



# Public Service Commission

State of Florida

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** August 4, 2000  
**TO:** Blanca Bayó, Director, Records and Reporting  
**FROM:** Jane Faurot, Chief, Bureau of Reporting  
**RE:** DOCKET NO. 991755-TP, PREHEARING HELD 8-2-00

**RE:** REQUEST FOR ARBITRATION CONCERNING COMPLAINT  
OF MCIMETRO ACCESS TRANSMISSION SERVICES LLC AND MCI  
WORLD COM COMMUNICATIONS, INC. AGAINST BELLSOUTH  
TELECOMMUNICATIONS, INC. FOR BREACH OF APPROVED  
INTERCONNECTION AGREEMENT

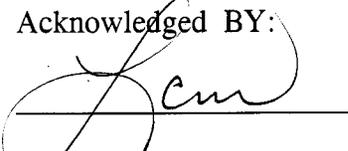
DOCUMENT NO. 09465, 8-3-00

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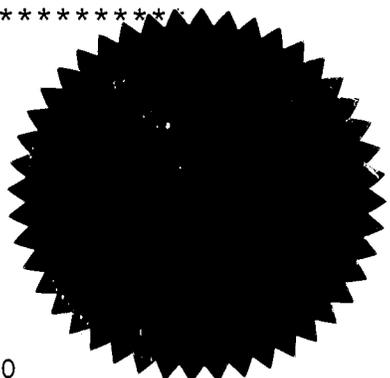
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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: In the Matter of : DOCKET NO. 991755-TP  
:  
: REQUEST FOR ARBITRATION CONCERNING :  
: COMPLAINT OF MCIMETRO ACCESS :  
: TRANSMISSION SERVICES LLC AND :  
: MCI WORLDCOM COMMUNICATIONS, INC. :  
: AGAINST BELLSOUTH TELECOMMUNI- :  
: CATIONS, INC. FOR BREACH OF :  
: APPROVED INTERCONNECTION AGREEMENT. :  
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PROCEEDINGS: PREHEARING CONFERENCE  
  
BEFORE: CHAIRMAN J. TERRY DEASON  
Prehearing Officer  
  
DATE: Wednesday, August 2, 2000  
  
TIME: Commenced at 9:30 a.m.  
Concluded at 10:04 a.m.  
  
PLACE: Betty Easley Conference Center  
Room 152  
4075 Esplanade Way  
Tallahassee, Florida  
  
REPORTED BY: TRICIA DeMARTE  
Official FPSC Reporter  
(850) 413-6736



## 1 APPEARANCES:

2 RICHARD D. MELSON, Hopping Green Sams and Smith,  
3 Post Office Box 6526, Tallahassee, Florida 32314,  
4 appearing on behalf of MCImetro Access Transmission  
5 Services, LLC, and MCI WORLDCOM Communications, Inc.

6 DULANEY L. O'ROARK, III, Esquire, MCI WorldCom,  
7 Inc., Six Concourse Parkway, Suite 3200, Atlanta, Georgia  
8 30328, appearing on behalf of MCImetro Access Transmission  
9 Services, LLC, and MCI WORLDCOM Communications, Inc.

10 DONNA C. McNULTY, MCI WorldCom, Inc. 325 John  
11 Knox Road, the Atrium, Suite 105, Tallahassee, Florida  
12 32303, appearing on behalf of MCImetro Access Transmission  
13 Services, LLC, and MCI WORLDCOM Communications, Inc.

14 NANCY B. WHITE, BellSouth Telecommunications,  
15 Inc., c/o Nancy Sims, 150 South Monroe Street, Suite 400,  
16 Tallahassee, Florida 32301, appearing on behalf of  
17 BellSouth Telecommunications, Inc.

18 TIMOTHY VACCARO, FPSC Division of Legal  
19 Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
20 32399-0850, appearing on behalf of the Commission Staff.

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

2 CHAIRMAN DEASON: Call the prehearing conference  
3 to order. Could I have the notice read, please.

4 MR. VACCARO: Pursuant to notice, this time and  
5 place have been designated for a prehearing conference in  
6 Docket Number 991755-TP for the purposes set forth within  
7 the notice.

