



1 BEFORE: CHAIRMAN J. TERRY DEASON  
2 COMMISSIONER E. LEON JACOBS, JR.

3  
4 DATE: Tuesday, August 1, 2000

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7 PLACE: Betty Easley Conference Center  
8 Room 148  
9 4075 Esplanade Way  
10 Tallahassee, Florida

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1 PARTICIPATING:

2 BETH KEATING, FPSC Division of Legal Services.

3 LENNIE FULWOOD, FPSC Division of Economic  
4 Regulation.

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

2 CHAIRMAN DEASON: Item 23.

3 MS. KEATING: Commissioners, Item 23 is staff's  
4 recommendation on the motions for reconsideration filed  
5 with regard to the Commission's post-hearing decision in  
6 the collocation proceeding and Sprint's request for oral  
7 argument.

8 In Issue 1 staff recommends that Sprint's  
9 request for oral argument be denied.

10 CHAIRMAN DEASON: Hold on just a second. I  
11 believe this is just Commissioner Jacobs and myself,  
12 correct?

13 MS. KEATING: That is correct.

14 CHAIRMAN DEASON: Commissioner Jacobs, I just  
15 have questions on a few of the items in Issue 2. I don't  
16 know, you may want to hear staff's explanation for all 13;  
17 if you do, that is great. But if it is all right with  
18 you, we can just concentrate on the ones we have questions  
19 on. Okay.

20 I have questions on -- as it pertains to Issue 2  
21 on Items 2, 3, 4, and 8.

22 COMMISSIONER JACOBS: If I can have a page with  
23 a number. Mine only had to do with Number 4, Item 4.

24 CHAIRMAN DEASON: Item 4 on Issue 2?

25 COMMISSIONER JACOBS: Yes.

1           CHAIRMAN DEASON: Okay. See, we have already  
2 narrowed it down a lot. Okay. You can go ahead and  
3 describe Item 2 under Issue 2.

4           MS. KEATING: Two is with regard to the  
5 conversion of virtual to physical collocation. Staff is  
6 recommending that BellSouth and GTE-Florida's motions for  
7 reconsideration on this point be granted. In view of the  
8 fact that the federal court has now rendered an  
9 interpretation of federal law that is directly contrary to  
10 this Commission's interpretation on this point, we believe  
11 the Commission decision could be considered in error.

12           Therefore, in conformance with the U.S. Court of  
13 Appeals for the D.C. Circuit's ruling, the Commission  
14 should determine that the ILEC rather than the ALEC may  
15 determine where the ALEC's physical collocation equipment  
16 should be placed within a central office even in  
17 situations where the ALEC is converting from virtual to  
18 physical collocation.

19           CHAIRMAN DEASON: Okay. The question that I  
20 have pertains to this particular item as well as it is  
21 kind of a recurring theme, so to speak, and it is evident  
22 within this particular recommendation. The federal court  
23 has made a decision. That decision has overturned some of  
24 the FCC's decisions in one form or another. We have had a  
25 hearing in this state. We have taken evidence and we have

1 made a decision. That decision is consistent with what  
2 the -- in some of these issues -- is consistent with what  
3 the FCC had done within their rule.

4 Now a federal court has said those rules are  
5 wrong. But does that mean that we are wrong? And it  
6 raises -- and if you say yes, it does, then it raises  
7 another question. And I'm going to go ahead and pose the  
8 question, you maybe can address it, too. If we in this  
9 state under our own statutory authority and whatever  
10 authority we have under the federal act, if we go to all  
11 the trouble, time and expense of having a hearing, getting  
12 all of these parties to participate, take testimony, have  
13 cross-examination, have briefs filed, staff make a  
14 recommendation, we deliberate on it, we make a decision,  
15 why do we do that if every time the federal court does  
16 something we just say, "Well, we have got to change our  
17 decision."

18 Why don't we just say no decisions from this  
19 state until the federal court rules. Because every time  
20 we come before you all say the federal court has done  
21 something, and I'm sorry, Commission, sorry you took all  
22 the time to take the evidence and make a decision, the  
23 court has said something different. So why do we even  
24 bother to have a hearing in this state? That is my  
25 question.

