLARK:** Okay. And --

11 **MR. DOWDS:** -- (simultaneous talking) there  
12 will be hybrids.

13 **COMMISSIONER CLARK:** All right. And the  
14 rates we have established in the table would allow for  
15 that kind of hybrid.

16 **MR. FULWOOD:** Right. It does allow -- like  
17 in virtual collocation the floor space and physical  
18 collocation, they were equal; space preparation  
19 charges and different things. So it's a hybrid  
20 charge. The only thing that doesn't come directly  
21 from the charge is the application fee.

22 **COMMISSIONER CLARK:** Right. Okay. Any  
23 other questions on 42?

24 **COMMISSIONER JACOBS:** The provisioning of a  
25 cageless collocation, sounds like there is less -- the

1 anticipation is that they can just put cageless  
2 wherever they want; is that correct?

3 **MR. FULWOOD:** Well, they really wouldn't be  
4 putting up cages.

5 **COMMISSIONER JACOBS:** That's what I mean.  
6 So there is less of a restriction as to planning and  
7 location and those sorts of things?

8 **MR. FULWOOD:** Right. It's a less of a --

9 **COMMISSIONER JACOBS:** The argument is made,  
10 and I think you buy that argument, that that should  
11 then have some cost impacts; is that correct?

12 **MR. FULWOOD:** Right, on the application fee  
13 because the application fee is what is taking in the  
14 cost and making the assessment of is the space  
15 available, how are we going to go about providing  
16 power, air conditioning and things like that and so  
17 that's why I reduced the application fee.

18 **COMMISSIONER JACOBS:** If I'm not mistaken,  
19 those are all nonrecurring?

20 **MR. FULWOOD:** Repeat that, please.

21 **COMMISSIONER JACOBS:** That's all  
22 nonrecurring?

23 **MR. FULWOOD:** The reduction I made was  
24 nonrecurring. An initial fee -- there are recurring  
25 fees that will make up for the things you just don't

1 want to charge upfront. There is a total number of  
2 hours and the recurring fee, you get a nonrecurring  
3 fee and you get the recurring fee that sort of builds  
4 and makes up sort of less than the charge upfront.

5 **COMMISSIONER JACOBS:** Okay. I just want to  
6 make sure that if that rationale holds, it holds in  
7 both places.

8 **MR. FULWOOD:** Right. It does hold in both  
9 places.

10 **COMMISSIONER JACOBS:** Okay. That's all the  
11 questions that I have.

12 **COMMISSIONER CLARK:** Is there a motion on  
13 Issue 42?

14 **COMMISSIONER JACOBS:** I move Staff.

15 **COMMISSIONER CLARK:** Without objection 42 is  
16 approved. 48.

17 **COMMISSIONER JACOBS:** I think I agree with  
18 the premise there are certainly indirect means by  
19 which we effect -- actions have tax consequences.

20 **COMMISSIONER CLARK:** I don't have any. I  
21 would agree with Staff on this one. Show Issue 48  
22 approved without objection.

23 Issue 51. Am I mistaken? Did ITC^DeltaCom  
24 indicate that there were other Commissions that had  
25 concluded it could include this kind of language in

1 the order and did they provide that cite?

2 **MS. CALDWELL:** Commissioner, this has been  
3 an ongoing as far as the cites and as far as the  
4 responses. When the briefs were due, ITC^DeltaCom  
5 filed its brief and then BellSouth filed a subsequent  
6 brief on a -- after the date of the filing of the  
7 original briefing schedule. And then ITC^DeltaCom  
8 filed its response and subsequent to that we've had a  
9 response and a motion to strike by BellSouth. So  
10 there is ongoing briefing of this particular issue.

11 When ITC^DeltaCom filed its initial response  
12 it just indicated that the answer should be yes.  
13 Subsequent to that, you know, BellSouth came in and  
14 made its arguments and BellSouth then -- ITC^DeltaCom  
15 then filed its response which was generally just again  
16 arguing that the Commission had the jurisdiction under  
17 364.285. So that their discussions of other cites and  
18 other states are in those subsequent responses. So I  
19 did not include those in my discussion here.

