

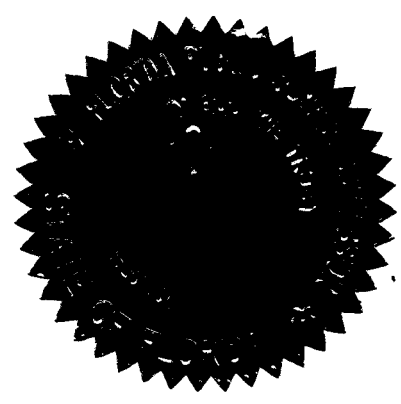
BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of

PROPOSED AMENDMENTS TO RULES
25-4.003, F.A.C., DEFINITIONS;
25-4.110, F.A.C., CUSTOMER
BILLING FOR LOCAL EXCHANGE
TELECOMMUNICATIONS COMPANIES;
25-4.113, F.A.C., REFUSAL OR
DISCONTINUANCE OF SERVICE BY
COMPANY; 25-24.490, F.A.C.,
CUSTOMER RELATIONS; RULES
INCORPORATED; AND 25-24.845,
F.A.C., CUSTOMER RELATIONS;
RULES INCORPORATED.

DOCKET NO. 990994-TP



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PROCEEDINGS: RULE HEARING

BEFORE: CHAIRMAN J. TERRY DEASON
 COMMISSIONER E. LEON JACOBS, JR.
 COMMISSIONER LILA A. JABER

DATE: Monday, August 21, 2000

TIME: Commenced at 9:30 a.m.
 Concluded at 3:50 p.m.

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

REPORTED BY: JANE FAUROT, RPR
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DOCUMENT NUMBER-DATE

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CHAIRMAN DEASON: Call the hearing to order.

Have the notice read, please.

MS. BROWN: By notice issued March 31st, 2000, this time and place were set for a rule hearing in Docket Number 990994-TP, in re, proposed amendments to Rule 25-4.003, Florida Administrative Code, definitions; 25-4.110, Florida Administrative Code, customer billing for local exchange telecommunications companies; 25-4.113, Florida Administrative Code, refusal or discontinuance of service by company; Rule 25-24.490, Florida Administrative Code, customer relations; rules incorporated; and 25-24.845, Florida Administrative Code, customer relations; rules incorporated.

The purpose of the rule hearing is set out in the notice.

CHAIRMAN DEASON: Thank you. Take appearances.

MR. GOGGIN: Michael Goggin for BellSouth Telecommunications.

MR. REHWINKEL: Commissioners, Charles Rehwinkel on behalf of Sprint Communications Company, Limited Partnership. Sitting here with me at the table is Michael Ragan, who is offering comments on behalf of Sprint, as well.

MR. WAHLEN: Good morning. I'm Jeff Wahlen of

1 the Ausley McMullen law firm, P.O. Box 391, Tallahassee,
2 Florida, appearing on behalf of ALLTEL Communications,
3 Inc.

4 MS. RULE: Marsha Rule, AT&T, 101 North Monroe
5 Street, Tallahassee, and with me is Mr. Dewey Alexander,
6 who will be offering comments.

7 MS. KAUFMAN: Vicki Gordon Kaufman of the
8 McWhirter Reeves law firm, and I'm appearing on behalf of
9 the Florida Competitive Carriers Association and the
10 Association of Communications Enterprises.

11 MS. McNULTY: Donna McNulty with MCI WorldCom.
12 And with me today is Richard Bondi, who will be making
13 comments.

14 MS. CAMECHIS: Karen Camechis with the
15 Pennington Law Firm representing Time-Warner Telecom of
16 Florida.

17 MS. BROWN: And Martha Carter Brown on behalf of
18 the Florida Public Service Commission staff.

19 CHAIRMAN DEASON: Preliminary matters, Ms.
20 Brown.

21 MS. BROWN: Mr. Chairman, I think that Sprint
22 has a couple of preliminary matters, and we have a couple
23 with respect to staff's Composite Exhibit Number 1. And
24 also we can lay out a format for presentations by the
25 parties, if you would like.

1 CHAIRMAN DEASON: Okay. We will hear from Mr.
2 Rehwinkel first.

3 MR. REHWINKEL: Thank you, Mr. Chairman. Sprint
4 has made what I consider to be an unusual request, and one
5 that probably has a high risk of offending if it is taken
6 the wrong way. But we noted that the Commission finds
7 itself with a three-member panel, which is not a panel, it
8 is the full Commission at this time. And we were
9 suggesting that the Commission consider having the
10 rulemaking heard when the Commission was at full strength.

11 We certainly recognize that the situation the
12 Commission finds itself in is not within the control of
13 the existing Commissioners. We also realize that you have
14 a very tight schedule, and this is a day that has been set
15 aside for this hearing and other events overtook the
16 proceeding.

17 I am not here to offer any legal precedent that
18 says that you shall not hear a case when you are not at
19 five commissioner strength. However, we also note that
20 the Commission does not assign cases that are rulemaking
21 to less than five commissioners.

22 Our request is one that is not, I can assure
23 you, aimed at achieving a certain panel makeup. Certainly
24 right now Sprint is very opposed to these rulemakings
25 going forward. To achieve our goal we only have to

1 convince two commissioners of that, a full-strength panel
2 we would have to convince three commissioners, at least,
3 of that. So there is a risk to Sprint that, you know, we
4 could get what we ask for, and it could effect us
5 adversely.

6 Our request was offered only in the spirit that
7 rulemaking is traditionally heard by the full Commission.
8 You are technically at full Commission strength. However,
9 especially in light of some of the testimony in the
10 docket, it doesn't appear that there is any real urgency
11 for this rulemaking to proceed at this time. And that is
12 the basis for our request.

13 CHAIRMAN DEASON: Thank you. Anything further
14 from you, Mr. Rehwinkel, in preliminary matters?

15 MR. REHWINKEL: I think that we had also asked
16 that the Commission consider conducting a drawout
17 proceeding. At this point we are not prepared to press
18 that request. Under Chapter 120 a drawout request, which
19 is that the Commission hold the rulemaking in abeyance and
20 conduct an evidentiary proceeding. It can be made at any
21 time during the hearing. There are some questions that we
22 probably would be better asking of staff before pursuing
23 that matter. So at this time, although I did ask it as a
24 preliminary matter in my initial comments, I would reserve
25 that request until the appropriate time.

1 CHAIRMAN DEASON: Okay. I think as a
2 preliminary matter we certainly need to address the
3 question as to whether we are going to proceed with the
4 presently constituted Commission. And what I will do is
5 if any of the other parties have any comments along those
6 lines, I will give you a brief, a very brief opportunity
7 to address the Commission, and then I propose that we
8 decide what we are going to do with that request.

9 I will just go down. Mr. Goggin, do you have
10 any comments?

11 MR. GOGGIN: We do not have any objection to
12 going forward with the full Commission as currently
13 constituted.

14 CHAIRMAN DEASON: Okay. Mr. Wahlen.

15 MR. WAHLEN: No comments.

16 CHAIRMAN DEASON: Any comments?

17 MS. KAUFMAN: Chairman Deason, yes. ASCENT and
18 the FCCA would concur in Mr. Rehwinkel's comments. We
19 think when you are in a rulemaking and you are setting
20 policy through rules, the optimal situation would be to
21 have all five commissioners consider it. And we also
22 agree that there is no great urgency to moving forward at
23 this point in time.

24 So, as Mr. Rehwinkel stated, we have no problem
25 with three commissioners sitting on this matter, but it

1 would be our preference that the full Commission or all
2 five commissioners hear it. Thank you.

3 CHAIRMAN DEASON: Any further comments?

4 MS. RULE: Marsha Rule for AT&T. I would like
5 to echo the comments of Sprint and FCCA and point out that
6 some of the provisions that is this rule would require are
7 going to be extremely expensive and will take a long time
8 to develop. I also agree that we are certainly willing to
9 go forward with the full Commission as it is presently
10 constituted, but given the enormous amount of expense that
11 this rule will entail if applied to ALECs, we would ask
12 that you consider delaying it.

13 MS. McNULTY: And MCI WorldCom concurs in the
14 comments made by Sprint, FCCA and AT&T.

15 CHAIRMAN DEASON: Thank you. Staff, do you have
16 any comments?

17 MS. BROWN: Only two, Commissioner. The first
18 one is that it doesn't appear from my review of the rules
19 and statutes that you are required to delay this rule
20 hearing because you are only three at this time. The
21 second comment is that I think staff would agree with me
22 that they are -- there doesn't appear to be any compelling
23 need to go forward if you feel more comfortable waiting at
24 this time. And those are really the comments that we
25 have.

1 CHAIRMAN DEASON: Commissioners, questions or a
2 motion?

3 COMMISSIONER JACOBS: Well, it occurs to me that
4 the only issue here is the content of a consensus. I
5 don't think that anyone would argue that the three of us
6 come to this issue with any preconcept or prejudgment on
7 it, and I don't think that is the intent of the parties.
8 And if that is the case, then I think we hear the record.
9 Even if we have the hearing today and we want to delay the
10 proceeding, we can delay the proceeding and let another
11 Commissioner come on and read the record.

12 CHAIRMAN DEASON: So it is your recommendation
13 that we go forward?

14 COMMISSIONER JACOBS: I would move to go
15 forward.

16 CHAIRMAN DEASON: There is a motion to go
17 forward with the hearing.

18 Is there a second?

19 COMMISSIONER JABER: Second.

20 CHAIRMAN DEASON: Moved and seconded. All in
21 favor say aye.

22 COMMISSIONER JACOBS: Aye.

23 COMMISSIONER JABER: Aye.

24 CHAIRMAN DEASON: Aye. We will proceed.

25 Ms. Brown.

1 MS. BROWN: Yes, Commissioner. Staff has Staff
2 Composite Exhibit 1 to mark and move, if there is no
3 objection, into the record. It includes procedural
4 matters, the notice, a copy of the rules, and also copies
5 of the testimony and responsive comments from the parties.
6 We would like to have that marked, and move it if there is
7 no objection.

8 CHAIRMAN DEASON: It will be identified as
9 Composite Exhibit Number 1. Is there any objection?

10 MS. KAUFMAN: Chairman Deason, I don't think I
11 have an objection, I just have a question. When we filed
12 our last round of comments last week, we requested that
13 all the comments that we have filed regarding this rule be
14 incorporated. I haven't had time to look through this
15 stack, but I don't believe that all of our comments are in
16 here, and I would ask that they be included.

17 MS. BROWN: We have no objection to that. I
18 think what Ms. Kaufman is asking for is all of her
19 comments that were filed throughout the rule hearing for
20 the rules that were adopted last month, and I am afraid I
21 overlooked that. But I have no problem having it as part
22 of this record. We don't object to that.

23 CHAIRMAN DEASON: Any objections?

24 MS. BROWN: Since it is done in the same
25 proceeding, it is the same docket, they are part of the

1 same record.

2 MS. KAUFMAN: I was just going to say, I think
3 it would probably make the record most complete if that
4 were the case, if that was done for all the parties
5 because there have been numerous rounds of comments in
6 this matter all in the same docket.

7 CHAIRMAN DEASON: Any objection? Hearing no
8 objection, Staff, you will amend Composite Exhibit Number
9 1 to include all comments from all the parties that have
10 been filed in this matter?

11 MS. BROWN: Yes, Commissioner. And if I can do
12 that by incorporating it by reference, which I will need
13 to go look, since it is already filed in the docket, I
14 will do it that way. If not, I will make sure there is
15 another copy included.

16 CHAIRMAN DEASON: Very well. So with that
17 understanding, then, show then that Composite Exhibit
18 Number 1 is admitted.

19 (Composite Exhibit Number 1 marked for
20 identification and admitted into the record.)

21 MS. BROWN: Commissioner, the next thing is to
22 establish the schedule for presentations. We suggest that
23 our staff witnesses go first; Sally Simmons, Dick Durbin,
24 Rick Moses.

25 I'm sorry, first we will have a short

1 presentation by Mr. Moses that just describes the rules
2 that we are here to review today.

3 Then ALLTEL -- I'm sorry, ALLTEL is not going to
4 file comments. First BellSouth, then FCCA with direct and
5 responsive comments; then Sprint with direct and
6 responsive comments; MCI who just filed responsive
7 comments; AT&T; and Time-Warner.

8 Mr. Chairman, we haven't set a time limit. We
9 suggest ten minutes.

10 CHAIRMAN DEASON: Let me make sure. You are
11 suggesting that after we conclude with the overview by
12 staff and the staff witnesses, then we would proceed with
13 the order being BellSouth, and then FCCA?

14 MS. BROWN: Yes.

15 CHAIRMAN DEASON: And then Sprint.

16 MS. BROWN: Yes.

17 CHAIRMAN DEASON: MCI?

18 MS. BROWN: Yes.

19 CHAIRMAN DEASON: AT&T?

20 MS. BROWN: Yes.

21 CHAIRMAN DEASON: Time-Warner?

22 MS. BROWN: Yes.

23 CHAIRMAN DEASON: Okay. First of all, is there
24 any objection to that order? Mr. Wahlen.

25 MR. WAHLEN: I have no objection, I just didn't

1 want ALLTEL's not bringing forward a witness to leave the
2 impression that we are not opposed to the rule. We are
3 opposed to the rule, but we would like to just stand on
4 our written comments in the docket.

5 CHAIRMAN DEASON: Very well. So I think we have
6 an order. Now the question is time limitations.

7 MR. REHWINKEL: Mr. Chairman, before you
8 proceed, I wanted to ask if the staff would be offering
9 Mr. Hewitt to answer questions about the SERC?

10 MS. BROWN: Yes, he is here to answer questions.

11 MR. REHWINKEL: So would he be in the staff's --
12 prior to all the company witnesses?

13 MS. BROWN: We can if everyone would like that.

14 CHAIRMAN DEASON: Well, why don't we have Mr.
15 Hewitt first, then.

16 MS. BROWN: All right.

17 CHAIRMAN DEASON: And then you suggested
18 Ms. Simmons, is that correct?

19 MS. BROWN: Yes.

20 CHAIRMAN DEASON: Followed by Mr. Durbin?

21 MS. BROWN: Yes.

22 CHAIRMAN DEASON: And then Mr. Moses?

23 MS. BROWN: Yes.

24 CHAIRMAN DEASON: Okay. Ms. Brown.

25 MS. BROWN: Mr. Chairman, does the Commission

1 wish to impose a time limit on the presentations?

2 CHAIRMAN DEASON: Is ten minutes sufficient for
3 the presentations?

4 MR. REHWINKEL: Can I ask -- this is Charles
5 Rehwinkel with Sprint -- are you talking about ten minutes
6 per presenter, because ten minutes --

7 MS. BROWN: Yes.

8 MR. REHWINKEL: That would be acceptable.

9 CHAIRMAN DEASON: Very well. Now, there is
10 going to be an opportunity to ask questions following the
11 presentations, correct?

12 MS. BROWN: Yes, clarifying questions.

13 CHAIRMAN DEASON: Yes, I understand. Okay.

14 COMMISSIONER JABER: May I ask Ms. Brown a
15 question, Mr. Chairman?

16 CHAIRMAN DEASON: Sure.

17 COMMISSIONER JABER: A clarification on
18 Composite Exhibit Number 1. I think this is what you were
19 saying, Ms. Brown, but let me make sure. You are going to
20 amend the composite exhibit with all of the comments.
21 Will you make sure that we get a copy of your amended?

22 MS. BROWN: I certainly will.

23 CHAIRMAN DEASON: Okay. I believe that we
24 are -- Mr. Moses is to give an overview, not his comments,
25 but just an overview of where we have been and where we

1 find ourselves, correct?

2 MR. MOSES: That's correct.

3 CHAIRMAN DEASON: Please proceed.

4 MR. MOSES: Okay. We are having this rule
5 hearing to address Paragraphs 2, which are the building
6 requirements, and Paragraph 18, which is the billing block
7 option of proposed Rule 25-4.110 as to its applicability
8 to IXCs and ALECs.

9 CHAIRMAN DEASON: That was brief.

10 COMMISSIONER JACOBS: I liked that.

11 CHAIRMAN DEASON: Is Mr. Hewitt in the room?
12 I'm sorry, I didn't see you over there.

13 Do you have a short summary of the economic
14 impact, or did you just want to make yourself available
15 for questions?

16 MR. HEWITT: I will just make myself available.

17 CHAIRMAN DEASON: Very well. We will proceed.

18 Mr. Goggin, do you have any questions for Mr.
19 Hewitt? Okay.

20 MS. BROWN: Mr. Chairman, I have copies of the
21 statement of estimated regulatory costs, if you all would
22 like to see them.

23 CHAIRMAN DEASON: Please.

24 MR. REHWINKEL: I can go ahead while they are
25 passing that out, if that is your pleasure.

1 CHAIRMAN DEASON: That will be fine.

2 Thereupon,

3 CRAIG HEWITT

4 appeared as a witness before the Commission and testified
5 as follows:

6 EXAMINATION

7 BY MR. REHWINKEL:

8 Q Good morning, Craig. Charles Rehwinkel with
9 Sprint.

10 A Good morning.

11 Q I spoke with you briefly before the hearing
12 started, and I just wanted to ask you again the same
13 question I asked you, which was in the development of the
14 statement of economic and regulatory costs, the SERC, with
15 respect to the itemization proposal and the bill block
16 option, to whom did staff send data requests inquiring
17 about costs of implementing those provisions?

18 A We sent it to the ILECs, selected ALECs, and
19 some associations.

20 Q Okay. Do you know which ALECs you sent them to?

21 A It is a long list of about 20 or 30. I don't
22 have it in front of me this second, but I can look it up
23 if you need it.

24 MR. REHWINKEL: I was wondering, Mr. Chairman,
25 if -- I don't need to see it right now, but if we could

1 ask for an exhibit to be added indicating the list of
2 ALECs that were sent a statement of economic and
3 regulatory costs data request form.

4 CHAIRMAN DEASON: Any objection to the exhibit?

5 MS. BROWN: Staff has no objections. We will
6 provide that. And I guess it would be Late-filed Exhibit
7 2.

8 CHAIRMAN DEASON: Yes, it will be so identified.

9 (Late-Filed Exhibit 2 marked for
10 identification.)

11 BY MR. REHWINKEL:

12 Q Mr. Hewitt, was a similar data request sent to
13 the interexchange carriers?

14 A No, it wasn't.

15 Q Was one sent to any interexchange carrier
16 association?

17 A The associations were the Cable
18 Telecommunications Association, the Florida Competitive
19 Carriers Association, the Florida Public
20 Telecommunications Association.

21 Q Okay. So the FCCA, the FCTA and the FPTA, okay.

22 Can I ask you, the sample that you sent to the
23 ALECs, or the alternative local exchange carriers, was
24 that -- first of all, what was the total ALEC population
25 that that was a sample of at the time you sent it out, do

1 you know?