1 MS. KEATING: Okay. First off, going back to  
2 the point of whether you could make a decision separate  
3 and apart from what the FCC had done based on your own  
4 record. I believe that you could. The problem is that  
5 with regard to these specific issues there wasn't much of  
6 a record beyond what the FCC had done. The vast majority  
7 of testimony and evidence presented was discussion of the  
8 FCC's decision.

9 CHAIRMAN DEASON: Let me interrupt you a second.  
10 I agree. If this Commission, if we were to just say we  
11 default and we are just going to do whatever the FCC says,  
12 and then the FCC is overturned, I agree with you, we don't  
13 have a leg to stand on. If we are going to defer to the  
14 FCC to begin with, that's fine. But when we take  
15 evidence -- and I'm looking at your own recommendation on  
16 Page 15, you state, "Although there is a significant  
17 amount of testimony in the record that supports the  
18 Commission's decision, the D.C. Circuit has specifically  
19 rejected similar rationale used by the FCC."

20 MS. KEATING: I understand your point. But on  
21 two of the points, the cross-connects and conversion of  
22 virtual to physical collocation, I think the problem there  
23 is that the court did specifically state that it disagreed  
24 with the exact same rationale that the Commission was  
25 going with in its decision.

1           CHAIRMAN DEASON: Now, did the FCC take evidence  
2 and make a decision and the court said that their  
3 decision-making was faulty and --

4           MS. KEATING: And they said that their rationale  
5 was faulty, as well.

6           CHAIRMAN DEASON: Uh-huh.

7           MS. KEATING: Like, for instance, with  
8 cross-connects, the court specifically said that the act  
9 doesn't reach the issue of cross-connecting between ALECs,  
10 that it only addresses the issue of interconnection and  
11 collocation between an ILEC --

12          CHAIRMAN DEASON: We have a statute in this  
13 state, though, that promotes competition. Do we have the  
14 authority under Chapter 364 to make the decision that we  
15 made?

16          MS. KEATING: I believe that we could do that,  
17 Commissioner. But when we went to hearing on these  
18 issues, I believe that the issues as they were approached  
19 and addressed by the parties were addressed more from the  
20 perspective of the Telecom Act versus state authority.

21          Now parties have come back in on reconsideration  
22 and said, well, you have state authority to do this now.  
23 But in the original hearing that wasn't the approach that  
24 was taken. This hearing was done mostly under the  
25 auspices of the Telecom Act.



1           CHAIRMAN DEASON: So if we have a hearing in  
2 this state and people just come in and tell us why the FCC  
3 is right or wrong, we can just kick them out and say tell  
4 us why we are right or wrong under our state act? I mean,  
5 this is a very -- this to me is a very important point. A  
6 very important point. And in all honesty, I am tired of  
7 the federal government and the FCC telling us what we can  
8 and can't do when we have got some provisions under our  
9 own act and we have got to promote competition the way we  
10 see fit.

11           MS. KEATING: Well, if we came in under state  
12 authority any appeals wouldn't go to that same federal  
13 court, so the likelihood that you might get a different  
14 decision. Our concern was that this is something that has  
15 been done, like I said, under the auspices of the Telecom  
16 Act. And a federal court has specifically said that the  
17 rationale that the Commission based its decision on is  
18 just wrong.

19           CHAIRMAN DEASON: They are saying that we cannot  
20 require interconnects in a central office between  
21 collocators, we cannot require that?

22           MS. KEATING: That is correct under the federal  
23 law.

24           CHAIRMAN DEASON: Can we require it under state  
25 law?

1           COMMISSIONER JACOBS: Under your rationale the  
2 proceeding where we adopted collocation should have been  
3 more appropriately called implementation of FCC rule  
4 number, whatever rule got vacated here. Is that what we  
5 did?

6           MR. FULWOOD: In part, basically when it came  
7 down to this proceeding it was based on --

8           COMMISSIONER JACOBS: No, no, no. There is a  
9 little subtle distinction there. A little lawyer's trick.

10           Did we actually implement an FCC rule pursuant  
11 to jurisdiction they gave us, ala, number conservation?

12           MS. KEATING: We weren't actually implementing.

13           COMMISSIONER JACOBS: I agree. So if that is  
14 the case, why then should the vacation of an FCC rule  
15 disrupt our decision?