8 CHAIRMAN DEASON: Thank you. Take appearances.

9 MS. WHITE: Nancy White on behalf of BellSouth  
10 Telecommunications.

11 MR. MELSON: Rick Melson on behalf of the MCI  
12 WorldCom companies.

13 MR. VACCARO: Tim Vaccaro on behalf of  
14 Commission Staff.

15 MR. MELSON: And I'd also like to enter an  
16 appearance, if I could, for Donna McNulty and  
17 Dulaney O'Roark, both in-house with MCI WorldCom.

18 CHAIRMAN DEASON: Very well. Are there any  
19 preliminary matters?

20 MR. VACCARO: I believe Mr. Melson wanted to  
21 bring something up.

22 CHAIRMAN DEASON: Okay.

23 MR. MELSON: I can do it either now or later. I  
24 was going to ask, is there any chance of having this  
25 hearing rescheduled to a later date? It originally was

1 scheduled, Commissioner, for August 23rd, which fit well  
2 with the schedule of counsel and witnesses. With the  
3 change in the makeup of the Commission and the  
4 reassignment to a new panel, it's been scheduled for  
5 September 6th, which is not an impossible date but comes  
6 essentially right before Mr. O'Roark, who's the lead trial  
7 counsel on this, goes into four consecutive weeks of  
8 hearings in four different states on arbitrations in cost  
9 matters.

10 We would respectfully ask that if the calendar  
11 can accommodate it, that the hearing be moved sometime  
12 during the last week in October or the first two weeks in  
13 November. I believe BellSouth has no objection to that,  
14 but we recognize that the Commission's calendar obviously  
15 will dictate when we can go to hearing.

16 CHAIRMAN DEASON: Okay. Your request will be  
17 taken under advisement and will be considered.

18 MR. MELSON: Thank you.

19 CHAIRMAN DEASON: But I think the prospects do  
20 not look good.

21 MR. MELSON: All right.

22 CHAIRMAN DEASON: But I will take a look at it.

23 MR. MELSON: Thank you.

24 CHAIRMAN DEASON: Okay. Other preliminary  
25 matters?

1 MR. VACCARO: No other preliminary matters.

2 CHAIRMAN DEASON: Okay. We can then proceed  
3 through the draft prehearing order, and I will take it  
4 section by section. And if there are any concerns, please  
5 let me know. Section 1, Conduct of Proceedings; 2, Case  
6 Background; Section 3, Procedure for Handling Confidential  
7 Information; Section 4, Posthearing Procedures; Section 5,  
8 Prefiled Testimony and Exhibits; Section 6, Order of  
9 Witnesses. We're going to be doing direct and rebuttal at  
10 the same time; is that correct?

11 MS. WHITE: That will be fine with BellSouth.

12 MR. MELSON: Fine with MCI WorldCom.

13 CHAIRMAN DEASON: Let me ask this question: Are  
14 there going to be opening statements?

15 MS. WHITE: I don't see a need for there to be.

16 MR. MELSON: No, Commissioner, I don't believe  
17 so.

18 CHAIRMAN DEASON: Very well. I'm just -- I'm  
19 not asking for it. I just want it clarified, so there is  
20 not a question at the hearing as to whether there will or  
21 will not be.

22 MR. MELSON: I understand.

23 CHAIRMAN DEASON: Okay. Section 7, Basic  
24 Positions, any changes or corrections? Section 8, Issues  
25 and Positions, Issue 1. I have a question, and I'm just

1 trying to clarify the purpose of why we're having this  
2 hearing. Issue 1 says, under FCC Rule 51.711, and then it  
3 goes in to describe a situation which the parties disagree  
4 on as to when -- is an indication that facts would dictate  
5 a certain treatment and the facts would dictate another  
6 treatment under this rule. My question is, and I would  
7 appreciate any feedback I can get from Ms. White and  
8 Mr. Melson and from Staff, are we -- is it the  
9 Commission's role to enforce FCC rules?