2 A There was over 200 ALECs certified in Florida.

3 Q So did you pick a certain sample size or was it
4 just --

5 A A sample size that I thought was large enough
6 but also hit all the larger carriers that have the
7 majority of the traffic.

8 MR. REHWINKEL: Mr. Chairman, that's all I have
9 for Mr. Hewitt. Thank you.

10 CHAIRMAN DEASON: Further questions for Mr.
11 Hewitt? Ms. Kaufman.

12 EXAMINATION

13 BY MS. KAUFMAN:

14 Q Good morning, Mr. Hewitt. The SERC that has
15 been distributed is dated February 25, 2000, right?

16 A Yes.

17 Q And this is the only SERC that was prepared in
18 regard to this rule, is that right?

19 A There was a previous one. This is a revised one
20 that tried to address the changes that staff made into the
21 rule.

22 Q Now, you are aware that certain portions of this
23 rule have already been enacted, and that we are just here
24 discussing Subsections 2 and 19, I think, as Mr. Moses
25 indicated?

1 A Right.

2 Q There was not a revised SERC done after the
3 prior portions of the rule were enacted, was there?

4 A No.

5 Q Do you have an estimate, Mr. Hewitt, of what it
6 will cost companies who must comply with this rule to
7 comply? Do you have either a total for all companies to
8 whom the rule would apply or by individual company?

9 A I listed in the SERC the replies that the
10 individual companies made to the original rule and the
11 alternatives that staff placed in the rule would
12 substantially reduce those costs. So these would be
13 maximum costs for the higher restrictions, much lower
14 costs for the revised rule.

15 Q If I am reading the SERC correctly, you
16 reference four companies, correct?

17 A Under which section?

18 Q Well, I think in the SERC you talk about
19 Companies A, B, C and D, because one of the companies had
20 asked for confidentiality for their information.

21 A There were more replies than just four. I see
22 here up to at least Company I in one section. Some
23 companies replied to certain sections of the rule and did
24 not for others.

25 Q Okay. Let's talk about -- then, maybe it will

1 be easier, let's talk about the bill block.

2 How many companies do you have information about
3 in regard to the cost of implementation of the bill block?

4 A It looks like five approximately -- well, six
5 commented on that section.

6 Q Okay. So six companies. How many companies
7 will be required to implement the bill block if this rule
8 is enacted?

9 A I would assume all of them.

10 Q So that would be the -- I think you talked
11 earlier about the 200 ALECs and 600 IXCs?

12 A Well, it would be the ones that bill. If they
13 use another billing company, then it wouldn't be them, it
14 would be the billing company.

15 Q Okay. So we have got 600 IXCs, 200 ALECs and
16 then we have got the incumbents. Do you know out of
17 those, say, 800 companies how many of them bill and would
18 be subject to the rule?

19 A I do not know the exact number. From my
20 knowledge, there is a fairly small number that actually do
21 the billing.

22 Q But you don't know how many?

23 A Not exactly, no.

24 Q And you don't know, other than the information
25 that you have put in the SERC, what it will cost these

1 other companies to implement the bill block?

2 A Well, the cost varied by company a great deal.
3 Some of them were in the thousands, five digits, some were
4 in the millions for various portions of the rules. We
5 think that the millions are, maybe, not going to be that
6 costly but certainly it will vary by company. And it
7 could be tens if not hundreds of thousands of dollars,
8 depending on the size and the number of bills that a
9 company had to deal with.

10 Q Do you have a good faith estimate of what it is
11 going to cost the companies to whom this rule will apply
12 to comply with the billing block portion of it?

13 A A total number, no.

14 Q You do not.

15 And I think you also said that you do not know
16 even how many companies would have to comply, is that
17 right?

18 A I do not know the exact number.

19 Q Would your answers be the same if I asked you
20 the same line of questions in regard to the bill
21 formatting, which is Section 2 of the rule? Do you know
22 how many companies would have to comply if that is
23 implemented?

24 A Are you talking about the billing headings?

25 Q Is that what you call it? I call it the bill

1 formatting, but Section 2.

2 A Have bold conspicuous type, is that what you are
3 referring to?

4 Q Yes, sir. How many companies will have to
5 comply with that portion of the proposed rule if it is
6 enacted?

7 A Well, only one company replied to that section
8 at a cost of 8,000, although bold conspicuous type is
9 already a requirement in the current rule. So that should
10 not be any new cost.

11 Q Do you know how many companies will have to
12 comply with Subsection 2? I didn't ask you how many
13 people had responded, but how many companies will be
14 subject to the rule if it is enacted?

15 A If I understand your question about bold
16 conspicuous type, it is the current rule now, so everybody
17 has to now under the current rule.

18 Q So everybody already has to do what the new rule
19 would require?

20 A I'm just talking about that particular section.

21 Q Okay. That is not the only requirement of what
22 I will call new Subsection 2, correct? For example, there
23 is a requirement to provide information in regard to
24 taxes.

25 A Okay. That is another subheading of the SERC.

1 Okay. Under that section some companies stated they will
2 require significant system enhancements. One company
3 estimated \$2 million, another estimated recurring costs of
4 5 million, over 5 million per year. One had a
5 nonrecurring cost of 77,000. So it varied across the
6 board, again, here.

7 Q Okay. And I think in your answer, if I counted
8 correctly, you discussed four individual companies, what
9 their varying responses were?

10 A Under the tax related items?

11 Q Right.

12 A There is a Company C and a Company D. That is
13 two under the section that replied to that.

14 Q Okay. So two companies you have discussed.
15 Now, do you know how many companies would have to comply
16 with that section of the rule in regard to providing
17 information on I think it is state, federal and local
18 taxes?

19 A The proposed rule, revised proposed rule offers
20 an alternative to doing that. And a company can explain
21 each line item in a bill in plain language to a customer
22 who calls concerning those items. We have no way of
23 knowing how many customers are going to call requesting
24 that type of information.

25 Q I understand. And all I'm trying to find out is

1 if you know how many companies would be required to
2 either -- to choose one of the alternatives that is being
3 proposed.

4 A As far as I know, all the companies that are
5 covered by the rule.

6 Q But you don't know how many companies that is?

7 A Only two --

8 MS. BROWN: Mr. Chairman, if I might object,
9 which I hate to do since we are not really having cross
10 examination right now, I would like to call everyone's
11 attention to the order establishing procedures that were
12 issued for this rulemaking, which makes the comment on
13 Page 3 that persons making presentations will be subject
14 to questions from other persons, but those questions shall
15 be limited only to those necessary to clarify and
16 understand the presenter's position.

17 If I could just make sure that everyone keeps
18 that in mind with respect to the questions they are asking
19 Mr. Hewitt. They are beginning to sound a little bit to
20 me like cross-examination.

21 CHAIRMAN DEASON: Well, it's kind of difficult
22 to draw a bright line between clarification and
23 cross-examination. I don't think that line has been
24 crossed. Please proceed.

25 MS. KAUFMAN: Thank you, Mr. Chairman.

1 BY MS. KAUFMAN:

2 Q Mr. Hewitt, I think what I was trying to find
3 out was if you know the number of companies that would be
4 required to comply with that portion of the rule requiring
5 either the provision of tax information on the bill or
6 having somebody available to answer questions if the
7 customer should call in?

8 A All the ones that are subject to the rule that
9 do billing. And I point out that in the data request only
10 two companies bothered to reply to this section.

11 COMMISSIONER JABER: Mr. Chairman, may I ask a
12 question to follow-up. I want to make sure that I
13 understand.

14 Craig, did staff send the data request to every
15 company that this rule will be applicable to?

16 MR. HEWITT: No. We sent it to all the ILECs
17 and a sampling of the ALECs, which included all the larger
18 ALECs. We tried to get basically a random sampling. Went
19 down, I think, to every fifth company, that type of thing,
20 plus their associations so that we know about -- that we
21 wanted that information. And my experience is that only
22 the larger companies tend to reply to these data requests
23 anyway. So we don't do 200 ALECs and 700 IXC's in these
24 type of data requests.

25 COMMISSIONER JABER: Okay. So it's correct to

1 say that you don't have cost estimates from every company
2 that this rule will apply to?

3 MR. HEWITT: No, but I believe we covered the
4 majority of the costs.

5 COMMISSIONER JABER: Okay. For the companies
6 that the rule will apply to, do you have the number of the
7 companies?

8 MR. HEWITT: I didn't ask in the question of all
9 the ones that we went data requests to are you a bill
10 provider. I thought the ones we did send it to, and they
11 were, they would send us their costs if they were
12 concerned about this rule. And that is generally the way
13 it works. We are open to anybody to send us their costs.
14 We want the costs.

15 Like I said, I think we got the majority of the
16 companies. And if a company will not reply to a data
17 request, we don't tend to force them to send in data
18 requests on this type of rulemaking. So we don't have the
19 exact number and the exact cost, and we seldom ever do, I
20 believe.

21 COMMISSIONER JACOBS: The companies who did
22 respond -- the companies who did respond, in your view are
23 they typical or atypical of the normal companies that will
24 be operating in the state?

25 MR. HEWITT: They are typical of the ones who

1 are most affected by this rulemaking, and they tend to be
2 an example of the majority of the costs, because they have
3 a majority of the customers.

4 COMMISSIONER JACOBS: I noticed that you had
5 comments from BCI, is that the billing aggregator?
6 Billing Concepts, I'm sorry, BCI.

7 MR. HEWITT: Pardon?

8 COMMISSIONER JACOBS: My question is we had
9 comments from BCI. Did you do a data request to them?

10 MR. HEWITT: What was the initials, please?

11 COMMISSIONER JACOBS: Billing Concepts.

12 MR. HEWITT: We identified in the SERC companies
13 by letter to maintain their confidentiality. So I would
14 have to go back and look at the original replies to find
15 that answer. I don't have it right in front of me.

16 COMMISSIONER JACOBS: My understanding is they
17 are not an ALEC or a ILEC, they are just a billing
18 aggregator. I was just wondering if we have done a data
19 request yet.

20 MR. HEWITT: From my recollection, I don't think
21 I had that particular company in our database.

22 COMMISSIONER JACOBS: Thank you.

23 CHAIRMAN DEASON: Ms. Kaufman.

24 BY MS. KAUFMAN:

25 Q Mr. Hewitt, I want to follow up a little bit on

1 what Commissioner Jaber was asking you, if I understood
2 the dialog back and forth. Basically, what you said was
3 you sent data requests to certain selected companies. If
4 they responded, you included the information. If they
5 didn't, you didn't include it, is that correct?

6 A Well, there was nothing to include, right.

7 Q Okay. And to go back to the section about the
8 taxes, the tax options that companies have, as you sit
9 here today, you don't know how many companies would be
10 subject to that requirement. You only know the, I think
11 you said two that responded to your request?

12 A That's correct.

13 Q Can you tell us today what a good faith estimate
14 of the transactional costs to companies to whom this rule
15 would apply would be, if this rule is enacted?

16 A I don't have an exact number. I can go through
17 here and add up the individual companies. Like I said
18 before, I don't believe that these would be the costs now
19 under the alternatives the staff has offered in the
20 revised rule. These would be maximums. And I think
21 currently it would be substantially less than what the
22 SERC is stating as far as costs are concerned.

23 Q So it's your view it would be substantially
24 less, but you don't know what the number is, and you don't
25 know the companies to whom the rule would apply, is that

1 fair?

2 A I think the companies that it would apply to
3 would be the companies that are billing that have to
4 comply with our rules.

5 Q We are sort of going around in a circle, I
6 guess. But I think you said earlier that you don't know
7 who or how many those companies are other than the few
8 that responded to your request?

9 A That's right. I do not know the exact number of
10 billing companies or companies that bill that are out
11 there. Whether they are regulated companies or whether
12 they are private billing companies, that universe I just
13 don't have a list of those names.

14 Q Mr. Hewitt, I know you are not a lawyer, but let
15 me just ask you this last question. Are you familiar with
16 Section 120.541, which is the section that governs the
17 preparation of statement of estimated regulatory cost?

18 A Yes, I am.

19 MS. KAUFMAN: Thank you. That's all I have.

20 CHAIRMAN DEASON: Ms. McNulty.

21 MS. McNULTY: No questions at this time.

22 CHAIRMAN DEASON: Any further questions for
23 Mr. Hewitt?

24

25

1 MS. RULE: I have one or two questions.

2 EXAMINATION

3 BY MS. RULE:

4 Q Mr. Hewitt, this is Marsha Rule with AT&T. You
5 have mentioned several times that the SERC that you
6 prepared was based on an earlier version of the rules,
7 correct?

8 A That's right.

9 Q Have you identified any incremental benefits
10 that there would be by the adoption of or the application
11 of Subsection 19, that is the bill block paragraph, to
12 Rule 25-4.110? I believe at the last rule go-around we
13 had Subsection 18 was adopted and that requires carriers
14 to take charges off bills, correct?

15 A As far as I know.

16 Q Under certain circumstances. And in this
17 instance the Commission is considering the further action
18 of requiring companies to develop and implement a bill
19 blocking mechanism, correct?

20 A I believe that is true, yes.

21 Q So if the provision is already in effect that
22 requires companies to take charges off their bills upon
23 request, at least those that fall into the category, what
24 is the incremental benefit of requiring companies to
25 develop a bill block mechanism?

1 A I don't have that number. I haven't estimated
2 that number.

3 Q Have you done an estimated regulatory cost of
4 not implementing Subsection 19, at least as to ALECs?

5 A Well, the companies that have responded. One
6 company estimated it would cost between 2.5 and \$4.8
7 million in one year to develop that call blocking
8 requirement of the rule. And then 4.1 million if it had
9 to do a separate method of direct billing from users who
10 requested a bill block.

11 Another company estimated it would cost \$2
12 million initially and 250,000 per year for customer
13 identification on-going maintenance. Those are pretty big
14 numbers.

15 Q So you are saying then that the costs would be
16 eliminated if Subsection 19 were not applied to ALECs?

17 A I would say that if an ALEC company that billed
18 had similar circumstances then they would save a
19 substantial amount of money by not having to implement
20 this call blocking. I don't know that they would meet
21 those same criteria that the other companies have. Like I
22 said before, these costs vary tremendously from company to
23 company.

24 MS. RULE: Thank you.

25 CHAIRMAN DEASON: Further questions for

1 Mr. Hewitt? Commissioners.

2 COMMISSIONER JABER: I have one, Mr. Chairman.

3 Craig, you said that you expect the cost to be
4 substantially less than what was in your revised SERC?

5 MR. HEWITT: Yes.

6 COMMISSIONER JABER: Was the SERC only revised
7 once?

8 MR. HEWITT: Yes.

9 COMMISSIONER JABER: Why do you say the costs
10 should be substantially less? How do we know that?

11 MR. HEWITT: Because for a large portion of
12 these requirements, new requirements that we originally
13 received the cost estimates on, staff had changed those
14 requirements to give companies alternatives to those high
15 cost of compliance issues. So that I think staff tried to
16 work with the companies and come up with some better
17 language or requirements so to lower those implementation
18 costs. And I think the bill blocking is probably the
19 largest one still hanging there that is going to be very
20 costly to implement.

21 COMMISSIONER JABER: How does an agency decide
22 when to revise the SERC?

23 MR. HEWITT: I think it is a case-by-case basis.

24 COMMISSIONER JABER: When you all issued this
25 second SERC, the companies were allowed under the statute

1 and I suppose under our rules to send a good faith
2 estimate of lower cost, right?

3 MR. HEWITT: I don't think they are required to
4 and I don't think we asked them after the rule was
5 changed, the revisions were made.

6 COMMISSIONER JABER: Ms. Brown, maybe you can
7 shed some light on this. I'm looking at Section 120.541.
8 It says upon -- Subsection B -- upon the submission of the
9 lower cost regulatory alternative, the agency shall
10 prepare a statement of estimated regulatory cost or shall
11 revise its prior statement of estimated regulatory cost.

12 What I'm trying to understand is were we
13 required to do a second SERC after the implementation of
14 the rule was made?

15 MS. BROWN: No, I don't think the Commission was
16 required to do another SERC. And it is my understanding,
17 although I have to admit that I've come into this
18 rulemaking rather late in the game, but it is my
19 understanding that there was no submission of a lower cost
20 regulatory alternative.

21 Now, in the comments filed for this rule hearing
22 that has been brought up, and so it could be that that
23 will be something for the Commission to consider whether a
24 revised SERC would be helpful to them in making their
25 decision on whether to propose these -- to adopt these

1 rules. But to this point I don't think there is any
2 requirement that we do something that we haven't done.

3 COMMISSIONER JABER: How long does it take to
4 revise a SERC and get something back to us?

5 MR. HEWITT: Well, if we did a new data request
6 to the companies we give them 30 days usually to reply
7 plus the lead time to prepare it, send it out. And then
8 once we get their replies back another few weeks to
9 prepare the revised SERC. So maybe eight weeks. And we
10 could shorten that if we had to.

11 COMMISSIONER JACOBS: Help me understand. I'm
12 sorry, Mr. Chairman. You indicated that you had some
13 responses on alternative means of implementation or lower
14 cost?

15 MR. HEWITT: Yes, sir. We have what we call
16 some alternative methods to achieve the purposes of the
17 rule. And some of the companies had some problems with
18 certain sections. And as I have pointed out in the
19 revised SERC that because of the substantial revisions we
20 made to the proposed rule that most of those lower cost
21 alternatives would now be moot because they weren't
22 required to implement those costs.

23 COMMISSIONER JACOBS: So you have addressed many
24 of those.

25 MR. HEWITT: We addressed what some of their

1 concerns were in that alternate section, yes, sir.

2 COMMISSIONER JACOBS: And the one that you felt
3 had not been addressed to any great length is the billing
4 block.

5 MR. HEWITT: I don't think they mentioned that
6 in their alternatives. I don't see it here.

7 COMMISSIONER JACOBS: No one gave you an
8 alternative on the billing block option?

9 MR. HEWITT: I don't see -- okay, here is one.
10 Okay. Here is a comment which was made as far as that
11 charge blocking or call blocking was concerned that
12 Company A is unable to determine a statutory objective of
13 being implemented, interpreted, or make specific by this
14 rule. So they obviously did not like that particular
15 requirement.

16 COMMISSIONER JACOBS: Were you given any lower
17 cost alternatives?

18 MR. HEWITT: An alternative might be to not to
19 implement that rule. That is a lower cost alternative,
20 yes, sir.

21 COMMISSIONER JACOBS: Right. But in terms of
22 addressing the objective of that provision, you weren't
23 given anything in the way of lower cost alternatives?