16           MS. KEATING: Because the entire basis of the  
17 analysis --

18           COMMISSIONER JACOBS: In a court decision.

19           MS. KEATING: -- in the Commission's decision in  
20 this record was based on the FCC's decision.

21           COMMISSIONER JACOBS: Yet and still we weren't  
22 implementing that rule.

23           MS. KEATING: No, we weren't. But like I said,  
24 the vast majority of the testimony relied on portions of  
25 the order that were vacated. And when the Commission --

1           CHAIRMAN DEASON: But there has to be a reason  
2 for witnesses to come here and say this is the appropriate  
3 way to promote competition, or to facilitate  
4 interconnection, or whatever the goals we are trying to  
5 accomplish other than just saying this is what the FCC  
6 said. If that is all the testimony that we have in these  
7 proceedings, there is no reason to have witnesses come in.  
8 All we have got to do is read what the FCC said.

9           MS. KEATING: And maybe that is the answer.  
10 Maybe in the future we do need to broaden the scope of how  
11 we look at these things and perhaps see if we can get  
12 testimony that relates more to the state act as opposed to  
13 the federal act. But the problem was in this case that  
14 the parties came in and that was the tack they were  
15 taking. They were presenting evidence based on the  
16 Telecom Act and that is what you have in the record.

17           COMMISSIONER JACOBS: I will have to trust your  
18 recollection of the proceeding because I, quite frankly,  
19 can't remember back. I did remember, however, a  
20 discussion by some witness, and I'm sorry if I can't  
21 remember, but about the diseconomies that occurred when  
22 they are sitting there in place and all that has to be  
23 done is some rewiring. And there is this need, according  
24 to the proposal that was given by the ILECs, of actually  
25 taking their equipment out of there, putting it into a

1 different rack, totally new wiring. I thought we had some  
2 witness testimony on that.

3 MS. KEATING: I believe you did.

4 CHAIRMAN DEASON: It is an efficient way to  
5 promote interconnection between competitors, wasn't there  
6 testimony to that regard?

7 MR. FULWOOD: What he was just speaking on, I  
8 think, was converting virtual.

9 CHAIRMAN DEASON: Oh, okay.

10 COMMISSIONER JACOBS: Converting virtual to  
11 physical, which was this item, right? That is  
12 Commissioner Deason's --

13 MR. FULWOOD: I think Commissioner Deason is  
14 speaking on three different issues, which is --

15 CHAIRMAN DEASON: Right now we are on Issue 2,  
16 and I think that has to do with interconnections between  
17 collocators.

18 MS. KEATING: That is cross-connects.

19 MR. FULWOOD: That is cross-connects. Number  
20 two is the conversion of virtual to physical collocation.

21 CHAIRMAN DEASON: I'm sorry, I'm getting ahead  
22 of myself.

23 MR. FULWOOD: They did have testimony on that  
24 issue, and the efficiencies of that issue. But what we  
25 based our decision on and the testimony that was given as

1 far as converting in place is we are not disagreeing with  
2 converting virtual to physical collocation. The essence  
3 is converting virtual to physical collocation in place  
4 means the ALEC can choose to keep their equipment in the  
5 same location, and the reason -- the foundation upon our  
6 decision to allow them to keep their equipment in place  
7 was the advanced services order. I think it was Paragraph  
8 42 that said they can put -- they are allowed, ALECs are  
9 allowed to choose to put their equipment anywhere in the  
10 central office if there is space available.

11 Now that does not mean that this staff  
12 necessarily agreed with that, but posed with the FCC rule  
13 or order that said this is what you have to allow, I don't  
14 believe we can do less than that. We can do more than  
15 that, but we can't turn around and do less. So even if we  
16 did not agree with that for the State of Florida, the FCC  
17 would supersede the state.

18 CHAIRMAN DEASON: I guess it goes back to the  
19 same question of Commissioner Jacobs. Are we just a field  
20 office for the FCC, subservient to their rules, and we  
21 just implement their rules? We are the ones that sit in  
22 here for hours on end and hear all the evidence just to  
23 implement their rules, is that our function? Are we  
24 relegated to that?