10 MR. MELSON: Commissioner, it's your role to  
11 handle arbitration proceedings and to handle contractual  
12 disputes under the interconnection agreements that arise  
13 between the parties. At the time the Commission approved  
14 the interconnection agreements that are at issue in this  
15 case, the FCC rule had been stayed, and the Commission  
16 dictated a result that is -- that was not in accordance  
17 with the then stayed rule. The parties' agreement --

18 CHAIRMAN DEASON: I don't mean to interrupt, but  
19 I need to really understand. The Commission being the  
20 Florida Public Service Commission --

21 MR. MELSON: Yes, sir.

22 CHAIRMAN DEASON: -- had made a decision because  
23 there was no FCC rule because it had been stayed?

24 MR. MELSON: Correct.

25 CHAIRMAN DEASON: Now that decision is no longer

1 valid?

2 MR. MELSON: The agreement -- that decision is  
3 valid, but the agreement contains provisions for what  
4 happens when there is a change in law, and says  
5 essentially that in the event a provision of the agreement  
6 becomes unlawful that the parties shall attempt to  
7 renegotiate, and failing renegotiation, come to the  
8 Commission to resolve that dispute.

9 We believe that as a result of the reinstatement  
10 of the FCC rule, the provisions in the agreement are now  
11 unlawful. BellSouth disagrees. We are here to -- asking  
12 you to -- under the provision, it says if we can't agree  
13 that you arbitrate. We're asking you essentially to  
14 re-arbitrate whether there has been a change in law and  
15 how that applies to the particular facts of this case.

16 CHAIRMAN DEASON: Ms. White?

17 MS. WHITE: My response to your original  
18 question would be that the -- I would agree with  
19 Mr. Melson that the State Commission has the authority and  
20 the obligation to rule on arbitrations and contractual  
21 disputes between the parties. I think that in doing that,  
22 they take into consideration the applicable law at the  
23 time, as well as the facts and circumstances of the case.

24 Unfortunately, we all well know this is not a  
25 stable area, and what is law today may not be law

1 tomorrow. I don't know of any way to deal with that any  
2 more than anybody else does, except to say you just have  
3 to take it as you have it when you take it as you find it  
4 when you're making your decision.

5 CHAIRMAN DEASON: So you're saying that it is  
6 our responsibility to enforce FCC rules?

7 MS. WHITE: I'm saying that in this particular  
8 case, the existence or not of an FCC rule and its status  
9 is something that you have to take into account, but I  
10 think you have to apply that to the facts and  
11 circumstances of the issue at hand, which is what  
12 geographical area and what functions MCI's switches serve.  
13 That is a factual matter that has to be determined, that  
14 is in dispute, actually, and that has to be determined  
15 before you could even get to the point of what law do you  
16 apply and what rule applies and whether the FCC's rule is  
17 the one in effect at the time.

18 CHAIRMAN DEASON: I'm just trying to understand,  
19 because I think -- and it's not necessarily this case and  
20 this issue. It is a much broader question; something that  
21 I think is troubling and something that needs to be  
22 resolved. And I'm not -- we can't resolve it here today,  
23 but at least we need to lay some clarification as to how  
24 we perceive ourselves for this hearing. And I'm trying to  
25 educate myself to some extent, so I'm utilizing the

1 resources that are here in front of me. So please allow  
2 me that latitude.

3 Why is there no reference in here whatsoever to  
4 Chapter 364, which is where we get our statutory authority  
5 to even be in existence?

6 MS. WHITE: I think it's because this  
7 arbitration was conducted under the auspices of the  
8 Telecommunications Act and the FCC's and the Court's  
9 interpretation of the provisions of the Telecommunications  
10 Act. MCI did not file --

11 CHAIRMAN DEASON: Let me interrupt just a  
12 second.

13 MS. WHITE: Okay.

14 CHAIRMAN DEASON: And that's even a more  
15 fundamental question. Do we have the authority -- you  
16 know, we work for the state of Florida, and the federal  
17 government as far as I know doesn't pay my salary. Am I  
18 lawfully conducting a hearing to enforce federal law when  
19 that's not my job?

20 MR. MELSON: Commissioner Deason, I think, yes,  
21 the Legislature, while it's probably not as crystal clear  
22 as you would like it, amended Chapter 120.80 Sub 13, which  
23 establishes some special procedures for the Commission,  
24 grants you some exceptions to 120 generally, and  
25 essentially says in conducting proceedings under the

1 Telecom Act of 1996, that you will utilize procedures  
2 consistent with that Act. It seems to me to be at least  
3 an indirect recognition by the Legislature that they  
4 expect the Florida Commission to carry out some of the  
5 functions that the Act contemplates the State Commissions  
6 will carry out.