24 MR. HEWITT: Well, obviously staff thinks that
25 there are benefits for that call blocking or they wouldn't

1 have put it in there. And staff believes that the
2 benefits would exceed the cost of implementing that. The
3 benefits are sometimes harder to pin down than the costs
4 because you are talking about individual customers,
5 ratepayers who it would be impossible to survey all of
6 them and find out who is going to be affected before it
7 happens. So those benefits, staff believes, are there;
8 but we haven't quantified them.

9 COMMISSIONER JACOBS: Okay. Thank you.

10 MS. BROWN: Mr. Chairman, may I ask a follow-up
11 question to Mr. Hewitt?

12 CHAIRMAN DEASON: Surely.

13 MS. BROWN: Thank you.

14 EXAMINATION

15 BY MS. BROWN:

16 Q Mr. Hewitt, if an ALEC is not billing for itself
17 at the present time, but it anticipates doing so in the
18 future, say in six months or a year, would you think that
19 if this rule is in effect by that that applies the billing
20 structure requirements to the ALECs, and the ALEC is just
21 setting up its billing system to bill for itself, would it
22 be less expensive for them to start anew and make their
23 bills comply with the requirements of the rule from the
24 beginning than to have to change over?

25 A I don't know if I have an exact answer. But

1 from my understanding of billing systems, they are very
2 complex, require a lot of software. So it is very costly
3 to change it once it is in place. If you start out fresh
4 with a certain goal and you can incorporate these
5 particular requirements from the get-go, I think the costs
6 would be less, because you wouldn't have those
7 after-the-fact changes to the software.

8 MS. BROWN: Thank you.

9 CHAIRMAN DEASON: Thank you, Mr. Hewitt. Ms.
10 Simmons.

11 Thereupon,

12 SALLY A. SIMMONS

13 appeared as a witness before the Commission and testified
14 as follows:

15 EXAMINATION

16 BY MS. BROWN:

17 Q Ms. Simmons, would you state your name and
18 business address for the record, please.

19 A Yes. My name is Sally A. Simmons, and my
20 business address is 2540 Shumard Oak Boulevard,
21 Tallahassee, Florida 32399.

22 Q By whom are you employed and in what capacity?

23 A I am employed by the Florida Public Service
24 Commission. I am chief of the Market Development Bureau
25 in the Division of Competitive Services.

1 Q And you filed prefiled testimony in this rule
2 hearing?

3 A Yes, I did.

4 Q Do you have a summary to give of your testimony?

5 A Yes, I have a brief summary.

6 Q Thank you. Would you give it at this time.

7 A Yes. The purpose of my testimony is to explain
8 the staff's position regarding the appropriate level of
9 regulation of telephone bill content for ALECs and IXCs
10 which issue bills to end users.

11 As a starting point, staff reviewed the
12 applicable requirements for incumbent LECs, which are
13 included in Rule 25-4.110, Florida Administrative Code.
14 And after looking at that and considering the provisions
15 of Section 364.01 and 364.604(1), Florida Statutes, and
16 input gathered through the workshop process, staff
17 believes that Rule 25-4.110(2) should also apply to ALECs
18 and IXCs that issue bills to end users.

19 Staff believes that these limited requirements
20 are appropriate given the statutory provisions and market
21 conditions, and that these requirements serve to further
22 the interests of consumers in understanding their bills
23 and protecting themselves from unauthorized charges.

24 CHAIRMAN DEASON: Questions for Ms. Simmons.

25 MR. GOGGIN: BellSouth has no questions.

EXAMINATION

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BY MR. REHWINKEL:

Q Good morning, Ms. Simmons. This is Charles Rehwinkel with Sprint.

A Good morning.

Q Is it your testimony that -- well, let me go to Page 4 of your testimony and ask you about the considerations that were given of Section 364.01, Subsections 3 and 4. Which provisions of Subsection 4 did you consider in developing your position?

A Okay. Let me refer to the statute. Just give me a minute, please.

MR. REHWINKEL: Commissioners, I have -- when it comes time to make my comments, I had sections of the statute copied for your use. If you would like, I can pass those out to you now.

CHAIRMAN DEASON: That would be very good. Please do so.

THE WITNESS: This may not be an exhaustive list, but I know I looked at (b), (d) --

BY MR. REHWINKEL:

Q I'm sorry, did you say b?

A B as in boy.

Q Okay.

A I looked at (d), (e), (f), and (h). I can say

1 with some certainty I looked at all of those.

2 Q Can I ask you with regard to your looking at
3 those, did you do it with respect to -- well, let me ask
4 you this. Are you familiar with Section 364.337(2)?

5 A Let me flip to it and see exactly what you are
6 referring to. It deals with rules governing alternative
7 local exchange companies?

8 Q Yes.

9 A Yes, I am familiar with that.

10 Q Okay. The first sentence in that statute says
11 rules adopted by the Commission governing the provision of
12 alternative local exchange telecommunications service
13 shall be consistent with Section 364.01. Are you familiar
14 with that?

15 A Yes, I see that.

16 Q Was that the purpose underlying your review of
17 364.01 in developing these rules?

18 A I would say so. Even more fundamentally I just
19 thought it was appropriate first to look at the
20 legislative intent, and certainly that is embodied in
21 364.01. And you are quite correct there is a reference to
22 it here in the first sentence of 364.337(2).

23 Q Okay. Now, was it staff's position that the
24 provisions of 364.604 could be implemented without regard
25 to that provision in Subsection 337(2)?

1 A No. I really looked at all of the statutory
2 provisions that I thought might be germane and tried to
3 weigh the various considerations.

4 Q Okay. When you talk about a transitional
5 period, or the regulatory transition on Page 4, is it
6 staff's view that the legislature intended for there to be
7 essentially two tiers of regulation of the local exchange
8 companies, with one tier being of the monopoly providers
9 and the other tier being of the alternative local exchange
10 companies?

11 A To me it wouldn't be in terms of tiers. I mean,
12 there is some continuum from going from a monopoly
13 environment to a fully competitive one. So it would be a
14 series of steps over time. I wouldn't necessarily see it
15 as two tiers.

16 Q Was there a presumption that a CLEC or an ALEC
17 should be subject to the same level of regulation as an
18 ILEC unless there was a good reason not to regulate at
19 that level?

20 A I guess I approached this from the standpoint
21 that I thought it might be appropriate to require less of
22 an ALEC because of their non-dominant position in the
23 market.

24 Q Now, what we are here today on is purely the
25 application of these two subsections, 2 and 19, to ALECs;

1 do you agree with that?

2 A I believe that is correct. I am here only to
3 address 2.

4 Q Okay. And with respect to 2, it is your
5 testimony that the staff position is that with respect to
6 that, all the items in Subsection 4, which for convenience
7 I am going to refer to as the competitive checklist, can
8 you accept that?

9 A I'm sorry, I'm not sure where you are referring
10 to.

11 Q Subsection 4 of 364.01, the statute.

12 A Okay.

13 Q This is a checklist, I guess, that the
14 legislature -- that the legislature gave direction to the
15 Commission to consider when implementing rules governing
16 ALEC service, would you agree with that?

17 A I don't know if it is a checklist. Certainly
18 consideration.

19 Q Okay, considerations. So can we call them
20 competitive considerations?

21 A That would be fine.

22 Q Okay.

23 CHAIRMAN DEASON: Mr. Rehwinkel, is there some
24 reason why you didn't give us 364.01 in your handout?

25 MR. REHWINKEL: I apologize, Commissioner.

1 CHAIRMAN DEASON: Thank you.

2 MR. REHWINKEL: Commissioner Jacobs, did I give
3 you one? I'm sorry, Mr. Chairman.

4 BY MR. REHWINKEL:

5 Q You said that you started from the presumption,
6 I guess, that the ALECs should be subject to less?

7 A I thought that would be appropriate given their
8 non-dominant market position.

9 Q Okay. With respect to Subsection 2, however,
10 what the staff is proposing is that ALECs and ILECs be
11 subject to the same level of regulation, is that correct?

12 A Strictly speaking, the answer is yes. However,
13 it is important to point out that the incumbent local
14 exchange companies have additional obligations that effect
15 how they render bills besides this Paragraph 2 that we
16 have been discussing.

17 Q Okay. But the Commission's rulemaking that we
18 are in this hearing on is only on applying 2 and 19 to
19 ALECs and IXC's, is that correct?

20 A That's correct.

21 Q So I guess my question, to understand the
22 transitional period testimony that you have on Page 4
23 is -- and in light of 364.014, what was it that said to
24 you that you needed to overcome your presumption and
25 regulate ALECs and ILECs at the same level with respect to

1 the bill format?

2 A I guess I don't see it quite the same way as you
3 do. I don't see us imposing the same level of regulation
4 on incumbent LECs and ALECs and interexchange companies or
5 IXC's. The incumbent LECs have a couple of additional
6 provisions, and let me just scan here for a moment and I
7 will give them to you. There is a section, a (3) that
8 deals with an itemized bill for local service. There is a
9 (4), which also goes into an annual itemized bill. There
10 is (5), which addresses additional requirements that must
11 be followed on all bills rendered by a local exchange
12 company.

13 CHAIRMAN DEASON: Ms. Simmons, where are you?

14 THE WITNESS: I am looking in the Composite
15 Exhibit Number 1, and I am looking to see if there are
16 page numbers. One of the first items in the packet is
17 actually the rule that is being proposed, and I am looking
18 there. It is on page -- I am looking at Page 3 of 8 and
19 Page 4 of 8. And let's see. There is the cover sheet,
20 about three pages after that, and then the rule actually
21 starts.

22 COMMISSIONER JABER: And which part of the rule
23 are you reading from?

24 THE WITNESS: I am looking at Page 3 of 8,
25 starting there; 25-4.110(3) down towards the bottom, (4)

1 at the very bottom, and (5) near the top of the next page.

2 CHAIRMAN DEASON: Thank you.

3 BY MR. REHWINKEL:

4 Q Okay. On Page 5 of your testimony you believe
5 that it is this lack of application or lack of proposed
6 application of Sections 3, 4, and 5 of the existing rule
7 that creates balance in the proposal to apply 2 or
8 Subsection 2 to ALECs?

9 A Right. By not requiring (3), (4), and (5),
10 ALECs and IXCs would be subject to a lesser level of
11 regulation than would incumbent local exchange companies.

12 Q That is if you look at other provisions of rules
13 that staff never intended to apply to IXCs and ALECs? I
14 have too many alphabet numbers.

15 A Well, I just think it is reasonable to look at
16 what is required of the incumbent provider. Since the
17 incumbent has a dominant position, you clearly would not
18 want to require anything further than that, and I would
19 think you would normally want to require something less,
20 so that was where I started.

21 Q With respect to the competitive considerations
22 in Subsection 4 of 364.01, did the staff consider whether
23 the itemization of the bill or the requirement that all
24 ALEC bills be itemized as provided in Subsection 2 of the
25 proposed rule would have an impact on ensuring the

1 availability of the widest possible range of consumer
2 choice in the provision of all telecommunication services?

3 A Certainly. I mean, I guess in summary I really
4 needed -- I looked at all of these various considerations.
5 I tried to not put undue emphasis on any one.

6 Q So would it be fair to say that you didn't
7 specifically go through the items in Subsection 4 to
8 determine whether Section 364.01 was complied with?

9 A I guess what I'm trying to say is I looked at
10 all of these considerations in the intent section really
11 as a set, and I tried to come up with something that I
12 thought was compatible after considering all of those
13 considerations as well as 364.604(1). I also considered
14 that in terms of what the legislature had said regarding
15 expectations on billing practice. More than expectations,
16 what they were requiring.

17 Q Okay. When you say on Page 5 of your testimony
18 that application of proposed Subsection 2 to ALECs and
19 IXC's is the reasonable accommodation to the needs of end
20 users while not creating a significant burden for ALECs
21 and IXC's, what would constitute a significant burden with
22 respect to that testimony?

23 A To my way of thinking, a significant burden
24 would be a highly prescriptive set of requirements. It
25 was my belief that (2), while it talked about information

1 that is supposed to be on the bill, I did not feel it was
2 highly prescriptive and I really didn't think it would be
3 burdensome. There are various options for placing
4 information. There has been discussion already about
5 taxes in the questioning of Mr. Hewitt. There are some
6 options for how to handle that. So I did not think it was
7 overly prescriptive and there was room for some variation.

8 Another thing I would point out is that
9 regardless of what form this rule eventually takes,
10 certainly a company is always able to petition for a
11 waiver of the rule. That is always possible and certainly
12 if the underlying purpose of the rule is being satisfied,
13 those are normally viewed favorably.

14 Q How long does it take to get a waiver?

15 A I mean, that would vary. I mean, it would
16 depend on how quickly the item could, you know, be brought
17 to an agenda conference.

18 Q Are they generally scheduled for about a 90-day
19 consideration period?

20 A I'm not certain what the typical period is. I
21 don't know if there even is one. I do know if there is a
22 pressing need, when it comes to just about any subject we
23 can bring recommendations very quickly if there really is
24 a necessity.

25 Q So if a company was -- an ALEC was subject to

1 Subsection 2, your assertion is that the availability of a
2 waiver would mitigate the burden on the ALEC?

3 A What I'm trying to say I guess first is that I
4 don't think the rule is burdensome. But in the event an
5 ALEC or an IXC might find it burdensome, to the extent
6 that they are satisfying the underlying purpose of the
7 rule in some other fashion that is normally looked at
8 favorably. And customarily a waiver would typically be
9 granted under those circumstances.

10 MR. REHWINKEL: That's all I have. Thank you.

11 MS. RULE: Thank you, Mr. Chairman.

12 EXAMINATION

13 BY MS. RULE:

14 Q Ms. Simmons, you stated that you considered
15 various provisions of Section 364 in making your
16 recommendation to the Commission, correct?

17 A Yes.

18 Q And specifically I imagine you considered
19 364.602 and .604, correct?

20 A Yes, I looked at those.

21 Q Okay. Do you still have 364.602, Subsection 3
22 in front of you?

23 A Yes, I do.

24 Q Could you read the definition of customer,
25 please?

1 A Yes. It says, "Customer means any residential
2 subscriber to services provided by a telecommunications
3 company."

4 Q Is it your understanding that this rule would
5 apply to billing to all customers or only residential
6 customers?

7 MS. BROWN: Mr. Chairman, if I might object to
8 that cross-examination question. It goes beyond the scope
9 of Ms. Simmons' testimony.

10 MS. RULE: I believe she is here to support the
11 rule, explains why it's there, and I'm asking her to whom
12 it applies.

13 MS. BROWN: Yes. But I think it needs to be
14 clarified that Ms. Simmons is not a lawyer, that these
15 very technical legal issues can be addressed in comments
16 and in the staff recommendation.

17 CHAIRMAN DEASON: Objection overruled. The
18 witness may express an opinion.

19 THE WITNESS: All right. Ms. Rule, I would
20 refer you to Page 3 of my testimony where I have cited the
21 portion of 364.604(1) that I was attempting to implement,
22 and that portion does not refer to the word customer.

23 BY MS. RULE:

24 Q Is it your position then that because it does
25 not -- I'm sorry, I just don't understand your position.

1 If Section 602 defines customer as a residential customer,
2 is it your position that .604(1) applies to all customers
3 or only residential customers?

4 A It is neither a yes nor a no answer. I looked
5 at 364.604(1), and I looked at the first -- let's see, I'm
6 trying to count sentences here -- the first two sentences
7 of that paragraph. The rest of it, the rest of (1), (2),
8 (3), (4) were not relevant for my purposes in terms of
9 what I was asked to do.

10 Q So do I understand you correctly that at this
11 time you do not have a position on whether ALECs would be
12 required to provide a billing block to business customers?

13 A I am not testifying on the billing block.

14 Q I'm sorry, you're right. Would not be required
15 to format their bills in this fashion for business
16 customers?

17 A My position would be that regarding (2) of the
18 proposed rule that ALECs and IXCs would be subject to
19 these requirements, which I would really, I guess, clarify
20 that to me these are requirements regarding content. To
21 me they are not formatting requirements.

22 Q Okay. Using your terminology, would these
23 content requirements -- would ALECs be required to include
24 these content requirements to business customers as well
25 as residential customers?

1 A That is my position, yes.

2 MS. RULE: Thank you. No further questions.

3 CHAIRMAN DEASON: Further questions? Ms.

4 Kaufman.

5 MS. KAUFMAN: Thank you.

6 EXAMINATION

7 BY MS. KAUFMAN:

8 Q Ms. Simmons, I just want to talk for just a
9 moment more about 364.01(4), that you discussed with Mr.
10 Rehwinkel. Would you agree with me that talking about the
11 subsections that you highlighted, which are actually the
12 same ones I looked at, (b), (d), (e), (f), and (h), that
13 generally what the legislature was trying to accomplish
14 here was to lessen regulatory and administrative burdens
15 and thus encourage competitive entry?

16 A I would agree with you over time as market
17 conditions warrant and as the market is able to provide
18 its own controls, I think clearly the legislature
19 contemplated less regulation.

20 Q There is nothing in Subsection 4, the
21 sub-subsections we have just discussed that relate to a
22 time frame, is there? In other words, it doesn't say, you
23 know, after three years we want you to lessen the
24 administrative burden or anything like that, is that
25 correct?

1 A I don't recall seeing any specific time frames.

2 Q Now, I think you have testified, someone else
3 asked you about this, that you think that the application
4 of these content rules as you described them is a
5 reasonable compromise, is that right?

6 A Yes. I have tried to weigh numerous factors.
7 And, yes, I would characterize them as a compromise.
8 There are numerous statutory provisions. And as I mention
9 in my testimony, there was quite a diversity of industry
10 opinion on this subject.

11 Q Well, I just have to ask you about that last
12 comment. You are not aware of any ALECs or IXCs that are
13 in favor of the imposition of these requirements, are you?

14 A No. But there are some other parties to the
15 proceeding that had a completely opposite position.

16 Q I understand, I just wanted that comment to be
17 clear. You heard me discuss the cost issue a little bit
18 with Mr. Hewitt. Do you have any estimate of what it
19 would cost the ALECs and the IXCs?

20 MS. BROWN: Mr. Chairman, I object to the
21 question. If we are cross-examining, it is beyond the
22 scope of Ms. Simmons' testimony.

23 MS. KAUFMAN: Mr. Chairman, I think we have
24 discussed at some length the lessening of regulatory
25 burden, and that is what Ms. Simmons, in part, relied upon

1 for her testimony. I think I am entitled to inquire as to
2 whether she has taken into consideration the cost that
3 this would visit on the industry.

4 CHAIRMAN DEASON: Objection sustained. We have
5 already discussed cost with the prior presenter. You may
6 continue with another line of questioning.

7 BY MS. KAUFMAN:

8 Q Ms. Simmons, will you agree that one way that
9 competitive companies can differentiate themselves in the
10 marketplace might be through the presentation or the
11 formatting of their bill?