25 MS. KEATING: I really wouldn't take it that

1 far. I think Mr. Fulwood has got a good point. We can't  
2 really do less than what they require. But if we think  
3 there are additional requirements that are consistent with  
4 the act and not inconsistent with what the FCC is doing,  
5 we can do that. The problem is is that with these three  
6 points that the court specifically addressed --

7 COMMISSIONER JACOBS: Now you take me to the  
8 exact point that I think is really important here. What  
9 you are saying is that we have to act consistent with the  
10 act. The language in the statute says -- on this point  
11 says what?

12 MS. KEATING: Are you talking of virtual?

13 COMMISSIONER JACOBS: On collocation, 251(c)(6).  
14 I have it here, I will read it. You don't have to search  
15 for it. 251(c)(6) says the duty -- this is a section that  
16 imposes duties on -- for interconnection on the ILECs. It  
17 says, "The duty to provide rates, terms, and conditions  
18 that are just, reasonable, and nondiscriminatory for  
19 physical collocation of equipment necessary for  
20 interconnection or access to unbundled network elements at  
21 the premises of the local exchange carrier, except that  
22 the carrier may provide for virtual collocation if the  
23 local exchange carrier demonstrates to the state  
24 commission that physical collocation is not practical for  
25 technical purposes or because of space limitations."

1 MS. KEATING: But that gets to the issue of  
2 space or technical feasibility, not --

3 COMMISSIONER JACOBS: It has to do with standard  
4 of proof and to who.

5 MS. KEATING: That I think --

6 COMMISSIONER JACOBS: Help me here, because the  
7 words say something to me.

8 MS. KEATING: I think what you are reading  
9 there, that gets to the issue of whether or not they have  
10 to provide physical collocation versus virtual  
11 collocation. It doesn't get to the issue of converting  
12 virtual collocation to physical collocation or the  
13 placement of the equipment within the office.

14 COMMISSIONER JACOBS: Why?

15 MS. KEATING: Because all you are talking about  
16 here, all the language is talking about is that they have  
17 the duty to provide physical collocation and access.

18 COMMISSIONER JACOBS: I thought the only way we  
19 got to talk about conversion was pursuant to this  
20 provision. I wasn't aware of another provision that  
21 directed us to address conversions from physical to --  
22 from virtual to physical or vice versa. Help me  
23 understand what the statute says where there is another  
24 grant of authority that allows us to look at conversion.

25 MR. FULWOOD: We are in no way saying that they

1 cannot -- there is no, that I can recall, statute about  
2 converting --

3 COMMISSIONER JACOBS: So we are still talking  
4 about this grant of authority?

5 MR. FULWOOD: Right. But we are not saying they  
6 cannot convert virtual to physical.

7 COMMISSIONER JACOBS: No, no. Understand, I  
8 agree with -- I understand what you are saying. You are  
9 saying that they can convert, but in doing so they must  
10 adhere to the provisions in the FCC rule. And when we  
11 adopted our provisions, we sought to confine our  
12 deliberations to the boundaries of the FCC rule. That is  
13 what I hear your argument saying.

14 MR. FULWOOD: Whether they can choose where  
15 equipment goes into a central office.

16 COMMISSIONER JACOBS: No, no, no. Let me step  
17 back for a minute. I want to be real clear about this.  
18 Because what I hear your argument saying is because the  
19 FCC rule is vacated, we can't look at our independent  
20 deliberations to determine what criteria should apply as  
21 to conversions from virtual to physical. If that is the  
22 case --

23 MS. KEATING: I think I see where you are going.  
24 I think that we probably could as long as it doesn't  
25 conflict with what the FCC has done or with the act. The



1 problem is is that there has now been an interpretation of  
2 the act by a federal court.

3 COMMISSIONER JACOBS: As to the FCC's actions.

4 MS. KEATING: Right. But the rationale behind  
5 those actions as well, which was that the ILEC should have  
6 the ability to decide where in a central office the ALEC's  
7 equipment should go rather than the ALEC. And I think  
8 even if we are not preempted by what the FCC does, I think  
9 you run into a problem taking that same rationale and  
10 applying it even under state law.

11 COMMISSIONER JACOBS: I get exactly the opposite  
12 result. The only thing that could have happened to us in  
13 the FCC rule is we could have been preempted. And what  
14 you are telling me is that a court just said to the FCC  
15 what you did doesn't stand.