7 MS. WHITE: Well, and the Act itself. The Act  
8 itself says that the State Commissions are the proper  
9 entities to deal with requests for arbitration and  
10 contractual disputes. Now, whether the federal -- whether  
11 Congress could say, State Commissions, this is your job or  
12 not, I don't even want to try to get into that discussion,  
13 but that's what they did. That's essentially what the  
14 Telecommunications Act did. And it says if the State  
15 Commission doesn't act, then the parties can go to the  
16 FCC, and say, FCC, the State Commission won't act, so we  
17 need you to act in their place.

18 CHAIRMAN DEASON: Another question. And don't  
19 read anything into it; it's just a question. This is a  
20 learning exercise. Why don't you -- this is a FCC rule.  
21 Why don't you file your complaint with the FCC?

22 MR. MELSON: It's our complaint, I believe,  
23 because under the Telecom Act and under the Eighth Circuit  
24 decision interpreting the Act, they have told us this is  
25 the proper forum to go to for enforcing, and we believe as

1 a result of the amendments to Chapter 120, the Florida  
2 Legislature recognized that the Commission would have a  
3 role under the Telecom Act.

4 I mean, ultimately, if the Commission, I  
5 believe, vis-a-vis federal law, probably could refuse to  
6 hear any arbitrations and simply allow the parties at that  
7 point to have all those proceedings conducted at the FCC,  
8 but it seems to me the Florida Legislature has recognized  
9 at least indirectly that they expect for the Commission to  
10 handle those disputes.

11 CHAIRMAN DEASON: If we go to hearing and make a  
12 decision, what is the effect of that decision?

13 MR. MELSON: What we're asking you to do is to  
14 require the contract to be amended to conform with what is  
15 now the law, and we are asking you to, in essence, make  
16 that amendment retroactive back to the date that the law  
17 changed. Your decision will be binding on the parties  
18 subject to any review that either one of us might seek in  
19 U.S. District Court.

20 CHAIRMAN DEASON: Is this particular rule under  
21 any type of appeal or challenge at the present time?

22 MR. MELSON: No, sir.

23 MS. WHITE: I don't believe so. I would accept  
24 Mr. Melson's characterization. And a lot of this argument  
25 in this case, I think, is going to be factual. The rule

1 says what it says, but in order to determine whether you  
2 even get there, you have to look at the facts of what MCI  
3 says their switches are doing and what we think their  
4 switches are doing. And that's a factual issue that's  
5 going to have to be dealt with no matter what rule  
6 applies.

7 CHAIRMAN DEASON: Mr. Melson, you referenced the  
8 change in Chapter 120 --

9 MR. MELSON: Yes, sir.

10 CHAIRMAN DEASON: -- to make the recognition of  
11 the Commission's ability to process cases consistent with  
12 the federal act. Are you comfortable, that gives us the  
13 authority to exercise this type of jurisdiction?

14 And the reason I ask that question, and you're  
15 probably familiar with this, maybe more so than I,  
16 remember back in the days when the PURPA Act was passed by  
17 Congress and required State Commissions to do certain  
18 things? And we basically found ourself in an inability to  
19 act until the Florida Legislature specifically gave us  
20 that ability, even though it was a federal act directing  
21 Commissions to do certain things, but it was an act of the  
22 Florida Legislature who specifically recognized that.

23 Are you comfortable that just the change in the  
24 procedural rule gives the Commission jurisdiction, I mean,  
25 a procedural statute?

1           MR. MELSON: Commissioner, I guess that along  
2 with the changes that there have been to Chapter 364, some  
3 of which predated the Act, some of which postdated that,  
4 set out general intention and purpose for the Commission  
5 to take steps to promote competition, it seems to me the  
6 fact --

7           CHAIRMAN DEASON: Let me interrupt just a  
8 second. Then if that is the case, why is this issue not  
9 saying under FCC rule and Chapter 364 would -- and  
10 whatever the issue is?