12 A I would agree with that.

13 Q And would you agree that it may be that some
14 customers want a lot of information and some customers
15 just want to know, you know, what their monthly bottom
16 line is?

17 A I would agree with that. And I would just point
18 out that we are just trying to come up with a minimal set
19 of requirements. I understand there is quite a bit of
20 variability in terms of what customers are looking for.

21 Q And would you agree that in the perfect
22 competitive marketplace that if there was a customer that
23 wanted reams of information about their telephone bill
24 they could select a provider that was able to give that to
25 them?

1 A In a fully competitive situation that would be a
2 reasonable expectation.

3 Q And then if there was another customer who said
4 all I want is that one line that says you owe X dollars,
5 they should be able to select that carrier?

6 A Once again, in a fully competitive situation
7 that would be a reasonable expectation.

8 MS. KAUFMAN: That's all I have.

9 CHAIRMAN DEASON: Further questions?

10 MS. McNULTY: My questions have been asked and
11 answered.

12 CHAIRMAN DEASON: Commissioners.

13 COMMISSIONER JACOBS: Ms. Simmons, in
14 approaching the development of this -- of the revisions to
15 this rule, were the primary objectives to alleviate
16 burdens on consumers, burdens on competitors in the
17 marketplace, or was the focus on consumers?

18 THE WITNESS: It was a balance of both.

19 COMMISSIONER JACOBS: Okay. So you balanced
20 those interests?

21 THE WITNESS: I tried to. And, of course,
22 looked to the statute for guidance there.

23 COMMISSIONER JACOBS: The interests of the
24 consumers, in your mind what were they in this discussion?

25 THE WITNESS: To me it was important for

1 consumers to have some basic information. I didn't want
2 to take it to an extreme, but some minimum set of
3 requirements I thought was appropriate.

4 COMMISSIONER JACOBS: And the rationale for
5 that, the reason that you felt that way, I know that is a
6 discussion of other testimony, but based on your opinion,
7 why was it so important that consumers have some manner of
8 handle on the information that is on their bill?

9 THE WITNESS: Mr. Durbin can better address
10 that, but certainly I am aware that there are numerous
11 complaints on this matter that come into Consumer Affairs.
12 I don't have firsthand knowledge of them, but I know that
13 they are significant in number.

14 COMMISSIONER JACOBS: So clearly there was an
15 impetus, though, to address some conduct in the
16 marketplace?

17 THE WITNESS: Yes.

18 COMMISSIONER JACOBS: Are you aware of -- well,
19 let me hold that question, also. That is probably more
20 appropriate for Mr. Moses. In terms of the actual
21 language that you address in Subsection -- I believe it
22 was Subsection 4. No, 3. Am I to understand that
23 Subsection 3, 4, and 5 are or are not applicable to all
24 companies?

25 THE WITNESS: You are speaking of the rule

1 itself?

2 COMMISSIONER JACOBS: Yes.

3 THE WITNESS: Okay. (3) (4) (5) are only
4 applicable to incumbent local exchange companies.

5 COMMISSIONER JACOBS: Okay. And, again, it was
6 a balancing of interests there in an effort to accommodate
7 and respect the relative market positions of the different
8 companies, correct?

9 THE WITNESS: Yes.

10 COMMISSIONER JACOBS: And that was an effort to
11 address the statutory provision that had been raised here
12 earlier about not imposing undue burdens on the smaller
13 companies, correct?

14 THE WITNESS: Correct.

15 COMMISSIONER JACOBS: I believe it was in your
16 testimony, you indicated that the information that is
17 being -- that the companies are being required to provide
18 pursuant to these provisions, that information is
19 particularly relevant to customers and their ability to
20 understand the bill and to make effective choices?

21 THE WITNESS: That is certainly part of it.

22 COMMISSIONER JACOBS: Okay. If you don't mind,
23 just briefly help me understand why the understanding --
24 the actual formatting of the charges and the understanding
25 of the ability to withhold charges from the bill is an

1 important aspect for consumers to have at their disposal?

2 THE WITNESS: Okay. I didn't deal with the
3 portion as far as withholding charges.

4 COMMISSIONER JACOBS: Then the other.

5 THE WITNESS: I'm trying to remember the first
6 part of your question.

7 COMMISSIONER JACOBS: Why the understanding or
8 the formatting actually, the organization of the charges
9 on the bill is an important aspect for consumers?

10 THE WITNESS: I really would characterize (2)
11 really as dealing with bill content. I don't think it
12 really requires a specific format. We were trying to make
13 sure that what to us constituted key information that any
14 customer would want, we were trying to make sure that that
15 was reflected.

16 COMMISSIONER JACOBS: And, again, also I
17 understand this is coming from other testimony, but the
18 content that you are addressing here has been demonstrated
19 to be critical to customers both in what they experience
20 in their billing to date, but most importantly in going
21 forward in a competitive marketplace their ability to make
22 effective decisions?

23 THE WITNESS: Yes. This (2) does address that,
24 because I think customers need certain key basic
25 information and that is what we tried to address in this

1 rule.

2 COMMISSIONER JACOBS: And the lack of that
3 information has had an impact on the market, certainly has
4 had an impact on customers and their views of their bills,
5 is that your --

6 THE WITNESS: Well, certainly it is an issue.
7 Mr. Durbin could address that better than I could.

8 COMMISSIONER JACOBS: Thank you.

9 MS. BROWN: Mr. Chairman, may I ask a few
10 follow-up questions, please?

11 CHAIRMAN DEASON: Yes.

12 MS. BROWN: Just two. I think it's only two.

13 EXAMINATION

14 BY MS. BROWN:

15 Q Ms. Simmons, in your review of the statutes that
16 the parties have gone over with you, did you also review
17 364.604, entitled billing practices?

18 A Yes, I certainly did.

19 Q Would you read the first sentence of that bill,
20 Subsection 1, please, for the Commission.

21 A Sure. It says, "Each billing party must clearly
22 identify on its bill the name and toll free number of the
23 originating party, the telecommunications service or
24 information service billed, and the specific charges,
25 taxes, and fees associated with each telecommunications or

1 information service."

2 Q Thank you. Now, that is a statutory
3 requirement, is it not?

4 A Yes, it is.

5 Q Does the FCC -- I'm sorry, flipping back now to
6 Rule 25-4.110(2), is it your understanding that the FCC
7 requires this information on bills at present?

8 A I believe that to be the case. I have to be
9 honest, I am not that conversant on the specific
10 requirements, but I believe everything that is here is
11 compatible with what has been required at the federal
12 level.

13 MS. BROWN: All right. Thank you.

14 CHAIRMAN DEASON: Thank you, Ms. Simmons.
15 We are going to take a ten-minute recess.

16 (Brief recess.)

17 CHAIRMAN DEASON: Call the hearing back to
18 order.

19 MS. BROWN: Mr. Chairman, if I might ask that
20 Witness Simmons be excused from the remainder of the
21 hearing.

22 CHAIRMAN DEASON: Without objection. Hearing no
23 objection, that's fine.

24 MS. BROWN: Thank you.

25 CHAIRMAN DEASON: Mr. Durbin.

1 Thereupon,

2 JAMES RICHARD DURBIN

3 appeared as a witness before the Commission and testified
4 as follows:

5 EXAMINATION

6 BY MS. BROWN:

7 Q Would you state your name and business address
8 for the record, please.

9 A My name is James Richard Durbin, 2540 Shumard
10 Oak Boulevard, Tallahassee, Florida 32399.

11 Q By whom are you employed and in what capacity?

12 A I work for the Florida Public Service Commission
13 in the Division of Consumer Affairs as a Regulatory
14 Supervisor/Consultant.

15 Q Did you prefile testimony in this rule hearing?

16 A Yes, I did.

17 Q Do you have a summary of your testimony to give?

18 A Yes, ma'am.

19 Q Did you also file exhibits with your prefiled
20 testimony?

21 A Yes, ma'am. There are two prefiled exhibits
22 marked JRD-1 and JRD-2.

23 Q Do you have additional exhibits to provide to
24 the Commission today?

25 A Yes, ma'am. That would be JRD-3 and Composite

1 Exhibit Number 2.

2 Q Would you describe Composite Exhibit Number 2,
3 please?

4 A Composite Exhibit Number 2 consists of examples
5 of cramming complaints filed with the Public Service
6 Commission, Division of Consumer Affairs, since January 1
7 of this year.

8 Q And you have provided copies of those to the
9 parties and to the Commissioners, have you not?

10 A Yes, ma'am.

11 Q And what does the other exhibit contain?

12 A The other exhibit contains the number of
13 complaints resolved since -- from April of 1998, which is
14 when we began tracking cramming complaints -- up through
15 June of 1999, the total number of complaints resolved and
16 the amount of savings per complaint.

17 MS. BROWN: Thank you. Mr. Chairman, may I have
18 those two exhibits marked for identification at this time.
19 Staff Composite Exhibit 2, which I guess would be Staff
20 Composite Exhibit 3 or 4.

21 CHAIRMAN DEASON: I think that is totally
22 confusing.

23 MS. BROWN: I know. I apologize.

24 CHAIRMAN DEASON: Let's start with what -- he
25 initially filed JRD-1 and 2, correct?

1 MS. BROWN: Yes.

2 CHAIRMAN DEASON: Let's identify that as Exhibit
3 3.

4 (Exhibit 3 marked for identification.)

5 MS. BROWN: Thank you.

6 CHAIRMAN DEASON: Now, what additionally has he
7 filed?

8 MS. BROWN: He has filed Staff Composite -- what
9 we have identified as Staff Composite Exhibit 2, which is
10 a compilation of cramming complaints.

11 CHAIRMAN DEASON: Where is that?

12 MS. BROWN: That should be in front of you.
13 That has been passed out to the parties.

14 CHAIRMAN DEASON: All right. Well, apparently I
15 didn't get it or it has been misplaced.

16 COMMISSIONER JABER: Is it JRD-3, Ms. Brown?

17 MS. BROWN: JRD-2 is the staff composite
18 exhibit.

19 CHAIRMAN DEASON: I have just been handed a
20 rather voluminous group of reports here, and it is
21 entitled Staff Composite Exhibit 2. And apparently it
22 consists of a set of -- these are complaints, are they
23 not?

24 THE WITNESS: Yes, Chairman. Staff Composite
25 Exhibit 2 is examples of cramming complaints filed with

1 the Public Service Commission since January 1, 2000.

2 CHAIRMAN DEASON: Okay. This is Staff Composite
3 Exhibit 2, and for the record we will identify this as
4 Exhibit Number 4.

5 (Exhibit 4 marked for identification.)

6 CHAIRMAN DEASON: Okay. Now, what about JRD-3,
7 what is it? This is a compilation of the complaints
8 resolved and the savings to customers?

9 MS. BROWN: Yes, that is correct.

10 CHAIRMAN DEASON: Okay. It will be identified
11 as Hearing Exhibit Number 5.

12 (Exhibit 5 marked for identification.)

13 MS. BROWN: Thank you, Commissioner. I
14 apologize for the confusion.

15 If I may ask if all the parties have copies of
16 that exhibit.

17 MS. KAUFMAN: Chairman Deason, no, we don't.

18 CHAIRMAN DEASON: I would like a copy of Exhibit
19 5 when you get an extra one.

20 MS. BROWN: It's on its way.

21 MS. McNULTY: Are there other copies of JRD-3?
22 I don't know if all the parties have received those.

23 MS. BROWN: They are being passed out now. I
24 thought you all had received them, I'm sorry.

25 COMMISSIONER JABER: Ms. Brown, the only copy I

1 did not receive is the composite exhibit, the voluminous
2 one that Commissioner Deason referred to.

3 CHAIRMAN DEASON: That is Hearing Exhibit 4.

4 COMMISSIONER JABER: Commissioner Jacobs needs
5 one, too.

6 BY MS. BROWN:

7 Q Mr. Durbin, would you please summarize your
8 testimony.

9 A Yes, ma'am. The purpose of my testimony is to
10 demonstrate that although the incidence of cramming has
11 declined, it is still a problem for consumers in Florida
12 and that consumers object to their lack of control over
13 charges on their telephone bill.

14 MS. BROWN: Thank you.

15 CHAIRMAN DEASON: Okay.

16 MR. GOGGIN: BellSouth has no questions for this
17 witness.

18 EXAMINATION

19 BY MR. REHWINKEL:

20 Q Good morning, Mr. Durbin, Charles Rehwinkel with
21 Sprint.

22 Can I ask you about your exhibits first.
23 Hearing Exhibit Number 4, which is the quarter-inch stack
24 of cramming complaints?

25 A Yes, sir.

1 Q Are any of these complaints from customers of
2 CLECs?

3 A No.

4 Q Okay. On Composite Exhibit 5 -- I apologize,
5 Hearing Exhibit 5, the complaints resolved and savings to
6 customers. Are any of these complaints, the 2,996
7 cramming complaints, do those involve complaints by
8 customers of CLECs at the time they lodged the complaints?

9 A Not to my knowledge, no.

10 Q Thank you. Before I ask you about your
11 testimony directly, if I could indulge you to ask or
12 answer a question about complaints by CLEC customers
13 regarding the content of their bill. Are you aware of any
14 such complaints?

15 A No, I'm not.

16 Q Thank you. Mr. Durbin, you discuss on Page 3 of
17 your testimony, looking at Line 20, that a common thread
18 in your conversations with customers are that they are
19 interested in having the ability to restrict billing on
20 their telephone bill to companies specified by the
21 customer?

22 A I don't believe that is what my testimony says.

23 Q Okay.

24 A My testimony says that -- the question is in
25 your experience are customers interested in having the

1 ability to restrict billing on their telephone bill to
2 companies specified by the customer. My response is that
3 it is a common thread in our conversations with customers
4 that they want to be able to control which companies'
5 charges appear on their bill.

6 Q Okay. And are these conversations with
7 customers of CLECs?

8 A It would not have -- I don't believe so. I
9 don't believe that it would come up in a conversation with
10 a CLEC.

11 MR. REHWINKEL: Okay. Thank you. Mr. Durbin,
12 that's all I have. Thank you.

13 THE WITNESS: Thank you.

14 MR. WAHLEN: Mr. Durbin, it's Jeff Wahlen.

15 EXAMINATION

16 BY MR. WAHLEN:

17 Q Do you know whether any CLEC in Florida offers
18 bill blocking as a service for its customers?

19 A I am not aware of any.

20 Q But your testimony is that people would like
21 this service?

22 A My testimony is that customers have expressed
23 concern that charges can appear on their bill without
24 their knowledge and without their control. Customers want
25 to be able to control what charges appear on the bill.

1 Q And so if that is true, and a CLEC offered bill
2 blocking on a voluntary basis, would your testimony be
3 that some customers might be interested in that?

4 A I would think so, yes.

5 Q And so that might be a way for a CLEC to
6 distinguish itself in a competitive marketplace, would
7 that be true?

8 A That could be conceived of as an advantage, yes.

9 Q In your discussions with the customers or in the
10 discussions that you say are a common thread in your
11 testimony, have your customers indicated any willingness
12 to pay a little extra for that service?

13 A Customers that we talk to are not typically
14 aware of the concept of a billing block, so the discussion
15 of a charge for it is not something that has typically
16 come up.

17 Q Now, your exhibit shows that the Division of
18 Consumer Affairs has gotten a number of refunds for
19 customers for cramming, is that correct?

20 A That is correct, yes.

21 Q And is cramming a violation of the Commission's
22 existing rules?

23 A Not typically, no, sir. Most of the time we are
24 referring to charges that are nonregulated charges.

25 Q So is it your testimony that cramming is not a

1 violation of the Commission's rules?

2 A It depends upon the nature of the complaint. It
3 would be -- you would have to look at each specific one to
4 determine whether a Commission rule has been violated or
5 not.

6 Q But in those cases -- in any event, if someone
7 has been crammed, you are going to try to get a refund for
8 them, is that correct?

9 A That's correct.

10 MR. WAHLEN: Thank you. No further questions.

11 MS. RULE: Mr. Durbin, Marsha Rule with AT&T.

12 EXAMINATION

13 BY MS. RULE:

14 Q Did you work with staff on the promulgation and
15 implementation of Subsection 18 of Rule 25-4.110? That is
16 the provision that says if a customer notifies a billing
17 party that they didn't order an item on their bill or they
18 weren't provided a service, then the billing party shall
19 promptly provide a credit and remove the item from the
20 bill with certain listed exceptions. Did you work on that
21 one?

22 A I have been on staff on this docket. Now
23 whether or not I worked on that specific section, I
24 honestly could not recall. I wouldn't be at all surprised
25 that I did.

1 Q You are familiar with the section, correct?

2 A Yes, ma'am.

3 Q Now, that section just went into effect on July
4 5th, didn't it?

5 A Yes, ma'am, to the best of my recollection.

6 Q Now, if a customer can call their billing party
7 and request that these items that we could call crammed
8 items be taken off their bill, would that tend to reduce
9 the complaints to the Commission?

10 A I would expect that it probably would, yes.

11 Q And I notice that kind of a theme in your
12 exhibits, the complaints from people is that they have
13 tried to get their charges taken care of and they were
14 unable to, correct?

15 A In many cases, yes, that is the situation.

16 Q So the implementation of Subsection 18 should
17 help with that problem, right?

18 A One would think so, yes, ma'am.

19 Q Okay. Now, CLECs are required to comply with
20 this provision, aren't they?

21 A In the proposed rules, yes, ma'am.

22 Q So after July 5th when the rule went into effect
23 we would expect the incidence of cramming complaints would
24 further drop?

25 A Well, there is a time delay before we start

1 seeing any results. And there hasn't been enough time
2 passed to determine whether or not the implementation of
3 this rule has, in fact, effected a reduction in cramming
4 complaints.

5 Q Based on your experience that customers have had
6 a hard time getting some charges off their bill, and now
7 there is a rule that requires companies to take it off
8 their bill, would you expect that over time cramming
9 complaints would drop?

10 A I would expect so.

11 MS. RULE: Thank you. No further questions.

12 EXAMINATION

13 BY MS. KAUFMAN:

14 Q Hello, Mr. Durbin. I want to look at the
15 exhibits that are attached to your testimony.

16 A Yes, ma'am.

17 Q I have to admit I'm not sure what number they
18 are, but the bar graph is what I want to look at.

19 A Yes, ma'am.

20 Q Would you agree -- and this is one entitled
21 cramming complaints closed by the department, by the FPSC
22 Division of Consumer Affairs, and the preceding chart is
23 similar, and that is complaints received, correct?

24 A Yes, ma'am.

25 Q You have got received and you have got closed?

1 A Yes, ma'am.

2 Q Would you agree with me that there has been a
3 pretty dramatic drop in the number of cramming complaints
4 that you are receiving?