16 What that says to me is that whatever preemption  
17 there was or possibly was no longer exists, and the  
18 language in this statute should be more guiding than an  
19 FCC rule. I go the exact opposite way. Help me  
20 understand why that is not the case.

21 MR. FULWOOD: As staff we agree with what the  
22 court said is what it comes down to. They said that  
23 letting the ALEC choose where their equipment was going to  
24 go was basically giving them landlord control. And as  
25 staff, we agree that that is giving the ALEC landlord

1 control.

2 COMMISSIONER JACOBS: And understand what I'm  
3 saying is exactly consistent with what you are saying.  
4 What you are saying is that the court looked at the FCC's  
5 implementation of this statute and determined that what  
6 the FCC did was too broad.

7 Now, what I am saying is that -- and what I hear  
8 you say also was that our direction is what we should have  
9 done should have come from the rule. I am questioning  
10 that. Understand what I'm saying. I am questioning  
11 whether or not we should be looking at what the statute  
12 says and then determine whether or not the FCC's actions  
13 have served to preempt what we have done.

14 The only way that could have happened is if they  
15 had done a rule. They did a rule, we thought we were  
16 consistent with that rule. Now that rule is out the  
17 window. So any standard that would have preempted us,  
18 i.e., some FCC rule, is not there. So we, in my mind,  
19 stand on equal footing now to interpret and apply this  
20 statute, which I thought we took evidence to do.

21 MR. FULWOOD: But what we had in place before  
22 this proceeding did take into account that statute.

23 COMMISSIONER JACOBS: Right.

24 MR. FULWOOD: Now, when the FCC comes out with  
25 an advanced services order or a remand order, the ALECs

1 say, okay, now we can have this, now we can have that,  
2 because the FCC said so. So your --

3 COMMISSIONER JACOBS: That is the point of  
4 divergence, where we go from. If that were the case, then  
5 Commissioner Deason's characterization would be exactly  
6 correct. We should not make a move and do anything  
7 regarding this statute until the FCC says so. If that  
8 were the case, that is exactly where our function should  
9 serve.

10 I don't read the statute to say that. In fact,  
11 what I read the statute to say is, companies, come show  
12 your state commission how you want to implement this and  
13 they will approve it. Help me.

14 MR. FULWOOD: And we wouldn't approve the  
15 conversion in place without the FCC making it a rule or an  
16 order. So when they made it an order the testimony refers  
17 to that order, and we will turn around and follow that  
18 order.

19 CHAIRMAN DEASON: You are saying our decision  
20 was because it is an FCC rule, that is what we are going  
21 to do.

22 MS. KEATING: Essentially, yes, Commissioner.

23 CHAIRMAN DEASON: That's our fault.

24 MS. KEATING: And that brings us back to the  
25 point that this is a motion for reconsideration. And the

1 standard is whether or not they have pointed out a mistake  
2 of fact or law. And it looks like it is a mistake of law  
3 now.

4 CHAIRMAN DEASON: No, it is our fault that we --  
5 if we are going to go to all the time, trouble, and  
6 expense of having an evidentiary hearing, the only thing  
7 we do is say the FCC said it, that is what we are going to  
8 do. We should not be in that position or else we  
9 shouldn't even be trying the case.

10 MS. KEATING: But remember you are doing it, you  
11 are making your decision based upon what evidence the  
12 parties present to you. If that is all they are  
13 presenting to you, that is what you have to base your  
14 decision on. I mean, this whole proceeding was instituted  
15 based on the Telecom Act, not based on state --

16 COMMISSIONER JACOBS: No, no, that is not what  
17 you just told me. What you just told me is this  
18 proceeding was implemented because of an FCC rule.

19 MS. KEATING: That comes from the Telecom Act.

20 COMMISSIONER JACOBS: Okay. Then if that is the  
21 case, why in the world then are we preempted to act  
22 with -- the recommendation here is that we are preempted  
23 from acting because an FCC rule was vacated.

24 MS. KEATING: I don't think we are saying that  
25 you are preempted from acting. What we are saying is that

1 the motions for reconsideration on conversion of virtual  
2 to physical, on cross-connects between collocators, and  
3 the equipment -- a motion should be granted on those  
4 points because your decision was based upon portions of  
5 the FCC's order that have now been vacated.