20 **COMMISSIONER CLARK:** Did you look at them?

21 **MS. CALDWELL:** Yes.

22 **COMMISSIONER CLARK:** Have there been other  
23 jurisdictions that found there was authority to do  
24 that and what basis did they conclude there was?

25 **MS. CALDWELL:** I think they discussed

1 Kentucky Public Service Commission. Let me go back.  
2 In their summary and brief they did not specifically  
3 cite any particular company -- I mean any particular  
4 other states that were doing so.

5 **COMMISSIONER CLARK:** So as far as we know  
6 the conclusions of the Commissions that have  
7 arbitrated these types of agreements has been that  
8 they can include that kind of -- that kind of  
9 provision has not been mandated to be included --

10 **MS. CALDWELL:** In other states, that's  
11 correct.

12 **COMMISSIONER CLARK:** Okay. And you're  
13 saying no vote is necessary on this. This is an  
14 information issue?

15 **MS. CALDWELL:** That's correct.

16 **COMMISSIONER CLARK:** Because we struck it as  
17 an issue? I mean --

18 **MS. CALDWELL:** Yes, and Staff also believes  
19 that the issue is really not ripe in this proceeding.

20 **COMMISSIONER CLARK:** And why is that?

21 **MS. CALDWELL:** The issue itself was added by  
22 the prehearing officer at the agenda conference.

23 **COMMISSIONER CLARK:** Which was me, right?

24 **MS. CALDWELL:** No. It was already in the  
25 prehearing order added by the prehearing officer and

1 it was an issue that was added at the prehearing  
2 conference.

3 **COMMISSIONER CLARK:** Who was the prehearing  
4 officer?

5 **MS. CALDWELL:** Commissioner Jacobs.

6 **COMMISSIONER CLARK:** They really sound alike  
7 then. I could have sworn I was the prehearing  
8 officer.

9 **MS. CALDWELL:** At the hearing there was  
10 additional discussion and we, at that time, assured  
11 you that it would be discussed.

12 **COMMISSIONER JACOBS:** You did bring that up.  
13 There were issues that we did strike though, if I'm  
14 not mistaken.

15 **MS. CALDWELL:** The other issues were  
16 stricken.

17 **COMMISSIONER JACOBS:** So the parties have  
18 raised it.

19 **COMMISSIONER CLARK:** Parties raised it and  
20 we struck them as issues.

21 **MS. CALDWELL:** That is correct.

22 **COMMISSIONER CLARK:** But we asked them to  
23 file the briefs on it.

24 **MS. CALDWELL:** That is correct.

25 **COMMISSIONER CLARK:** Okay. Then we don't

1 need to take a vote on this.

2 MS. CALDWELL: That is correct.

3 COMMISSIONER CLARK: Issue 52.

4 COMMISSIONER JACOBS: Move Staff.

5 COMMISSIONER CLARK: Without objection 52 is  
6 approved. That's it. Thank you all very much.

7 COMMISSIONER JACOBS: Thank you.

8 (Thereupon, the hearing concluded at  
9 4:20 p.m.)

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

4 I, KIMBERLY BERENS, CSR, RPR, FPSC  
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Special Agenda  
7 Conference in Docket No. 990750-TP was heard by the  
8 Florida Public Service Commission at the time and  
9 place herein stated; it is further

10 CERTIFIED that I stenographically reported  
11 the said proceedings; that the same has been  
12 transcribed by me; and that this transcript,  
13 consisting of 112 pages, constitutes a true  
14 transcription of my notes of said proceedings.

15 DATED this 25th day of January, 2000.

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KIMBERLY K. BERENS, CSR, RPR  
FPSC Commission Reporter  
(850) 413-6736