5 A Yes, ma'am.

6 Q And I think we have already established that
7 even of the small number you are receiving, none of those
8 are related to ALECs, correct?

9 A That is correct.

10 Q Now, currently the way it works, if you get a
11 complaint or your employees, would it be fair to say that
12 it is handled on a case-by-case basis?

13 A Absolutely.

14 Q And do you feel that you have been fairly
15 successful in resolving complaints for people, for
16 consumers?

17 A We would think, so, yes, ma'am.

18 Q And certainly you could -- without the
19 imposition of the rule we are discussing here you would
20 continue to resolve those complaints on a case-by-case
21 basis, wouldn't you?

22 A Yes, ma'am.

23 Q And would you expect to continue to have the
24 same sort of success you have had in the past?

25 A We would see no reason why not.

1 MS. KAUFMAN: Thank you, Mr. Durbin.

2 EXAMINATION

3 BY MS. McNULTY:

4 Q Good morning, Mr. Durbin. I am Donna McNulty on
5 behalf of MCI WorldCom, and I have a few questions to ask
6 you also about your Exhibit JRD-1 and 2 attached to your
7 testimony.

8 Do you have copies of that?

9 A Yes, ma'am, right in front of me.

10 Q As it has been established, there is a
11 significant decline in cramming since 1998, is that
12 correct?

13 A Yes, ma'am.

14 Q In your testimony on Page 3 you state that
15 cramming complaints are filed either against certificated
16 IXCs or against noncertificated service providers, is that
17 correct?

18 A That's correct.

19 Q Referring to your exhibit again, approximately
20 what percentage of cramming complaints are filed against
21 noncertificated providers that are shown in this chart?

22 A It would simply be a guess on my part without
23 having gone in and researched it. Having worked on this
24 the last few days, I would say probably 50/50. But that
25 is only an estimate.

1 Q Okay. Then turning to the exhibit that was
2 handed out today, that is, I believe, your composite or
3 your Exhibit JRD-3 that are examples of customer
4 complaints regarding cramming?

5 A Yes, ma'am.

6 Q How many complaints are included in your
7 example?

8 A There are, I believe, eight examples here.

9 Q And are they fairly typical examples?

10 A Yes.

11 Q And of these eight complaints, how many
12 complaints are there against ALECs?

13 A None against ALECs.

14 Q And how many are there against IXCs?

15 A I can tell you real quick. It appears that
16 seven of the eight complaints are against companies that
17 are now certificated as IXCs.

18 Q But at the time they were filed -- I would like
19 to refer you to the company codes in these exhibits. For
20 example, the one that says USP&C?

21 A Yes, ma'am.

22 Q It says company code NA, what does that mean?

23 A Not applicable.

24 Q And why is that not applicable?

25 A Because the analyst who filed this complaint was

1 apparently not aware that USP&C has become a certificated
2 carrier. At one time we filed -- we were filing a number
3 of complaints against USP&C before they had become a
4 certificated carrier and apparently she was still under
5 the impression that they had not gotten certification.

6 Q Okay. And what about yellow pages.com, it also
7 says NA?

8 A Yes. I could not find anything on our master
9 Commission directory indicating that that was a
10 certificated long distance carrier.

11 Q And it doesn't hold an ALEC certificate either,
12 is that correct, to your knowledge?

13 A To my knowledge, no.

14 Q Is that also true for Federal Transtel?

15 A Correct.

16 MS. McNULTY: Thank you. I have no further
17 questions.

18 CHAIRMAN DEASON: Commissioners.

19 COMMISSIONER JACOBS: Mr. Durbin, on your
20 Exhibit -- I think it is Exhibit 4, it is the composite of
21 complaints that you filed.

22 MR. DURBIN: Yes, sir.

23 COMMISSIONER JACOBS: Labeled Staff Composite 2.

24 MR. DURBIN: Yes, sir.

25 COMMISSIONER JACOBS: I want to look at a couple

1 of these real briefly. The one that is like the fourth
2 stapled pack from the back, and it is titled Request
3 Number 308504T, as in Tom, and the consumer name is
4 Catherine Peacock. I'm sorry, Peacocks.

5 THE WITNESS: Yes, sir.

6 COMMISSIONER JACOBS: Do you have that?

7 THE WITNESS: Yes, sir, I do.

8 COMMISSIONER JACOBS: Now, first of all, these
9 forms here, the consumer request form, understand me --
10 walk me through, rather, what these are and how they are
11 processed?

12 THE WITNESS: When a customer contacts the
13 Public Service Commission and tells us that, you know,
14 that they have a complaint, we fill out all of the
15 information on this form and then either fax, or mail, or
16 e-mail this form to the company against which the
17 complaint is being filed. The company then has 15-working
18 days within which to get us a written response to the
19 complaint.

20 COMMISSIONER JACOBS: So this is a standard form
21 you fill out at the instance of every consumer request you
22 get, send it to the company and they corroborate or refute
23 what is on there?

24 THE WITNESS: Correct.

25 COMMISSIONER JACOBS: Okay. What I want to

1 focus on here is specifically this is a cramming
2 complaint. And to understand it, I won't go through all
3 the details, but on Page 2 I just want to touch just very
4 briefly, this customer had -- actually it is on Page 1.
5 This customer had received an unauthorized charge on her
6 bill and had been credited already, correct?

7 THE WITNESS: That's correct.

8 COMMISSIONER JACOBS: And then that charge
9 appeared again, is that correct?

10 THE WITNESS: That's correct.

11 COMMISSIONER JACOBS: And so this was her second
12 request on that same charge, is that correct?

13 THE WITNESS: That's correct.

14 COMMISSIONER JACOBS: The charge was for a
15 voicemail that could only be activated if the customer
16 called that number, is that correct?

17 THE WITNESS: That is correct, yes, sir.

18 COMMISSIONER JACOBS: But it is my understanding
19 that the customer is complaining they had never called
20 this service, is that correct?

21 THE WITNESS: That's correct.

22 COMMISSIONER JACOBS: But this charge still
23 appeared on the bill?

24 THE WITNESS: The customer is saying that she
25 never ordered the service, never utilized the service.

1 COMMISSIONER JACOBS: Now, back about mid-ways
2 in that package there is a letter from the company that
3 billed her. It is a letter -- I don't have the page
4 number, but it has a letterhead Integretel Billing
5 Solutions?

6 THE WITNESS: Yes, sir.

7 COMMISSIONER JACOBS: Would you read for me the
8 last paragraph of that letter?

9 THE WITNESS: On the first or second page, sir?

10 COMMISSIONER JACOBS: First page, I'm sorry.

11 THE WITNESS: On the first page the charges in
12 question are billed for a monthly voicemail service
13 initially accessed through a toll free number. The
14 customer is provided with a box number and chooses a
15 personal identification number to initiate the service. A
16 long distance telephone number is given to access their
17 voicemail. A block has been requested to prevent any
18 additional calls. Please be advised that blocking is not
19 100 percent guaranteed. For a more detailed operational
20 information, please contact Jane Jacobs, counsel for
21 Remote Solutions, at the following address.

22 COMMISSIONER JACOBS: So this customer worked
23 through the process and asked that they be blocked, to not
24 get this call again, to not get this service again?

25 THE WITNESS: I don't know that the customer

1 asked -- well, yes, in effect that is true.

2 COMMISSIONER JACOBS: Well, you can take by
3 representation here, at least from the company, and they
4 say the block has been requested to prevent any additional
5 calls. But it appears that this customer actually
6 experienced what was indicated in this letter that a block
7 wasn't guaranteed because they got the charge again.

8 THE WITNESS: That's correct.

9 COMMISSIONER JACOBS: Okay. Let's go to the
10 complaint following that complaint number 311980T, as in
11 Tom.

12 THE WITNESS: Yes, sir.

13 COMMISSIONER JACOBS: And that consumer -- the
14 business name actually is Belleview Portable Buildings?

15 THE WITNESS: Yes, sir.

16 COMMISSIONER JACOBS: And, again, this is an
17 unauthorized charge, in this instance, for a website, is
18 that correct?

19 THE WITNESS: That's correct.

20 COMMISSIONER JACOBS: Let me find the section
21 that I wanted to refer to. On Page 2 of the complaint of
22 the request form, top first paragraph. Would you -- well,
23 let me go about it this way rather than read through all
24 that.

25 Is this correct to state that in this instance

1 this business called the company that was ostensibly
2 providing this website service and were told and
3 acknowledged that they were indeed -- well, there was a
4 dispute as to whether or not those charges were
5 authorized?

6 THE WITNESS: That's correct.

7 COMMISSIONER JACOBS: But acknowledged that the
8 charges should come off of the bill, is that correct?

9 THE WITNESS: Correct, yes, sir.

10 COMMISSIONER JACOBS: How long did they tell
11 them it would take to come off the bill? It is in the
12 middle of that paragraph.

13 THE WITNESS: Let's see. She informed me of the
14 same policy of two to three billing cycles for a credit to
15 show up on her phone bill. Two to three cycles.

16 COMMISSIONER JACOBS: Now, would the charge
17 actually stop and then the credit will come two or three
18 billing cycles later, or would the charges continue and
19 then the credits come two or three billing cycles later?
20 Are you aware of how that works?

21 THE WITNESS: Typically, my understanding is
22 that the charges would stop. Someone, say Mercury
23 Marketing, for example, would stop charging. Now, it is
24 not unlikely that a charge would appear on the next bill
25 because it may have already been submitted. But, anyway,

1 the charges would typically stop at that point, and then a
2 credit for any charges would appear within two to three
3 billing cycles.

4 COMMISSIONER JACOBS: Okay. And the customer
5 sought some recourse in that and they called the LEC that
6 had provided the bill on which those charges were
7 provided, is that correct?

8 THE WITNESS: If I understand correctly, yes.

9 COMMISSIONER JACOBS: And the LEC then referred
10 them to this Commission, is that correct?

11 THE WITNESS: Yes, sir.

12 COMMISSIONER JACOBS: Thank you.

13 CHAIRMAN DEASON: Ms. Brown. Thank you, Mr.
14 Durbin. Mr. Moses.

15 Thereupon,

16 RICHARD A. MOSES

17 appeared as a witness before the Commission and testified
18 as follows:

19 EXAMINATION

20 BY MS. BROWN:

21 Q Would you state your name and business address
22 for the record, please.

23 A My name is Rick Moses, 2540 Shumard Oak
24 Boulevard, Tallahassee, Florida 32399.

25 Q By whom are you employed and in what capacity?

1 A The Florida Public Service Commission, Bureau
2 Chief of the Bureau of Service Quality.

3 Q You filed prefiled testimony in this rule
4 hearing?

5 A Yes, I did.

6 Q Did you also file an exhibit with your
7 testimony?

8 A Yes, I did.

9 Q And that is Exhibit Number RAM-1, is that
10 correct?

11 A That's correct.

12 MS. BROWN: Mr. Chairman, could we please have
13 that exhibit marked for identification?

14 CHAIRMAN DEASON: Yes. Exhibit 6.

15 (Exhibit Number 6 marked for identification.)

16 BY MS. BROWN:

17 Q Mr. Moses, did you prepare a summary of your
18 testimony?

19 A Yes.

20 Q Would you give it to the Commission at this
21 time, please.

22 A Certainly. My testimony addresses my belief
23 that there needs to be a billing block option also
24 applicable to ALECs and IXC's. The biggest problem as I
25 see it is that if a company is going to bill for an entity

1 other than itself, it is just as susceptible to fraud as
2 any other billing system, such as the LECs.

3 We have seen evidence of cramming over the
4 recent years through the LECs' billing systems, and I
5 believe that the Commission needs to take a proactive
6 approach instead of a reactive approach and prevent the
7 cramming before it happens in case the ALECs and IXC's open
8 their billing systems.

9 One other point, I believe that in many of the
10 complaints that we have seen the customer is usually the
11 most angry about the fact that they have absolutely no
12 control over their telephone bill. The telephone bill has
13 evolved to the point that it has now become an account of
14 which anyone can place charges on a billing system simply
15 by looking up the telephone number in a telephone
16 directory or getting it from directory assistance.

17 If they have got the ability to access the
18 billing systems and forward the information onto the
19 billing systems, it gets placed on the local telephone
20 bill. And there is no verification required or anything
21 to validate that charge.

22 That concludes my summary.

23 MS. BROWN: Thank you.

24 CHAIRMAN DEASON: Questions.

25 MR. GOGGIN: BellSouth has no questions for Mr.

1 Mr. Moses.

2 MR. REHWINKEL: Thank you.

3 EXAMINATION

4 BY MR. REHWINKEL:

5 Q Good morning, Mr. Moses.

6 A Good morning.

7 Q It's still morning. Charles Rehwinkel with
8 Sprint.

9 I would like to ask you about one of the last
10 things you said in your testimony -- I mean, in your
11 summary regarding customers wanting control over their
12 bill. Would the bill block option that is in the rule
13 proposal give the customers control over what items appear
14 on their bill?

15 A I believe it would.

16 Q Would it allow -- let me see. Mr. Durbin said
17 that in their experience customers are interested in
18 having the ability to restrict billing on the telephone
19 bill to companies specified by the customer. Would the
20 bill block option that you are proposing give the customer
21 that ability?

22 A If I understand your question correctly, it
23 would give the customer the ability to strictly having the
24 companies that they have selected, such as their
25 presubscribed long distance, presubscribed local carrier,

1 intraLATA carrier. In other words, they wouldn't be able
2 to have a company on there that they would not recognize
3 if that company's name appeared on their bill.

4 Q Okay. But would the customer have the ability
5 to designate what companies or charges appeared on their
6 bill other than as set out in the rule? Let me ask you a
7 different way.

8 A I'm just not clear on what you are asking.

9 Q You can design a bill block option that allows
10 the customer to designate that I want this, this, this and
11 this company on my bill and no one else; or you can have a
12 bill block option that says that everybody but these
13 companies can -- anybody but these companies can put
14 charges on my bill, would you agree with that?

15 A The way you characterized it, I'm not sure if I
16 would or if I wouldn't, because it is kind of confusing
17 the way you are trying to explain it. The way the billing
18 block is set up is it identifies the types of services,
19 the types of companies that that customer can select and
20 it also identifies the types of charges those companies
21 can put on the bill.

22 COMMISSIONER JABER: Mr. Moses, I didn't
23 understand that, either, so help me. Logistically, how
24 does the customer -- how would you envision a customer
25 exercising the billing block option?

1 THE WITNESS: They would tell the billing
2 company that I want only charges from my presubscribed
3 long distance carrier and my presubscribed intraLATA
4 carrier, and my toll carrier, if that is what they want,
5 and they don't want all of these voicemail charges or any
6 other charges to appear.

7 If that is the type of service that they want
8 restricted to, which most people don't want anything else
9 charged to their telephone bill, they will pay for it in
10 some other manner, they should have that right to control
11 that bill.

12 COMMISSIONER JACOBS: Is there technology now
13 that allows the incoming calls to be filtered on that
14 basis?

15 THE WITNESS: Incoming calls?

16 COMMISSIONER JACOBS: That is what is going to
17 happen, isn't it, where --

18 THE WITNESS: The rule allows for collect calls,
19 that type of service. Because a collect call, for
20 instance, the customer has to actually make an
21 acknowledgment that they are accepting that call at the
22 time, so it wouldn't prevent that from appearing on the
23 bill.

24 COMMISSIONER JACOBS: Well, I guess -- let me
25 make sure I'm asking the question correctly. What you are

1 saying is that a customer can specify by way of a block
2 that they only want to receive calls from their -- their
3 presubscribed IXC and the other categories that you
4 indicated.

5 Is there technology out there now that can
6 implement that, that block?

7 THE WITNESS: I would believe that there would
8 be, because there is technology out there that does
9 incoming call blocking, for instance, there is technology
10 that does screening for certain things that the line can
11 only do. There is 900 blocking already out there. There
12 is PIC freeze out there for your selection of carriers.
13 And I think if the technology exists that the person can
14 get a fraudulent charge on the bill the technology ought
15 to exist to be able to prevent it.

16 COMMISSIONER JACOBS: For instance, today if a
17 customer tried to make a long distance call -- well, how
18 do I say this? If the customer wanted to make a long
19 distance call just by dialing 1 and the area code, the
20 technology automatically knows who that presubscribed IXC
21 is and automatically charges them through that IXC's
22 system, is that correct?

23 THE WITNESS: Yes.

24 COMMISSIONER JACOBS: If someone wanted -- if
25 there were an incoming call and it was from a 900 number,

1 the technology now can decide not to complete that 900
2 call?

3 THE WITNESS: You would never receive --

4 COMMISSIONER JACOBS: I'm sorry, the call out.
5 I'm sorry.

6 THE WITNESS: Outgoing, if you were going to
7 make a 900 call, there is already in the current rules the
8 ability to block that.

9 COMMISSIONER JACOBS: Okay. Now, and the
10 billing that goes along with that, the billing records
11 that go along with that, they can correctly negotiate
12 those transactions, is that correct?

13 THE WITNESS: Well, I think there is a little
14 confusion about the two different blocks. The 900 block
15 is more or less what I would call a physical block. You
16 can't even make the calls. So there is no billing that
17 would be associated with that.

18 COMMISSIONER JACOBS: Okay.

19 THE WITNESS: Now, let's say that -- the type of
20 billing block that we are talking about is more or less
21 the charges that are just placed on the bill that have
22 absolutely no call associated with it whatsoever, such as
23 voicemail, or in one instance there was a pet insurance
24 that was put on a bill. I mean, that was about the most
25 ludicrous thing that I had seen put on a bill.

1 There is also charges -- in fact, just recently
2 we have experienced on the State of Florida lines that
3 there is over \$5,000 worth of cramming charges put on it
4 for a voicemail system. And as everybody knows, the State
5 of Florida already has a voicemail system. And there is
6 no one authorizing that to be placed on there. So if
7 those lines were subscribed to a billing block, those
8 charges would never appear to begin with. The customer
9 doesn't have to go through the aggravation of trying to
10 prevent this from happening to them.

11 COMMISSIONER JACOBS: So it's not so much the
12 matter of some kind of call transaction record, it is the
13 filter at the billing process?

14 THE WITNESS: Absolutely.

15 COMMISSIONER JACOBS: Okay. Thank you.

16 COMMISSIONER JABER: What is that process, Rick?
17 If a customer has requested a billing block, and let's say
18 the pet insurance guy tries to put a charge, an
19 unauthorized charge on the bill, you think the ALEC has
20 the appropriate technology or the appropriate mechanism to
21 catch that and not even put it on the bill?

22 THE WITNESS: First off, the ALEC if they are
23 not opening their billing systems to bill for others than
24 themselves, it is a moot subject. There is nothing to
25 block. They are never going to have a cramming charge.