6 COMMISSIONER JACOBS: Okay. I am prepared to  
7 make a motion now.

8 MS. KEATING: Whether or not the Commission  
9 could have made another decision under state law or taken  
10 evidence under state law is beyond the point, frankly.  
11 Because what you have -- the standard that you are faced  
12 with is whether or not there is a mistake of fact or law  
13 in rendering your decision. The mistake of law has now  
14 been pointed out by the federal court and the entire basis  
15 for your decision is gone.

16 COMMISSIONER JACOBS: I'm prepared to make a  
17 motion.

18 MS. KEATING: You know, I hate to oversimplify,  
19 but at least that is staff's perspective.

20 CHAIRMAN DEASON: Well, what exactly is our  
21 role?

22 MS. KEATING: A lot of people have asked that  
23 question. There are provisions in the act that give the  
24 state commissions specific direction.

25 COMMISSIONER JACOBS: This one doesn't apply,

1     though. This Subsection 6 doesn't apply, though, does it?

2             MS. KEATING: I think, you know, with regard to  
3     collocation --

4             COMMISSIONER JACOBS: I'm being cynical. Please  
5     forgive me, I'm probably cynical.

6             MS. KEATING: One of the things that we are  
7     doing now with regard to collocation is we -- this  
8     Commission hears petitions for waiver for the requirements  
9     to provide physical collocation because of space. You  
10    have heard several of them. You have already developed  
11    collocation guidelines that direct companies on how to  
12    file those petitions for waiver. I mean, you have been  
13    considering those, there have been several that have  
14    already come before the Commission.

15            With regard to any further rules, essentially  
16    our view is that what the FCC doesn't cover, or isn't  
17    clear on, that is where the state commission steps in and  
18    that is where we were going in this docket.

19            CHAIRMAN DEASON: So it is what the FCC doesn't  
20    cover or is unclear on, that is our role?

21            MS. KEATING: Essentially, yes.

22            CHAIRMAN DEASON: So why do these hearings last  
23    so long if that is all that we do?

24            MS. KEATING: There is a lot that the FCC isn't  
25    clear on.

1           COMMISSIONER JACOBS:  If that is the case, why  
2 isn't the record from our hearings transmitted to the FCC  
3 for them to implement their rule?

4           MS. KEATING:  Because it is not -- our record  
5 isn't necessary for them to implement their rule.  We  
6 only -- the record is only necessary here for purposes of  
7 developing whatever additional requirements this  
8 Commission may promulgate.

9           COMMISSIONER JACOBS:  I agree.  I'm ready to  
10 make a motion, if you want me to.

11          CHAIRMAN DEASON:  Please do.

12          COMMISSIONER JACOBS:  I think there is a mistake  
13 of fact, I'm sorry, a mistake of law.  And it is that we  
14 have relied solely on the rule.  I think we have  
15 independent jurisdiction to hear evidence and make  
16 decisions pursuant to the federal statutes that does guide  
17 our decisions, and where the FCC has preempted us clearly  
18 I think we have to abide by that.

19                 In this instance whatever preemption there may  
20 have been in my mind, even if we are bound, and we didn't  
21 get into all the legal issues here about whether or not we  
22 are bound by a circuit decision and all those sorts of  
23 things, but even if we are bound by that decision, at best  
24 where we are is that a FCC rule that might have preempted  
25 us has been vacated.

1           And I see no indication here that the vacation  
2 of that rule automatically preempts us absent some court  
3 decision saying such. And I see no reason why we should  
4 stand back from our decision automatically because of a  
5 court decision indicating that the FCC didn't have  
6 sufficient evidence in promulgating its rule. That is  
7 what in large part that court decision says.

8           If, in my mind, we had sufficient evidence to  
9 support our decision, and that is what I have not heard,  
10 that is the most disturbing thing I have heard today here  
11 is that we went through a -- I don't know how long it was,  
12 and we didn't come up with enough evidence to support our  
13 decision. And we walked away from that proceeding and  
14 simply said because the FCC said so, we -- and I  
15 understand the implications of that. It said that you  
16 heard all of that testimony and you disregarded it. You  
17 didn't do that. You are too smart for that. We are too  
18 smart for that.