11           MR. MELSON: It's because we had viewed the  
12 primary source of authority as -- or the primary source of  
13 the Commission's duty to handle the complaint as flowing  
14 from the federal law. I would have no objection to adding  
15 Chapter 364 to the issue. You've got authority,  
16 independent state law authority under Chapter 364 to deal  
17 with matters of interconnection, unbundling, and resale.  
18 And if you'll remember even prior to the federal act, you  
19 held state law proceedings regarding interconnection,  
20 regarding UNE pricing.

21           Once the federal act came into effect,  
22 essentially the parties' focus shifted to enforcing the  
23 Act, and I think the Commission's focus did as well. It  
24 seems to me that the history since 1996 of the Commission  
25 having exercised authority under the federal act and the

1 failure by the Legislature -- I mean, the Legislature's  
2 affirmative act in amending Chapter 120 to allow you to  
3 act in accordance with the federal act procedures and  
4 their failure to draw you up short saying that you're  
5 exceeding your authority are all indications to me that  
6 the Legislature felt that Chapter 364 taken as a total  
7 gave you adequate authority.

8 CHAIRMAN DEASON: Ms. White?

9 MS. WHITE: I don't think I would have any  
10 objection to that kind of change --

11 CHAIRMAN DEASON: I'm not suggesting it be done.

12 MS. WHITE: -- on a going-forward basis.

13 CHAIRMAN DEASON: It's just a question of --

14 MS. WHITE: Right.

15 CHAIRMAN DEASON: -- I'm trying to understand  
16 what our role in this whole process is.

17 MS. WHITE: And I think that's true. I mean, I  
18 think that in any of these issues you can say, under the  
19 federal law and/or under the state law, is this -- what  
20 should we do here? I guess the reason, of course, I  
21 wouldn't like it in this instance is because nobody has  
22 filed testimony as to under the state law whether this  
23 should be done a certain way or not.

24 But, I mean, the state law does have -- we have  
25 held arbitrations under the state law before the federal

1 act was in place. And I think that the only reason that  
2 the state law has never been mentioned in any of the  
3 issues since the federal law was passed is because  
4 everything has been brought under the federal law. Nobody  
5 specifically said, okay, I want the Commission to decide  
6 this. First, does an obligation exist under federal law,  
7 and second, regardless of what you're saying in answer to  
8 number one, does an obligation exist under state law?

9 And that's just never been an issue posed by any  
10 of the parties in any of these cases, arbitrations, be  
11 they arbitrations or contractual complaint cases.

12 CHAIRMAN DEASON: Okay. Let me ask the converse  
13 question. Why -- is there any reference to the FCC rule?  
14 Why is it -- it's just whatever standard this Commission  
15 thinks should apply for this set of facts that should be  
16 what we think is appropriate? Are we bound just to  
17 enforce the FCC rule? We're just a field office of the  
18 FCC; is that correct?

19 MS. WHITE: Well, then you get into the issue of  
20 whether the federal -- whether the FCC rule preempts --

21 CHAIRMAN DEASON: And that's what I need  
22 guidance on.

23 MS. WHITE: Yeah.

24 MR. MELSON: And, Commissioner, I think it's MCI  
25 WorldCom's view that in this situation, the FCC rule does

1 provide the controlling standard.

2           CHAIRMAN DEASON: So even if this Commission --  
3 and I'm not saying that there's any -- I don't know if  
4 there's -- I'm not saying there's anything wrong with this  
5 rule. It may be the best written rule ever crafted by  
6 man. It's just a theoretical question, but if this  
7 Commission, for some reason, felt like that was an  
8 inappropriate rule, an inappropriate standard, we have no  
9 say about that. Ours is strictly to enforce that standard  
10 as espoused by the FCC.

11           MR. MELSON: Commissioner, to the extent that  
12 rule sort of preempts the field -- and I believe this is  
13 one that does, although that was not a question I really  
14 thought about coming in --

15           CHAIRMAN DEASON: And I don't mean to catch you  
16 off guard, but some events yesterday have triggered some  
17 questions in my mind.

18           MR. MELSON: Yes, sir. I think in this area the  
19 rule probably preempts the field and, therefore, your role  
20 is to interpret that rule to fill in any holes in it and  
21 to apply it to the facts that are developed for you.