1 So it really doesn't even matter if this rule existed. It
2 is just whenever you open the billing system such as the
3 LECs have done. If they bill for one person they have to
4 bill for anybody that wants to put a bill on there or they
5 are susceptible to antitrust lawsuits.

6 We have heard that many times in meetings with
7 the companies. We have met with them to try to see if we
8 could do something to get the cramming down. And I think
9 because of the meetings, I think you are seeing cramming
10 coming down. But it still exists. And that is why we
11 think the billing block is an important tool for the
12 customers to have.

13 COMMISSIONER JABER: But how is it that the
14 company catches the charge? I'm still back on logistics.
15 I don't understand how you expect it to work.

16 THE WITNESS: There would have to be a system in
17 place that it looks at what companies can place a charge
18 on it in order to filter that out and kick it out as a
19 nonbillable charge.

20 COMMISSIONER JACOBS: It is the reverse of the
21 process that is now in place, right? Before someone can
22 send a billing record to be put on a company's bill, there
23 has to be some authorization. And the authorization I'm
24 talking of is not the customer authorizing the charge, but
25 in that company's billing record they don't just let

1 anybody send a billing record into their billing system,
2 do they?

3 THE WITNESS: If you have a telephone number and
4 you have the method by which -- usually it is mag tape,
5 and I don't know, there are probably various other systems
6 that are out there that I'm not familiar with, but if you
7 have got the ability to forward that on to a billing
8 system and you have entered into a billing agreement with
9 the billing company, yes, you can put it on there.

10 COMMISSIONER JACOBS: So am I to say that Joe
11 Blow's website, no registration at all, would send a
12 billing record to a telephone company and that telephone
13 company would accept it without knowing who Joe Blow is
14 and it will put it on their account?

15 THE WITNESS: They would have no way of knowing
16 where that charge originated from. There is no way --

17 COMMISSIONER JACOBS: I understand that. But
18 what I'm saying is in terms of the telephone company's
19 internal checkpoint, that they will simply accept this
20 letter from Joe Blow's website and then put it on their
21 bill?

22 THE WITNESS: Under the current method if a
23 record came in that they associated it with a telephone
24 number, which is what the billing companies have to
25 associate with it in order to match it up to an address to

1 send the bill and aggregate it onto the bill, that could
2 happen, yes, and does happen.

3 COMMISSIONER JACOBS: I would think that there
4 would be some process by which the companies would
5 corroborate that Joe Blow is out there, he is in the
6 process, he is not some crook in jail. They would then
7 corroborate that he provides this service, and then there
8 will be somebody check-off to send that actually to the
9 billing process and it says we now can bill for Joe Blow's
10 website service.

11 THE WITNESS: Let me see if I can explain this.
12 The companies can enter into billing agreements. They
13 have no way of knowing when they enter into that billing
14 agreement if they are entering into a company that is
15 going to commit fraud.

16 COMMISSIONER JACOBS: I understand. But they do
17 a due diligence when they enter into that billing
18 arrangement and then they make the determination that
19 based on the reasonable due diligence we have done it is
20 okay to bill for this person. They can't determine if the
21 person would ever do fraud or not, I understand that.

22 THE WITNESS: Right.

23 COMMISSIONER JACOBS: So if someone has not gone
24 through that process, if someone has not gone through the
25 company's due diligence, they have not entered into some

1 kind of a billing arrangement with the company, it is very
2 unlikely that they are going to appear on that bill, is
3 that correct?

4 THE WITNESS: Here I think is where something is
5 falling through the cracks is the word due diligence.

6 COMMISSIONER JACOBS: Well, I don't want to go
7 off on that. My main concern here is there will be some
8 process by which the company would evaluate a potential
9 originating party that they are going to bill for. And at
10 the end of that process, whatever it is, that a decision
11 is then made that that company will appear on the
12 telephone company's billing.

13 THE WITNESS: That's correct.

14 COMMISSIONER JACOBS: And if somebody hasn't
15 gone through that process it is unlikely that they will
16 appear on that bill. In other words, it is unlikely that
17 the company's internal controls would miss somebody. That
18 somebody would just slip through the cracks and get on the
19 telephone bill without having gone through the internal
20 controls of the telephone company.

21 THE WITNESS: I would have to assume that to be
22 correct.

23 COMMISSIONER JACOBS: Now then, once into that
24 process they are known. They have some kind of a track
25 record. They have probably -- whatever agreement they

1 signed in terms of getting billed, they are known within
2 the telephone company, is that correct?

3 THE WITNESS: Yes.

4 COMMISSIONER JACOBS: So then if it were needed
5 to restrict their ability to appear on a bill, they could
6 be referenced by whatever internal reference code they
7 have by that company, is that correct?

8 THE WITNESS: Yes.

9 COMMISSIONER JACOBS: So if a customer says I
10 only want my IXC and AB Company to appear on my bill, the
11 telephone company could then look and see everybody else
12 doesn't get on.

13 THE WITNESS: That's correct.

14 COMMISSIONER JACOBS: Is that the essence of
15 what a billing block would do?

16 THE WITNESS: Yes, sir.

17 COMMISSIONER JACOBS: Okay.

18 BY MR. REHWINKEL:

19 Q Mr. Moses, let me ask you this, ask my question
20 this way. Could a customer of an ALEC designate entities
21 other than those listed in Section 19? Could he designate
22 that he wanted to receive billing from those entities?

23 A Let me take one moment just to reread the rule,
24 if you don't mind.

25 Q Okay.

1 A It appears from looking at the rule that it
2 would have to be a charge that was a charge from the
3 billing party, or its affiliates, or the presubscribed
4 companies, or charges for collect calls, third-party,
5 customer dialed or 1010. It wouldn't be a situation to
6 where it would just be any company out there, I wouldn't
7 think.

8 Q Okay. If an ALEC decided they wanted to partner
9 with a large ISP, say AOL, and offer them some sort of a
10 bundle that included some Internet usage and maybe
11 billings associated with use of the Internet, would those
12 billings be allowed if a bill block option as required by
13 the Commission was in place?

14 A Well, if you were an affiliate, yes.

15 Q Let's say it wasn't an affiliate.

16 A Okay. If it was for website services or
17 something of that nature, I would say yes, because the
18 statute exempts us from regulation of the website.

19 Q Okay. So you are saying that a bill block --
20 that if you installed a bill block option like Section 19,
21 that where it says in 19(a) that a billing party must
22 restrict charges in its bill to only, and then it lists
23 Items 1 and 2, you are saying that Internet-related
24 charges would not be considered charges?

25 A I think it would be outside the rule.

1 Q Why do you say that?

2 A 364.604 exempts Internet.

3 Q Okay. Where exactly do you say -- is that
4 because of the definition, Section 364.602(5), which says
5 information service means telephone calls made to 900 or
6 976 type services, but does not include Internet services?

7 A That's correct.

8 Q Okay. So is it your position that the source of
9 authority for the Commission for implementing a bill block
10 option is found in 364.604?

11 MS. BROWN: Mr. Chairman, I object to the
12 question. He is asking for a very specific legal opinion
13 from Mr. Moses, and Mr. Moses is not a lawyer.

14 CHAIRMAN DEASON: We realize he is not a lawyer,
15 but he has worked in this matter, he has an opinion, he is
16 trying to express it in a technical way. And if he has an
17 opinion on the law I want to hear it. The question
18 stands.

19 THE WITNESS: The answer is yes.

20 BY MR. REHWINKEL:

21 Q Where in 364.604 is the bill block option?

22 A I don't have 604 in front of me, but I believe
23 it is, if I recall, Paragraph 2. But I'm not sure if --

24 Q Is that the section that reads, "A customer
25 shall not be liable for any charges for telecommunications

1 or information services that the customer did not order or
2 that were not provided to the customer"?

3 A That's correct.

4 Q So is it your position that the bill block
5 option could be required for business customers of ALECs?

6 A Yes.

7 Q And what is your basis for that?

8 A The statute doesn't distinguish between any kind
9 of services, it just says telecommunications services.

10 Q Okay. And I will be glad to give you a copy of
11 the statute, but I am reading under 364.602, definitions.
12 It says, "For purpose of this part," and it is my
13 representation to you that this part means Part 3,
14 telecommunications consumer protection. That in
15 Subsection 3 of Section 602 it says, "Customer means any
16 residential subscriber to services provided by a
17 telecommunications company." Do you recall that?

18 MS. BROWN: Mr. Chairman, if I just might object
19 or interrupt for a minute and have the opportunity to
20 approach the witness and give him a copy of this so he has
21 it in front of him.

22 MR. REHWINKEL: That's fine.

23 BY MR. REHWINKEL:

24 Q Would you like for me to revisit any part of
25 that question?

1 A Let's see. You were on 364.602?

2 Q Yes. I had read the first line that said for
3 purposes of this part.

4 A Okay.

5 Q And then I read Subsection 3, which defines
6 customer. And I was about to take you back over to
7 Section 604, which is part of this part, and down to
8 Subsection 2, which starts off -- the first two words are
9 a customer. And I guess it is staff's position that the
10 bill block option derives, or the authority for the bill
11 block option is derived from this subsection, is that
12 correct?

13 A The bill block option was derived from 364.604.
14 And as far as the definition section and everything, I
15 would have to default to legal counsel on that. I'm not
16 sure how that plays in.

17 Q Okay. So if it was the case that Subsection 2
18 is the authority for the bill block option, Subsection 2
19 of 364.604, and if it was the correct legal position that
20 a customer is limited to residential and therefore
21 excludes business customers --

22 A It still wouldn't exclude all business
23 customers. Because I think other statutes also define
24 single line businesses.

25 Q Okay. But this doesn't refer to basic service

1 customers, does it?

2 A Well, I'm not sure. It just seems like there is
3 some conflicts in the statutes from what you are
4 describing.

5 COMMISSIONER JABER: Mr. Moses, help me
6 understand it. Staff's intent is that the rule -- it is
7 your intent that the rule applies to business and
8 residential?

9 THE WITNESS: When we looked at 364 -- or when I
10 looked at 364.604, I looked at it from the standpoint it
11 does not say residential, it doesn't differentiate between
12 any services. Usually in the statutes, from my reading of
13 other statutes, they will always say right in that statute
14 it only applies to one particular type of service or
15 customer.

16 CHAIRMAN DEASON: Well, Mr. Moses, doesn't the
17 definitions section define customer as a residential
18 customer, and isn't that definition part of this overall
19 section in which billing practices is found?

20 THE WITNESS: It appears so, yes.

21 CHAIRMAN DEASON: But it is your intent that the
22 billing block option would be available to all customers?

23 THE WITNESS: I think it should be because we
24 have seen evidence on business systems that they have been
25 crammed the same as residential.

1 CHAIRMAN DEASON: Thank you.

2 BY MR. REHWINKEL:

3 Q Getting back to my question about if you had a
4 customer that wanted to be billed for Internet services,
5 you are saying that the bill block option, regardless of
6 which class of customers it applies to, would not stand as
7 a barrier to that customer receiving those charges because
8 it is exempt, an Internet service would be exempt under
9 the definition in 364.602(5)?

10 A That would be my understanding.

11 CHAIRMAN DEASON: I need to understand this. It
12 is your position that charges on a telephone bill for
13 Internet service or information service -- I'm sorry,
14 Internet service that the rule as you are proposing it
15 would not affect that in any way, is that correct?

16 THE WITNESS: It would not affect the Internet
17 portion of it because of the exemption in the statutes
18 that we don't have control over Internet services.
19 Therefore, I was viewing it as being outside of the rule.

20 CHAIRMAN DEASON: So if a customer chose a
21 billing block, he or she could not say I do not want any
22 charges, I do not want Internet services billed on my
23 telephone bill?

24 THE WITNESS: I think if a person was wanting to
25 be charged for the Internet services they wouldn't choose

1 the billing block. I mean, it is an optional service.
2 And if they choose to be billed by multiple entities out
3 there that would be blocked by the billing option, then
4 they just wouldn't choose that option. It is only meant
5 for a tool for those customers that don't want anything
6 other than just plain old telephone service on their bills
7 to have the option of having that.

8 COMMISSIONER JABER: Rick, I don't understand
9 what you're saying. I'm being very slow here, I'm sorry.
10 If an Internet service provider was providing service to a
11 customer of Sprint, you are saying that residential
12 customer just to simplify this could not exercise the
13 billing block for Internet, because under the statute we
14 don't have jurisdiction over Internet service?

15 THE WITNESS: No, I'm saying that the Internet
16 service charge would be outside of this rule. The billing
17 block shouldn't affect it.

18 COMMISSIONER JABER: Okay. But why isn't pet
19 insurance outside of this rule?

20 THE WITNESS: Nothing in the statute exempts pet
21 insurance. The statute was very specific when it said
22 Internet services, and we took it as such.

23 COMMISSIONER JACOBS: Are we talking for any
24 Internet or Internet provided by the telecommunications
25 provider?

1 THE WITNESS: I'm not real clear on that, I
2 don't know.

3 COMMISSIONER JACOBS: So what you are driving on
4 is that if an exemption speaks to Internet services, then
5 you would want to adhere to that for this rule. But in
6 terms of whether it is an authorized charge or not, that
7 still is an important issue with regard to billing
8 practices, is that correct?

9 THE WITNESS: That is correct.

10 CHAIRMAN DEASON: Back to Commissioner Jaber's
11 questions. Pet insurance is neither a telecommunications
12 service or an information service, is it?

13 THE WITNESS: That is true.

14 CHAIRMAN DEASON: But we have jurisdiction to
15 say that that shall not appear on a telephone bill.

16 THE WITNESS: Well, under the 364.604(2), it
17 says should not be liable for any charges for
18 telecommunications or information services that the
19 customer did not order. Wait a minute. I'm not clear --

20 CHAIRMAN DEASON: Well, let me ask you this.
21 How do you expand that to say it has to be a billing block
22 if it just says it is not liable? I mean, if there is a
23 requirement that says charges have to be removed from the
24 bill, the customer is not liable, correct?

25 THE WITNESS: Right.

1 CHAIRMAN DEASON: So how do you expand that to
2 say that means we can impose a billing block?

3 THE WITNESS: We were trying to prevent the
4 charge from happening to begin with instead of the
5 customer having to go through the process of trying to get
6 the charge removed and also possibly having their credit
7 ruined. We were looking at it as a preventative measure
8 and thought that the statute would cover that because they
9 should not be liable for it, so therefore it shouldn't
10 appear to begin with.

11 BY MR. REHWINKEL:

12 Q Thank you. I think Commissioners Jaber and
13 Deason have asked my questions along that line.

14 Mr. Moses, you alluded earlier in your comments
15 about -- I think it was in response to a question from
16 Commissioner Jacobs about ILECs being required to allow
17 billing clearinghouses and other third parties access to
18 their billing system, do you recall?

19 A That is my understanding, yes.

20 Q Are you aware of whether that same requirement
21 would apply to a CLEC?

22 A I don't know.

23 Q If it did not and the CLEC was available to
24 exercise more discretion in who they bill for, would you
25 still stand by your statement that ALECs are just as

1 susceptible to fraud as any other company? That is on
2 Page 5 of your testimony.

3 A I think you would still be susceptible. Maybe
4 not to that degree, because you could enter into an
5 agreement with a company that intends to defraud you.

6 Q Okay. If the CLEC wanted to partner with, let's
7 say, AOL to provide some sort of bundled service or some
8 sort of joint offering and then bill it to the customer
9 that wanted to receive billings from AOL, would they then
10 find themselves in the category -- and let's say that for
11 some reason AOL was going to not provide any exempted
12 services like Internet services, would that CLEC then find
13 itself in the position of having to implement a bill block
14 option before they actually offered the service, if that
15 service included billing to the customer?

16 A I'm not sure I followed what you just asked. I
17 was following you up there to a point.

18 Q All right. If the customer wants to receive
19 these third-party billings, would that trigger the -- in
20 your mind or in your view of the rule would that trigger
21 the requirement that the ALEC implement a bill block
22 option before they could fully offer that service to the
23 customer?

24 A I don't think the customer would choose a
25 billing block option if they wanted to receive charges.

1 Q And I would agree with you. But my question is
2 does the company have to implement the bill block option
3 because they are now billing third-party services,
4 regardless of whether that one customer wants to
5 receive the -- wants the bill block option or not? They
6 have got to put the bill block option in because they are
7 now billing third-party --

8 A I understand what you are saying. Yes. I
9 understand what you are saying.

10 Q Would you agree that installation of the bill
11 block option would be a predicate to offering this service
12 that the customer desired?

13 A Yes. Because you may have some customers that
14 would not want that, and you would have to have the
15 ability to block it.

16 Q Okay. So is it possible -- would you agree that
17 it would be possible that the bill block option would
18 impose a cost on a company that wanted to bring new
19 services to the market even where its own customers did
20 not want the protection that the bill block option
21 afforded?

22 A In the scenario that you just described, yes.

23 MR. REHWINKEL: Commissioners, that's all I
24 have. Thank you.

25 MR. WAHLEN: Mr. Moses, Jeff Wahlen.

EXAMINATION

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BY MR. WAHLEN:

Q The billing block option that we have here in the rule in 19(a), has any other state adopted a rule that imposes this kind of billing block?

A Not that I am aware of.

Q And are you aware of any telecommunications company that offers this kind of billing block option right now?

A There have been some local exchange companies that have -- of course they are required to now under the rule, but previous to the rule that they had restricted their billing to strictly telecommunications services, but not to the degree that we are going in this billing block.

Q Not this sweeping?

A No.

Q And are you aware of any system out there that a telephone company could purchase off the shelf that would allow them to implement this sweeping billing block option?

A Well, I would have to first be aware of all of the ones that are on the shelf, and I'm not, so I couldn't answer that.

Q So am I correct in understanding that you don't know whether there is a product that you could purchase

1 off the shelf that would allow a telecommunications
2 company to implement this sweeping billing block option?

3 A I don't know.

4 Q And have you read the SERC in this case?

5 A Not in its entirety, no.

6 Q Do you know what it would cost to implement this
7 kind of billing block option?

8 A No, I do not.

9 Q And so while we don't know what it would cost to
10 adopt this kind of billing block option, it is still your
11 recommendation that we would do it?

12 A On a conceptual basis, yes.

13 Q And am I correct that there have been no
14 Commission complaints directed to ALECs or CLECs that
15 would be prevented by -- that would have been prevented by
16 this billing block option if it had been in effect?

17 A To my understanding, none of them have opened
18 their billing systems, so there wouldn't be any
19 complaints.

20 Q Okay. Can I ask you a line of questions about
21 how this billing block option works, and I won't take
22 long.

23 If a customer requests the billing block option
24 and then calls its local exchange company and says I would
25 like call waiting, would that be blocked because the

1 customer has requested the billing block?