19           We heard evidence to implement this statute, not  
20 to implement an FCC rule. The FCC rule gave us guidance.  
21 It did not give us authority. The federal statute gave us  
22 authority expressly by its terms. And absent that  
23 authority being taken away by a court, I think we have  
24 authority to issue our decision.

25           There are uncertainties, but the only way to get



1 to those uncertainties is to get a court to speak up and  
2 be very clear. And I may be grossly mistaken, but I  
3 believe that we have the jurisdiction to stand by our  
4 original decision, at least until this decision is  
5 finalized. At minimum until the Eighth Circuit decision  
6 is finalized. I would argue, even in the face of that  
7 decision, we have jurisdiction to stand by our original  
8 decision, and that would be my motion to deny staff.

9 CHAIRMAN DEASON: Well, I have a question. It  
10 goes back, I guess, to the first question that I asked,  
11 and what triggered my initial question was the statement  
12 in staff's recommendation that there is a significant  
13 amount of testimony in the record that supports our  
14 decision.

15 Now, I think staff has backed away from that  
16 some and indicated that, well, perhaps what we did was  
17 just defer to the FCC and this is what the parties did in  
18 their testimony. And I guess that is where I am hung up.  
19 We are on reconsideration. And we are not retrying this  
20 of whether this is good policy or bad policy, whatever  
21 reason we made the decision. And I guess my concern is if  
22 we based it upon competent substantial evidence as to the  
23 merits of this policy one way or the other and we made a  
24 decision, that should -- it is my opinion it should stand,  
25 regardless of what the court said about the FCC rule.

1           Now, if staff is interpreting the court decision  
2 that it wasn't just invalidating the FCC rule, it is that  
3 the court's decision is that under no circumstances,  
4 states or FCC, can you under the federal act order this to  
5 take place, well, that is one thing. And I'm not sure  
6 that that is what the federal court said.

7           MS. KEATING: I don't think -- on at least two  
8 of these points, I don't think they were just invalidating  
9 an FCC rule. I mean, to the extent that they did give  
10 their opinion of what the act says. And in their opinion  
11 with regard to placement of equipment in a central office,  
12 which goes to the issue of converting virtual to physical  
13 collocation, they said --

14           COMMISSIONER JACOBS: Two questions. Did they  
15 overturn the statute?

16           MS. KEATING: No, they didn't, Commissioner.  
17 But let me point out that they did specifically say that  
18 the ILEC should be in control of where the ALEC's  
19 equipment goes in a central office. They went beyond just  
20 saying the FCC's rule --

21           COMMISSIONER JACOBS: At best that may be  
22 standing in the Eighth Circuit for somebody to come and  
23 challenge our order.

24           MS. KEATING: Well, they are challenging your  
25 order.

1           COMMISSIONER JACOBS: I'm sure that somebody  
2 will. But at best that is what we have is somebody in the  
3 Eighth Circuit coming and challenging our order. Or  
4 taking that Eighth Circuit decision and asking for it to  
5 be applied here.

6           MS. BEDELL: Commissioner, if I might suggest, I  
7 would prefer that we defer this so that our staff can do a  
8 little bit more research on the actual points related to  
9 the federal jurisdiction and our obligation to follow  
10 federal court decisions and come back to you at the next  
11 agenda, if you don't mind.

12           CHAIRMAN DEASON: Any objection?

13           COMMISSIONER JACOBS: No.

14           CHAIRMAN DEASON: Thank you. Item 23 is  
15 deferred to the next agenda.

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting  
6 FPSC Commission Reporter, do hereby certify that Agenda  
7 Item 23 in Docket Nos. 981834-TP and 990321-TP was heard  
8 by Chairman J. Terry Deason and Commissioner E. Leon  
9 Jacobs 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 24 pages, constitutes a true  
12 transcription of my notes of said proceedings.

10

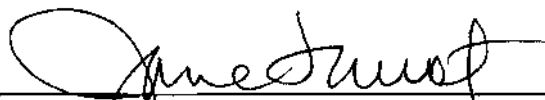
11 I FURTHER CERTIFY that I am not a relative, employee,  
12 attorney or counsel of any of the parties, nor am I a  
13 relative or employee of any of the parties' attorney or  
14 counsel connected with the action, nor am I financially  
15 interested in the action.

13

14 DATED this 4th day of August, 2000.

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JANE FAUROT, RPR  
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