22 Although --

23           CHAIRMAN DEASON: And we don't have the option  
24 to say, if it were the case, we don't believe in this  
25 rule, we're not going to enforce it. If you want it

1 enforced, you take it to the FCC.

2 MR. MELSON: Commissioner, I think if you wanted  
3 to say that, you would be within your rights to say that.  
4 And it would ultimately be a court on review that said  
5 whether that was the proper role under the Act or not.  
6 I'm not sure that question has been answered. I would  
7 encourage --

8 CHAIRMAN DEASON: I don't think the question has  
9 ever been asked before.

10 MS. WHITE: I don't think it has either.

11 MR. MELSON: It probably has not.

12 CHAIRMAN DEASON: And it may be need to be  
13 asked. And I'm not saying this should be a test case, so  
14 don't get too excited about things.

15 MS. WHITE: What you're going to is a  
16 fundamental issue of, is the FCC the only one that can  
17 interpret the Telecommunications Act, and what if this  
18 State Commission wants to interpret it differently than  
19 the FCC, is that going to be allowed or not? And it's a  
20 very fundamental question. And, unfortunately, it's one  
21 that I don't think has been raised or answered by any  
22 State Commission.

23 CHAIRMAN DEASON: And don't get me wrong, I'm  
24 not saying that -- I'm not trying to say that this  
25 Commission has the best solution to all of the problems.

1 I guess my concern is that if this Commission is asked to  
2 take the time, our resources, our Staff, State funds,  
3 because we don't receive any federal dollars at this  
4 Commission, utilize State dollars to arbitrate these  
5 things, make decisions, and it really have no meaning,  
6 it's just at the whim of the FCC to change a rule or  
7 whatever, and then everything changes from that point  
8 forward, you know, it may be best that they need to beef  
9 up their resources and get all of their hearing staff and  
10 they just arbitrate everything. They can arbitrate, you  
11 know, 100 cases a year from 50 states, have 5,000 cases a  
12 year, and then they can call all of the shots. You know,  
13 is that an unreasonable expectation?

14 MS. WHITE: Well, it's going to be horrible  
15 because the FCC is purely a paper practice. So they're  
16 not going to hear any evidence, like you all do; they're  
17 not going to see any witnesses, like this Commission does.  
18 So it would be interesting to see whether that -- I mean,  
19 some of these things are difficult to explain enough in  
20 person; on paper, it can get pretty scary.

21 MR. MELSON: And, you know, Chairman Deason, the  
22 part of the unanswerable question or unanswered  
23 question -- I guess it's answerable, but not by us here  
24 today -- is in any given case, to what extent does the FCC  
25 rule occupy the field, and have anything that the State

1 Commission might do be inconsistent with it, to what  
2 extent does it not occupy the field and allow for tailored  
3 State decisions that go beyond or modify in a way that's  
4 not inconsistent? Because of the narrow focus of this  
5 rule, it appears to me, sitting here today, that this may  
6 be one that is more prescriptive than many. But I think  
7 in many, many of the issues you deal with, for example,  
8 some of the issues you were dealing yesterday with in the  
9 collocation docket, that you probably have a great deal of  
10 flexibility to go beyond what the FCC may have done.

11 MS. WHITE: But that may be an issue that needs  
12 to be raised in each case at the beginning of the case.  
13 Parties, be prepared or make -- either make it as a formal  
14 issue or make it as an unwritten issue that the parties  
15 better be prepared to say to what extent they believe the  
16 FCC controls this area and what the FCC has done controls  
17 this area and how much flexibility or freedom does the  
18 State Commission have in this particular issue.

19 And maybe that needs to be a question -- a  
20 formal issue, a cleanup issue, as you made just like a --  
21 should this docket be closed issue that goes in every way,  
22 and then that way, both sides get to argue whatever they  
23 need to argue on that? The Commission gets a better  
24 understanding from both parties as to how much flexibility  
25 they have on a particular issue, and it may be that the

1 answer on some of the issues is, you have no flexibility.  
2 You've got to enforce the rule, and here are the facts  
3 you've got to apply that rule to. And other issues it may  
4 be, the FCC hasn't spoken in that area, so you're  
5 completely free to apply your best judgment and the law of  
6 the State and the Act.