2 A Is the local exchange company providing the
3 service?

4 Q Yes.

5 A And they are providing the billing?

6 Q Yes.

7 A Then, no, it would not. Because they are a
8 billing party and the charges for the billing party could
9 be on there.

10 Q Okay. So when the rule says -- and I'm looking
11 in particular at 19(a)(1)(c). At the end it says -- this
12 is written so 1 and 2 are and, not or. It is written
13 conjunctively, not disjunctively. So when I first read it
14 I thought the billing block would block anything that
15 wasn't from the billing party, the government agency, or a
16 presubscribed carrier and was a collect call, third-party
17 call, customer dialed call, or a 1010XXX call.

18 A No.

19 Q So you can block -- I don't understand how that
20 works. Because the way this reads, as I understand it, if
21 the LEC is the billing party, and the service is not a
22 collect call, a third-party call, a customer-dialed call,
23 or a call with a 1010XXX calling pattern, it will be
24 blocked. Am I misreading it?

25 A Yes.

1 MR. WAHLEN: Okay. I guess I will just have to
2 read it again. Thank you.

3 MS. RULE: Mr. Moses, Marsha Rule with AT&T.

4 EXAMINATION

5 BY MS. RULE:

6 Q I also have a few questions about how the rule
7 would work. And if I understand the rule correctly, if I
8 am a customer of a company that would be effected by the
9 rule, I could call up and say I want a billing block, is
10 that correct?

11 A Yes.

12 Q And then the -- I understood some of your
13 previous comments to mean that I could kind of designate
14 who I did and did not want to bill. But my reading of the
15 rule is that if I want the block I kind of get what it is,
16 I don't get to customize it. Am I incorrect?

17 A No, I don't believe you are incorrect.

18 Q So then if I ask for the block, I would still
19 expect to see charges on my bills from my billing party or
20 its affiliates, from a governmental agency, from a
21 presubscribed intraLATA or interLATA carrier, and from
22 other parties that are billing for collect, third-party,
23 customer-dialed, or 1010XXX calls, is that correct?

24 A That's correct.

25 MS. RULE: Okay. Thank you.

EXAMINATION

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BY MS. KAUFMAN:

Q Mr. Moses, good afternoon now. You were here and you heard Mr. Durbin testify, didn't you?

A Yes, I did.

Q And so you are familiar with his testimony that cramming complaints have declined and that there have been none associated with ALECs, is that correct?

A That's correct.

Q And you also heard I am assuming the discussion about Subsection 18, which is already in effect which permits a customer who believes there is an unauthorized charge on his bill to have that charge removed, correct?

A Yes.

Q And I take it from your testimony that at least in some of your review of complaints or whatnot you sense that billing block is an option that customers want, correct?

A Yes.

Q Do you have any sense -- let me back up. Let me restate that. If you wanted to answer it, I was going to ask.

MR. REHWINKEL: I think he answered the question she asked.

BY MS. KAUFMAN:

1 Q The billing block that is in this rule is not an
2 option. Any company that would be subject to the rule
3 would have to have the billing block available, is that
4 correct?

5 A If they bill for any entity other than
6 themselves, yes.

7 Q But conversely, it is only an option for a
8 customer; in other words, a customer may request it or
9 they may not request it, correct?

10 A That is true.

11 Q Now, this was the question I was going to ask.
12 Do you have any sense of how many customers in the State
13 of Florida would select this option?

14 A Without polling all of them, no.

15 Q And you have not done any sort of survey to see
16 how many customers would really be interested in this
17 option?

18 A No.

19 Q But nonetheless it would be your intent to
20 require every company to offer it?

21 A Yes.

22 Q Now, another possible scenario might be that if
23 this is something that the marketplace really wants,
24 customers might be able to select a company that offers
25 it, is that correct?

1 A There is a problem with that theory, though. If
2 you have been crammed you need to resolve your cramming
3 problem before you switch to another carrier that you may
4 think is not going to be susceptible to cramming. In some
5 instances those persons are getting turned over to
6 collection agencies, their credit is being ruined, and
7 they have no control over it. Their only option is to
8 take it to court, which is expensive.

9 Q Okay. So you are talking about an instance
10 where the cramming incident has already occurred in what
11 you have just described.

12 A There would be no reason for the person to
13 select another competitor if that were the case, if they
14 weren't crammed.

15 Q Okay. But the Section 18 we have previously
16 discussed allows that customer to call up his billing
17 entity -- not the pet insurer or some of these other
18 scenarios -- and say this is an unauthorized charge, I
19 want you to remove this from my bill. And under the rules
20 that are in effect now for ALECs, ILECs, IXCs, the billing
21 party is required to do that, correct?

22 A That is true. But there is nothing preventing
23 that cramming company from billing directly. So after
24 they have already produced one bill, they will turn around
25 and they are going to rebill, maybe not through the

1 billing entity. So it gets it off the telephone bill for
2 that one instance, but it doesn't make the charge go away.
3 What we are trying to do is prevent the bill from ever
4 happening.

5 Q I understand that, but what the industry is
6 looking at is a balance between the expense and sort of, I
7 guess, a zero tolerance policy on your part, or on the
8 Commission's part that this proposed rule seems to imply.
9 So if you are in a situation like you have just described
10 where you have what is obviously a fraudulent company that
11 is cramming people, isn't that something that can be
12 handled as is being handled now on a case-by-case basis by
13 Consumer Affairs in conjunction with the Subsection 18
14 that requires nonfraudulent companies who want to be in
15 compliance with the Commission's rules to remove those
16 charges when they are notified that they are disputed?

17 A It can be done that way.

18 Q And Section 20 of the rule isn't going to
19 prevent originating parties, say the pet insurer since we
20 like to talk about that situation, from billing the
21 customer directly, is that correct?

22 A That is correct. But the point is if they never
23 got a bill to begin with, we don't think that is going to
24 happen, that they are just going to be doing direct
25 billing. Because the ones that are out there actually

1 fraudulently doing the billing don't even know who the
2 customer is, they just pick a phone number. And that is
3 the avenue for them to get to the customer, because the
4 billing entity does know who that customer is.

5 Q But this fraudulent company, you know, if they
6 want to bill fraudulently they can do that without going
7 through the phone company. In other words, they can
8 directly bill this person for these fraudulent charges and
9 nothing in the proposed rules is going to eliminate that,
10 is it?

11 A It would be my opinion it would be a lot more
12 expensive for them to do that fraudulent charge, so it
13 wouldn't happen as often as it does through the billing
14 system.

15 Q But, again, they still can -- I mean, if someone
16 is going to commit fraud, they are probably going to find
17 a way to do it?

18 A That is true, yes.

19 MS. KAUFMAN: Thank you.

20 EXAMINATION

21 BY MS. McNULTY:

22 Q Good afternoon, Mr. Moses. I'm Donna McNulty
23 with MCI WorldCom. I just have a couple of clarifying
24 items for you. In your prefiled testimony you state that
25 a billing block as adopted in Rule 25-4.110, Subsection

1 19, should also be adopted as a requirement for IXCs and
2 ALECs, is that correct?

3 A That's correct.

4 Q But in your testimony you state that charges can
5 be from the company selected as the billing party,
6 government agency, et cetera. There is, however, no
7 mention of the billing party's affiliate?

8 A It's an oversight on my part.

9 Q Okay. Thank you. I just want to make sure that
10 that point is clarified for the record. Also I would like
11 to follow-up on a line of questioning from earlier. If a
12 customer has requested a billing block, doesn't the
13 provider have to review each and every bill record on that
14 particular customer's bill?

15 A You mean manually?

16 Q Technically how do you propose they do it?

17 A Well, if I knew technically how to impose all of
18 this I wouldn't be sitting in this seat. I don't know how
19 the billing systems would have to be reprogrammed to
20 facilitate it as far as specific technicalities to it.

21 Q And is it fair to say, though, that there must
22 be some type of system in place that reviews each and
23 every bill record on that customer's bill?

24 A Certainly.

25 COMMISSIONER JABER: Rick, let me tell you some

1 of the trouble I am having. And while you are on the
2 stand you can attempt to get me where this rule is. If we
3 are not clear on the costs associated with implementing
4 the block option, and we are not sure from a technological
5 standpoint how to do it, and we don't have complaints from
6 customers getting service from ALECs, then how can we be
7 so sure that the block option should apply to ALECs?

8 THE WITNESS: Well, I guess it depends on
9 whether you want to take the position of being reactionary
10 to consumers that have been harmed or you want to be
11 prospective and go forward with the prevention mechanism
12 to where they are not harmed to begin with.

13 COMMISSIONER JABER: Did I hear you say that
14 ALECs have not opened up their billing yet?

15 THE WITNESS: I have yet to see a bill from an
16 ALEC that had any charges on there other than the ALEC's
17 charges.

18 COMMISSIONER JABER: Do you expect to?

19 THE WITNESS: I would assume probably that that
20 is a possibility. And if they don't open the billing
21 systems, this whole subject is a moot discussion.

22 COMMISSIONER JABER: Okay.

23 BY MS. McNULTY:

24 Q And I would just like to follow up with one more
25 question to follow up on Commission Jaber's point as it

1 applies to IXCs. Were you listening to Mr. Durbin's
2 testimony earlier today?

3 A Yes.

4 Q And wasn't his testimony that the number of
5 complaints that are attached to his testimony do not
6 include solely IXCs?

7 A They didn't include solely IXCs, that's correct.

8 Q And so the number of complaints even generated
9 by IXCs is not that significant?

10 A Well, again, the IXCs that I have seen that bill
11 for themselves don't bill for anyone else. So, again, it
12 is not even a subject matter to be discussed, if that is
13 the case. It is just those billing systems that are open
14 to other entities to place charges on the bill that are
15 effected.

16 MS. McNULTY: Thank you. I have no further
17 questions.

18 CHAIRMAN DEASON: Commissioners? Ms. Brown.

19 MS. BROWN: No questions.

20 CHAIRMAN DEASON: Okay. Thank you, Mr. Moses.

21 Ms. Brown, there has been a number of exhibits.

22 MS. BROWN: Yes, Mr. Chairman, there have. We
23 would like to move them into the record at this time, if
24 we could. They are staff exhibits that have been
25 identified as Exhibits 4, 5 and 6. And also Exhibit 3.

1 CHAIRMAN DEASON: I have 3, 4, 5 and 6. Is
2 there any objection to Exhibits 3, 4, 5, and 6? Hearing
3 none, show those exhibits are admitted. And Exhibit 2 is
4 a late-filed.

5 (Exhibit Number 3, 4, 5, and 6 received in
6 evidence.)

7 CHAIRMAN DEASON: Mr. Moses, you may be excused.
8 BellSouth.

9 MR. GOGGIN: Commissioner, BellSouth has an
10 interest in this matter, obviously, because these rules as
11 they would apply to ILECs have already been approved. My
12 understanding is that the rules were intended to implement
13 the provisions of Section 364.604, and in particular
14 Subparagraph 1 of that section, which begins with the
15 words each bill party must.

16 And billing party, of course, is defined in
17 Section 364.602 as any telecommunications company that
18 bills an end user consumer on its own behalf. Similarly,
19 Section 364.604(2) states that a customer shall not be
20 liable for any charges for telecommunications or
21 information services that the customer did not order.

22 The word customer is defined in 364.602 as any
23 residential subscriber to services provided by a
24 telecommunications company. Telecommunications company,
25 in turn, is defined in Chapter 364 and in the Commission's

1 rules to include ALECs as well as ILECs and IXCs.

2 Accordingly, the statute that is being
3 implemented here clearly applies to all telecommunications
4 providers at least to the extent that they are billing
5 parties. In their comments, some of the ALECs, Sprint in
6 particular, cited statutory provision 364.337,
7 Subparagraph 2, for the proposition that all rules
8 governing the provision of alternative local exchange
9 services shall be consistent with Section 364.01.

10 Further on, of course, in that same subparagraph
11 it says that an ALEC may petition the Commission for a
12 waiver of some or all of the requirements of this chapter
13 with the exception of certain sections that don't apply in
14 this case. Accordingly, if the ALECs and the IXCs believe
15 that these statutory provisions should not apply to them,
16 we would submit that the burden is on them to seek a
17 waiver from these statutory requirements.

18 Now, we understand that ALECs and the IXCs --

19 CHAIRMAN DEASON: I'm sorry. How do you seek a
20 waiver from a statutory requirement?

21 MR. GOGGIN: There is a provision in Section
22 337.2 that specifically permits an ALEC to petition the
23 Commission for a waiver of some or all of the requirements
24 of this chapter, this chapter being Chapter 364 of the
25 Florida Code.

1 CHAIRMAN DEASON: Can you show me that language
2 specifically.

3 MR. GOGGIN: Yes. If you will look about
4 two-thirds of the way through that paragraph.

5 CHAIRMAN DEASON: 364.337.

6 MR. GOGGIN: 364.337, Subparagraph 2. I believe
7 it is the sixth sentence -- or the second sentence -- I'm
8 sorry, the third sentence from the end, the sixth sentence
9 from the beginning.

10 CHAIRMAN DEASON: A certificated alternative
11 local exchange telecommunications company may petition the
12 Commission for a waiver?

13 MR. GOGGIN: Uh-huh.

14 CHAIRMAN DEASON: Thank you.

15 MR. GOGGIN: We do not understand the ALECs or
16 the IXC's to be petitioning the Commission in this case for
17 a waiver from statutory requirements. What we understand
18 them to be doing is to be arguing that rules which
19 implement a statute that does apply to them, that those
20 rules should nevertheless not apply to them.

21 Under the circumstances, we think that the
22 burden should be on the ALECs and the IXC's to demonstrate
23 that there are reasons why these rules should not apply to
24 them. What they have argued up to now, though, is that
25 the provisions of Section 364.01 make it incumbent upon

1 the Commission to establish in every case why a given set
2 of rules should apply to them at all.

3 In other words, from their argument, what they
4 seem to be saying is that whenever the Commission adopts
5 rules, the first thing it must do is look at 364.01 and
6 determine whether you can justify applying any of the
7 rules to the ALECs. We have looked at 364.01, and
8 certainly the Commission must take it into account in
9 passing rules that would effect ALECs.

10 But the title of 364.01 is entitled powers of
11 the Commission and legislative intent. These are general
12 guideposts for the Commission to follow, they are not
13 specific legislative initiatives which must be
14 implemented. They are statements of general legislative
15 intent and they are not limited to the subsections that
16 have been cited by the ALECs.

17 For example, 364.01, Subparagraph 4(a), requires
18 the Commission to exercise its jurisdiction to protect the
19 public health, safety, and welfare by ensuring that basic
20 local telecommunications services are available to all
21 consumers in the state at reasonable and affordable
22 prices. Similar general consumer protections imperatives
23 can be found elsewhere in Chapter 364.

24 Accordingly, we believe that the burden should
25 be on the ALECs and the IXC's to demonstrate why this rule,

1 which is intended to implement a statute that on its face
2 is a consumer protection statute, it is not a statute
3 designed to effect the competitive landscape so much as it
4 is a statute designed to benefit consumers.

5 The burden should be on the ALECs and the IXC
6 to demonstrate why rules implementing this statute, which
7 the Commission has already determined would have benefits
8 for consumers by passing the rules as they would apply to
9 ILECs, the burden should be on the ALECs and the IXCs to
10 demonstrate why these burdens which they allege will be
11 placed on them outweigh the benefits that this Commission
12 has already determined would accrue to consumers in the
13 passage of these rules.

14 The second thing is as the Commission listens to
15 the presentations of the ALECs and the IXCs, one thing to
16 keep in mind is that -- particularly if you compare their
17 current comments with the comments they made in the
18 earlier proceeding where the rules were passed, but were
19 limited in their effect to the ILECs -- the comments are
20 pretty much the same. And for the most part the arguments
21 that have been made as to why these rules should not
22 apply, those arguments would apply with equal force to the
23 ILECs as they would to the ALECs and the IXCs.

24 For example, the argument is made that we should
25 allow the market to rule. That the format of the bill and

1 whether one offers a billing block and what sort of
2 billing block one might choose to offer are ways that
3 companies can differentiate from other companies, and that
4 that is something that will benefit the competitive
5 market.

6 Well, certainly the same could be said of any
7 carrier in this market, not just the ALECs. Companies may
8 choose, as Mr. Rehwinkel suggested, to bundle services
9 together. Companies may choose to charge different
10 prices, they may choose any one of a number of things to
11 differentiate each other.

12 By passing rules prescribing the manner in which
13 BellSouth must display its bills, that is one less way
14 that BellSouth, of course, has to differentiate itself
15 from its competitors, but the Commission made the judgment
16 that it was more important to ensure that the statutory
17 requirements of 364.604 be reduced to a rule and to apply
18 that rule for the benefit of consumers. We see no reason
19 why the rule should not be applied in the case of
20 BellSouth's competitors.

21 CHAIRMAN DEASON: Mr. Goggin, can BellSouth be
22 an ALEC in its own service territory? Can you get an ALEC
23 certificate and start doing business in Miami?

24 MR. GOGGIN: I would be inclined to say yes.
25 But I would be certain that they would involve a certain

1 amount of strife before this body if we were to do so. My
2 guess is that we would have people who would disagree with
3 that conclusion.

4 CHAIRMAN DEASON: So you are saying that you
5 feel like you have the legal authority to do that, but if
6 you didn't want to have the -- if you wanted to give an
7 option to customers to change something that we require
8 the incumbent LEC to do to meet that demand from customers
9 or to respond to competitive changes, you feel like you
10 could do that?

11 MR. GOGGIN: I would think that we would have to
12 be both. As a practical matter we would have to -- and
13 it's not an issue that I have studied deeply. But I would
14 imagine, given carrier of last resort responsibilities, if
15 BellSouth were to form an ALEC to offer service in the
16 same territory in which BellSouth Telecommunications, the
17 ILEC, currently offers service, that it would be a
18 separate entity altogether.

19 I would be inclined to think that we would not
20 do so, but I don't know that we would prevent it in that
21 circumstance if there were a separate BellSouth entity
22 engaged in offering services in Miami, for example. I
23 would think that that company would be free of these
24 restraints if the Commission were to leave the current
25 rule in place and do as the ALECs suggest here and not

1 apply the rule also to other carriers.

2 CHAIRMAN DEASON: Thank you.

3 MR. GOGGIN: Similarly, the ALECs raise the
4 argument that if a carrier is regional or national that
5 applying rules only in Florida would add additional costs.
6 This is something that is true for any regional or
7 national carrier, BellSouth included.