7           So, I mean, that may be a thing to look at, a  
8 process to look at. Either make it an unwritten or  
9 written formal issue in each case.

10           CHAIRMAN DEASON: Mr. Melson, what's your take  
11 on that?

12           MR. MELSON: I'm reacting off the top of my  
13 head, but that sounds like it has some merit to it, at  
14 least until we have worked through enough of these to try  
15 to figure out exactly what the Commission's role is.  
16 Having the parties focus on that and address it in a  
17 coherent way might be beneficial to all of us.

18           CHAIRMAN DEASON: Mr. Vaccaro, you're taking all  
19 of this in, I take it; is that right?

20           MR. VACCARO: Yes, Chairman.

21           CHAIRMAN DEASON: While I'm not trying to -- I  
22 don't think it would be appropriate to try to add such an  
23 issue at this late date in this hearing, but when  
24 things -- you know, the purpose of a prehearing conference  
25 is basically to layout the groundwork and put everyone on

1 notice as to the way the hearing is going to be conducted.  
2 And I know testimony has already been filed, and so I  
3 don't want to interject anything so extraneous that it  
4 could not have been contemplated at the onset of this,  
5 so -- but I think for future proceedings, that's something  
6 that we need to give serious consideration to.

7 MR. VACCARO: Mr. Chairman, I will certainly  
8 bring that up with Ms. Keating and with General Counsel,  
9 Legal Services' Director.

10 CHAIRMAN DEASON: And you need to bring that up,  
11 and whatever the appropriate mechanism is, while I think  
12 it's late in this process and other proceedings, maybe  
13 there is time to be able to put parties on notice that  
14 this is an issue which needs to be addressed. And if it  
15 has to be addressed in testimony, so be it. Or if it's  
16 something that can be briefed, so be it. But I think it  
17 would be beneficial, not only to the Commission, but to  
18 the participants in these cases, to have a clear  
19 understanding as to what the Commission's role is, what  
20 the jurisdiction is, what is the effect of our decisions.

21 And if going in, if it is, and if the parties  
22 agree that it is a simple ministerial action of taking  
23 evidence on some facts and saying these facts dictate  
24 according to FCC rule, or whatever else the standard is,  
25 that that is the outcome. If that's our role, I just want

1 to understand that going in. And it may -- while it's one  
2 more issue to be addressed, I think it may be beneficial  
3 in the long term.

4 MR. MELSON: And, Commissioner Deason, I agree  
5 with you. I'm wondering in light of the discussion we  
6 have had, I'm rethinking the advisability of doing opening  
7 statements and wondering if brief opening statements might  
8 not help. By that time, we will have had a chance, I  
9 think each of us, to consider exactly what we believe the  
10 Commission's role is in this particular case and to do  
11 perhaps a ten-minute opening statement that lays out our  
12 view and tries to show how our testimony fits into that  
13 framework.

14 CHAIRMAN DEASON: Ms. White?

15 MS. WHITE: Either that or put it in the brief,  
16 agree to put it in the brief.

17 CHAIRMAN DEASON: I prefer opening statements.

18 MS. WHITE: Okay.

19 CHAIRMAN DEASON: I think it would be beneficial  
20 for me and the other panel members to hear that going in.  
21 It may generate some questions. I don't know.

22 MR. MELSON: Undoubtedly.

23 MR. VACCARO: Mr. Chairman, let me ask you a  
24 question. In your mind, would that strictly be for  
25 informational purposes? Because I'm thinking if we don't

1 have an issue on it, I don't imagine this would be  
2 something that has to have a ruling on.

3 CHAIRMAN DEASON: Well, there's not a specific  
4 issue on this. We can't avoid it. I mean, we're here  
5 exercising jurisdiction, whatever that jurisdiction is. I  
6 think that we need to know what the parties' expectations  
7 are in that regard. So even though there's not a specific  
8 issue per se, it's something that -- you know, it's  
9 always -- it may not be listed as Issue 1, 2, or 3, it's  
10 always an issue. You can't avoid it.

11 And if the parties are willing to address it --  
12 and it's not going to be just that jurisdictional  
13 question. The opening statements will be for whatever  
14 purpose the parties see fit, and if you see fit to address  
15 that and put the factual issues in context of the FCC rule  
16 and what our jurisdiction is under that rule, I think  
17 that's what would be helpful.

18 MR. MELSON: And mentally, that's what I'm  
19 thinking we will try to do.

20 CHAIRMAN DEASON: Okay.

21 MS. WHITE: That sounds fine.

22 CHAIRMAN DEASON: Okay. The facts -- this seems  
23 to be a fairly straightforward case, and I would think  
24 that a ten-minute opening statement would be more than  
25 ample, and I would just put in the prehearing order that

1 ten minutes per side for opening statements. And there is  
2 no need to mention what the subject matter of the opening  
3 statement is going to be. That's at the discretion of the  
4 parties.

5 MR. VACCARO: Okay.

6 CHAIRMAN DEASON: Okay. Back to Issue 1. I  
7 take it, the parties are comfortable with the wording of  
8 the issue?

9 MR. MELSON: Yes, sir.

10 MS. WHITE: Yes.

11 CHAIRMAN DEASON: Any changes or corrections to  
12 positions? No. Issue 2?

13 MR. MELSON: No changes.

14 MS. WHITE: No changes.

15 CHAIRMAN DEASON: Issue 3?

16 MR. MELSON: No changes.

17 CHAIRMAN DEASON: Very well. Issue 4?

18 MR. MELSON: No changes.

19 CHAIRMAN DEASON: Okay. Section 9, Exhibit  
20 List, any changes or corrections?

21 MR. MELSON: No, sir.

22 MS. WHITE: No.

23 CHAIRMAN DEASON: None. Very well. There are  
24 no proposed stipulations, and there are no pending  
25 motions. There is a pending confidentiality matter. This

1 is being handled by normal procedure; is that correct?

2 MS. WHITE: That's correct.

3 MR. MELSON: Yes, sir.

4 CHAIRMAN DEASON: There's no outstanding  
5 dispute?

6 MR. MELSON: No, sir.

7 MS. WHITE: No.

8 MR. MELSON: We have got probably six items of  
9 confidential information in one piece of testimony, so at  
10 the hearing, we will have copies in red envelopes for the  
11 Commissioners of those two pages.

12 CHAIRMAN DEASON: Very well. Anything else to  
13 come before the Prehearing Officer?

14 MR. VACCARO: No, sir.

15 MS. WHITE: Nothing.

16 CHAIRMAN DEASON: I want to express my gratitude  
17 to the two parties here today which I asked some  
18 questions, and I sincerely appreciate your responses.  
19 They have been helpful, but I still think this, to some  
20 extent, is an ongoing question.

21 And, Ms. White, your suggestion, while we will  
22 take it under consideration, appears to have some merit.  
23 And maybe it needs to be -- not something that needs to be  
24 briefed, but perhaps it should be a threshold issue at the  
25 very beginning so we understand what the rules of the game

1 are going in and what is expected of this Commission. You  
2 know, I don't want to shirk any responsibility.

3 MS. WHITE: Right.

4 CHAIRMAN DEASON: I just want somebody to tell  
5 me what my responsibility is and what my authority is.

6 MS. WHITE: We all want to know that our time  
7 isn't being wasted, that's for sure.

8 CHAIRMAN DEASON: Thank you all.

9 MS. WHITE: Thank you.

10 CHAIRMAN DEASON: This prehearing conference is  
11 adjourned.

12 (Prehearing conference concluded at 10:04 a.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, TRICIA DeMARTE, Official FPSC Commission Reporter, do  
6 hereby certify that the Prehearing Conference in Docket  
7 No. 991755-TP was heard by the Florida Public Service  
8 Commission at the time and place herein stated.

7

8 It is further certified that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript, consisting of 26 pages, constitutes a true  
12 transcription of my notes of said proceedings.

10

11 I FURTHER CERTIFY that I am not a relative, employee,  
12 attorney or counsel of any of the parties, nor am I a  
13 relative or employee of any of the parties' attorney or  
14 counsel connected with the action, nor am I financially  
15 interested in the action.

13

DATED this 4th day of August, 2000.

14

15

*Tricia DeMarte*

16

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