8 It has been suggested that there may not be
9 specific statutory authority in 364.604 to establish a
10 billing block or to apply a billing block rule to business
11 customers. Well, certainly if there is no statutory
12 authority to pass a rule requiring a billing block option,
13 or, more narrowly, to require a billing block option be
14 given to business customers, then there would no statutory
15 authority to pass such a rule with respect to ILECs
16 anymore than there would be statutory authority to pass
17 such a rule with regard to ALECs. The statute applies to
18 telecommunications carriers, not to ILECs or ALECs.
19 Again, it has been argued that Rule 25-4.110, Subparagraph
20 18 --

21 CHAIRMAN DEASON: I'm sorry, can you back up.
22 That last statement that you just made, how do you
23 reconcile that with the language in the statute that says
24 there can be a different standard of regulation between an
25 incumbent LEC and an ALEC?

1 MR. GOGGIN: Well, what I hear the ALECs arguing
2 in this instance is not that the Commission in its
3 discretion should apply different rules to ALECs or ILECs.
4 What I hear them saying is that the statute that is being
5 implemented, 364.604, does not provide the statutory
6 authority to impose a rule requiring a billing block
7 option; or that that same statute, 364.604, does not grant
8 the Commission authority to apply a billing block option
9 to business customers.

10 If you follow that argument to its logical
11 conclusion, if the statute that is being implemented does
12 not provide the authority to establish a rule, then it
13 does not provide the authority to establish a rule. The
14 statute that provides the authority here, 364.604, applies
15 equally to both parties.

16 CHAIRMAN DEASON: Does 364.604 give us the
17 authority, or does it mandate that we do it? There is a
18 difference.

19 MR. GOGGIN: I believe that it would grant the
20 authority. Clearly in 364.604, Subparagraph 5, it says
21 the Commission may adopt rules. And the remaining
22 subparagraphs, in our view, do not mandate a billing block
23 option, nor do they mandate this particular --

24 CHAIRMAN DEASON: My question is this: Are
25 there other sections in 364 which give the Commission

1 enough jurisdiction, and latitude, and discretion, and
2 responsibility to impose a billing block option on
3 incumbent LECs other than 364.604? Are there provisions
4 in Chapter 364 which gives the Commission the authority to
5 mandate a billing block option on incumbent LECs?

6 MR. GOGGIN: I believe that in the absence of
7 the Telecommunications Consumer Protection Act if the
8 Commission had proposed a rule requiring a billing block
9 option it would have been BellSouth's position that that
10 rule was not authorized.

11 CHAIRMAN DEASON: Well, then where in 364.604 do
12 you see the term billing block and where is that mandated?

13 MR. GOGGIN: I do not see it, and it is not our
14 position that that particular rule is mandated.

15 CHAIRMAN DEASON: Okay.

16 MR. GOGGIN: I think there is a difference
17 between --

18 CHAIRMAN DEASON: I'm sorry. Do you rely upon
19 364.604, Subsection 2, as the authority to impose a
20 billing block option?

21 MR. GOGGIN: If there is authority for such a
22 rule, that is where I believe it would be found, yes.

23 CHAIRMAN DEASON: Well, do we have authority in
24 your opinion? Does the Commission have the authority to
25 require a billing block option?

1 MR. GOGGIN: I think it is a close call.

2 CHAIRMAN DEASON: Well, you have not -- have you
3 challenged the previous rules that have been adopted?

4 MR. GOGGIN: No, we have not.

5 CHAIRMAN DEASON: But you are saying you could
6 if you wanted to anytime?

7 MR. GOGGIN: I'm not saying that we would
8 prevail. BellSouth has chosen not to challenge the rule.

9 CHAIRMAN DEASON: But you are saying that if it
10 had not been for 364.604 it is your opinion that the
11 Commission would not have the authority to impose a
12 billing block option on BellSouth?

13 MR. GOGGIN: It is difficult to say, because
14 that is not the circumstance that arose, but I think it
15 likely that we would have challenged such a rule in the
16 absence of this statute.

17 CHAIRMAN DEASON: Okay.

18 MR. GOGGIN: The other response I wanted to
19 make, I guess, is --

20 CHAIRMAN DEASON: I guess what you are saying is
21 that you are not so sure that it applies to you, but if we
22 are going to apply it to you we ought to apply it to them.
23 Is that what you are saying?

24 MR. GOGGIN: The Commission has passed the rule,
25 BellSouth has not challenged it, and BellSouth intends to

1 comply with it regardless of whether you make it
2 applicable to ALECs and IXCs or not. We do not intend to
3 challenge it, no.

4 CHAIRMAN DEASON: That is not my question.
5 Whether or not you challenge it or not, I don't really
6 care. That's your call. My question is what you are in
7 here saying is that you are telling the Commission,
8 "Commission, we are not so sure that you have the
9 authority to make us do it, but we are going to comply,
10 but you have got to make -- since you have made us do it,
11 you have got to make the ALECs do it, too."

12 MR. GOGGIN: What we are saying is as a policy
13 matter that the Commission --

14 CHAIRMAN DEASON: Now, policy, not legal. I
15 thought you were here reading all this stuff from the law
16 saying Commission, you have got to do this. You can't
17 make us, but since you have made us, you have got to make
18 them. That's what I heard you say.

19 MR. GOGGIN: Yes. We believe that the statute
20 applies equally to both parties. We believe that there is
21 discretion given through 364.01 to treat ALECs and ILECs
22 differently. Make no mistake about it. What we contend,
23 however, is that given that the statute applies to ALECs
24 and ILECs and IXCs equally, that rules proposed to
25 implement this statute ought to be presumed to apply

1 equally.

2 In particular that is true as a matter of policy
3 because here we are talking about consumer protection, we
4 are not talking about rules designed to transition the
5 market from a regulated market to a fully competitive
6 market. We are talking about rules that likely would be
7 considered whether we were in a fully competitive market
8 and this Commission's sole responsibility were like the
9 Federal Trade Commission to regulate consumer protection
10 and antitrust matters, or whether, as we presently are,
11 this Commission has regulatory responsibilities for the
12 way the market operates. This is purely consumer
13 protection, this is not a competitive market statute and
14 these are not competitive market rules. These are
15 consumer protection rules.

16 COMMISSIONER JABER: So it is your testimony
17 that the statute applies equally to all companies when we
18 are looking at opening up a competitive market, but there
19 is flexibility for ALECs with respect to --

20 MR. GOGGIN: The statutes -- well, first of all,
21 this statute, regardless of whether you have a rule that
22 applies to ALECs, this statute will apply to them. The
23 legislature has already determined that. The question is
24 whether the rules that you have decided to implement with
25 regard to ILECs should also apply to ALECs and IXC's in

1 this case.

2 COMMISSIONER JABER: I'm trying to understand
3 your position with respect to the sentence in 364.01 that
4 talks about flexibility in regulatory oversight for ALECs.
5 Help me understand your position with when to apply that
6 sentence in the statute and choosing when not to apply it.

7 MR. GOGGIN: I think it would be -- the
8 Commission always has the discretion to treat them
9 differently under that statutory provision. In a case
10 where the statute that you are implementing or the rule
11 that you are proposing has to do with the structure of the
12 market, the case for treating new entrants differently
13 than ILECs is likely to be stronger.

14 Where the statute you are implementing or the
15 rule that you are considering is designed to benefit
16 consumers and moreover is designed to benefit consumers
17 from what one might argue is perhaps a side effect of sort
18 of competition, then you still have the discretion to
19 treat ALECs and IXCs differently. But we contend that the
20 burden should be put on ALECs and IXCs to demonstrate why
21 their customers should not benefit from what the
22 Commission has already determined is a rule that would
23 benefit customers. And we do not believe that they have
24 carried that burden. What they have said instead is that
25 the Commission, given 364.01, has the burden to

1 demonstrate why this rule should apply to them. We think
2 they have turned it on its head.

3 COMMISSIONER JABER: Is cost to the end use
4 consumer an appropriate showing of why the statute or why
5 the billing block shouldn't apply to ALECs?

6 MR. GOGGIN: Yes, I believe it would be. But it
7 has to be considered in a couple of different ways. One
8 is I think there ought to be some indication that the
9 proportionate costs are wildly different. Certainly we
10 are intrigued by the fact that this relatively modest
11 change to ALEC and IXC OSS, if you will, has generated
12 such an uproar. We are painfully aware of the cost and
13 the effort that is required to change billing systems and
14 other OSS. And certainly this will have -- BellSouth will
15 have a very large burden to bear with regard to these
16 rules, as well.

17 Certainly cost should be an issue. But there
18 ought to be some way to, number one, relate that cost in
19 terms of the proportion between new market entrants and
20 ILECs, and also to demonstrate that those increased costs
21 are going to have impact on consumers. That in a
22 consumer --

23 COMMISSIONER JABER: Wouldn't those increased
24 costs also have an impact on whether new entrants can
25 actively compete in the new market?

1 MR. GOGGIN: That is a potential issue, as well.
2 I guess BellSouth's point in making the comments that it
3 made was not to say definitively that these rules must
4 apply to ALECs and IXCs. It was to say that the burden
5 should be on them to demonstrate that they should not and
6 that they have not carried that burden. And with the
7 consumer protection rule, that is the way the presumption
8 should work.

9 CHAIRMAN DEASON: Let me ask you a question on
10 that. We have no complaints. And with all respect to
11 Bellsouth, maybe these folks are going to do it better
12 than what you did it in the sense that maybe they are
13 going to screen the people that they are going to bill for
14 better than you did it so that they don't have those
15 problems with their customers. So isn't there some policy
16 consideration as do we impose costs on them before they
17 have demonstrated whether they are going to do it better
18 than it was done in the past?

19 MR. GOGGIN: Well, I think the difference there
20 if this were a case where BellSouth were at fault, and
21 from what we have been told the impetus for this rule was
22 not so much the behavior of the telecommunications
23 companies, it was the behavior of the third-party entities
24 that were cramming things onto bills. The reason for the
25 rules --

1 CHAIRMAN DEASON: But didn't you have some
2 authority to review those?

3 MR. GOGGIN: Yes, we do. And we have provisions
4 in our contract with third-party billing customers, if you
5 will, that require them to get customer authorization, to
6 provide us with accurate bills, and we have terminated
7 those that --

8 CHAIRMAN DEASON: Were those requirements in
9 place day one? Were those requirements in place day one?

10 MR. GOGGIN: Those are in the contracts, yes.

11 CHAIRMAN DEASON: I'm sorry?

12 MR. GOGGIN: Those are in our contracts, yes.
13 And we do terminate billing parties or originating parties
14 that do not comply with those requirements.

15 CHAIRMAN DEASON: I understand that is the
16 requirement now. Did you do that from day one, the first
17 time that you had a third party bill on your telephone
18 bill, did you have those requirements in your contract
19 with them?

20 MR. GOGGIN: I cannot say with any certainty. I
21 did not draft those contracts. My point was simply to say
22 that in a rulemaking the rule should be presumed to be
23 nondiscriminatory. If this were a fault-finding adventure
24 and there were an order imposed, and as a part of the
25 injunctive relief in that order BellSouth was required to

1 do things that other carriers weren't required to do, that
2 would seem to me to be perfectly appropriate.

3 COMMISSIONER JABER: But doesn't the statute
4 allow us to be discriminatory with respect to competitive
5 providers during a transition period?

6 MR. GOGGIN: Yes, it does, provided that a
7 record can be established upon which to base that exercise
8 of discretion. The statutes also require that rules be
9 nondiscriminatory. And with regard to whether we are
10 treating our customers fairly or whether ALECs are
11 treating their customers fairly, we would posit that
12 carriers are similarly situated. That with regard to what
13 duties and obligations we have to the public in terms of
14 whether or not they will be defrauded, that all carriers
15 are similarly situated.

16 You can't argue that simply because one carrier
17 is smaller or doesn't have enough capital that they are
18 somehow differently situated in terms of their obligations
19 to the general public than a large carrier might be. If
20 the difference in treatment is to be based on past
21 conduct, then it seems to me that that has to be done in
22 the context of an adversarial proceeding and in the
23 context of proof that would demonstrate that one carrier
24 ought to be treated differently.

25 In the case of a rulemaking where you want to

1 exercise discretion to treat ALECs differently, we think
2 that the burden should be on the ALECs to create a record
3 demonstrating they are entitled to different treatment.
4 And in the context of a consumer protection rule, we
5 believe that that burden is higher than it would be in the
6 context of a rule that merely sets the rules of the road
7 for purposes of competition.

8 COMMISSIONER JABER: Here is what they have
9 said, they have said you don't have complaints from our
10 customers -- they being the ALECs -- this is costly, cost
11 prohibitive, and would deter our continued entry into a
12 competitive market. And, three, you don't know what is
13 technologically involved. Those three, just those three
14 allegations you think are not enough to show that they
15 have met their burden?

16 MR. GOGGIN: Well, they are comments. We have
17 not seen -- Sprint earlier suggested that perhaps the
18 proper thing to do would be to have a drawout with an
19 evidentiary hearing. Given what is in the record now,
20 which is essentially testimony provided by staff in favor
21 of the rule with no testimony in opposition to that, I
22 would think that the record would be inadequate, yes, to
23 exercise discretion in favor of adopting a rule that would
24 exempt ALECs and IXC's.

25 Now, as to the specific things that they have

1 said, there have been no complaints against ALECs. Well,
2 there have been complaints against IXCs, certainly. And
3 from the questioning that went on it appears that the
4 reason there have been no complaints against ALECs thus
5 far is that by and large ALECs do not provide third-party
6 billing services.

7 Now, there are a number of reasons for that, one
8 of which might be that thus far ALECs do not have enormous
9 customer bases that might attract third-party billing
10 services to them. It may be a decision that ALECs have
11 made that they don't want to get into this business.
12 Certainly there are ILECs in other parts of the country
13 who have made similar decisions, and we can understand
14 that. But if they decide not to provide third-party
15 billing services, then they are not subject to the rules
16 by definition.

17 Secondly -- I'm trying to remember the other two
18 points. I'm sorry, could you -- oh, yes.

19 COMMISSIONER JABER: The cost for the new
20 technology.

21 MR. GOGGIN: If the Commission -- I know that it
22 is very long and it is very tedious, but if the Commission
23 has the time to review the record in this proceeding,
24 there was a lot of discussion at the previous workshops
25 about what would be required technologically to get this

1 done. There are certain conventions in terms of the way
2 that billing data is passed back and forth between
3 carriers and others. And although it can be costly, it is
4 not something that these parties have not thought of.
5 Certainly there were indications that some carriers had
6 considered adopting billing blocks without having been
7 prompted to do so by the Commission.

8 So the cost issues are considerable. But the
9 other thing about the cost issue is that one of the
10 defenses it has made as to why billing blocks should not
11 be required is that carriers should have the ability to
12 differentiate. Well, if the carrier wants to offer a
13 billing block as a way to attract additional customers,
14 then presumably that carrier would have made the decision
15 that although it may be costly, it will be beneficial to
16 us in that it will allow us to attract additional
17 customers.

18 If, as the ALECs suggest, that this is so costly
19 that nobody would adopt it unless they are required to do
20 so by the Commission, then it is safe to assume that this
21 will never be a means by which carriers strive to
22 differentiate themselves from one another.

23 Similarly, the other arguments raised in favor
24 of not applying this rule to the ALECs and the IXC's apply
25 with equal force to everyone. It has also been suggested

1 that Rule 25-4.110, Subparagraph 18, which requires you to
2 remove cram charges upon request is sufficient protection
3 for consumers. Well, if that is sufficient protection for
4 consumers, then that is probably all that should be
5 required in the case of all carriers, not just the ALECs
6 and the IXCs. There is no reasoning given as to why that
7 is sufficient protection for ALEC customers but not for
8 ILEC customers.

9 Another apparent objection that seemed to be
10 growing up during the questioning here was that if you
11 want to offer a third-party billing at all, for example,
12 in conjunction with bundling and nonrelated Internet
13 service for the customers' benefit, then you would have to
14 have a billing block; or, as some of the other questioners
15 suggested, that if you have a billing block as the rule
16 puts it, it is a toggle switch. Either you get everything
17 or you get just telecom services and you don't have the
18 opportunity to get telecom services plus one selected
19 Internet provider.

20 Well, certainly there is nothing in the rule
21 that will prevent, for example, Sprint from offering a
22 bundled service offering of AOL plus Sprint. The billing
23 block in place would not require Sprint to block AOL's
24 charges from the bill if the customer wanted it. It
25 says -- this is all driven by the customer's request. If

1 the customer says I want a billing block, but I want AOL
2 on my bill, Sprint can do that for them. There is nothing
3 in the rule that would prohibit them from doing so. They
4 would have to establish the billing block if they want to
5 provide third-party billing, that is true. But that is
6 the same requirement that would apply to all other
7 carriers.

8 MS. BROWN: Mr. Chairman, if I might just remind
9 the Commission that we did establish a ten-minute time
10 limit for presenters.

11 MR. GOGGIN: I believe I have thoroughly
12 exhausted the arguments in favor of my position, so I will
13 desist.

14 CHAIRMAN DEASON: Thank you. Mr. Rehwinkel.
15 I'm sorry, who was next? No, it's FCCA.

16 MS. KAUFMAN: Thank you, Mr. Chairman. My
17 comments are offered on behalf of the Florida Competitive
18 Carriers Association and the Association of Communications
19 Enterprises, which you formerly knew them as TRA, or the
20 Telecommunications Resellers Association, but they have
21 changed their name.

22 I am going to be much briefer, I think, than Mr.
23 Goggin, unless I get a lot of questions. But essentially
24 I think I said this in my written comments, this is -- in
25 our view it is a solution that is in search of a problem

1 here.

2 I think we have heard from your own staff that
3 cramming complaints have declined greatly. If you look at
4 Mr. Durbin's exhibits you will see that to be the case.
5 No complaints that anyone is aware of against ALECs. Very
6 few against IXCs. It is being handled efficiently and
7 effectively by your staff in those instances where we do
8 have what we like to call some bad apples.

9 I think it is interesting to point out the
10 absence of someone at this hearing and that is the Public
11 Counsel, who in my experience in this area doesn't
12 hesitate to come forward when he sees a problem that
13 affects consumers. To me that also indicates that we have
14 got not much of a problem in this area, and certainly not
15 a problem that would necessitate the imposition of a great
16 deal of expense and regulatory burden, if you will, on
17 competitors in the marketplace.

18 Essentially, again, what I call the bill
19 formatting rule, Subsection 2, and the billing block,
20 Subsection 19, from what we can tell are going to visit a
21 lot of costs on the competitive industry to take care of a
22 very, very, very small problem. And I think as an agency
23 whenever you do anything about enacting rules you are
24 always engaged in a balance, and that is whether the
25 regulation you want to impose is sufficient, or is it too

1 much, or not enough to deal with the problem that you have
2 identified. And I think in this case what staff suggests
3 is tipping the scales way too much. To the extent --

4 CHAIRMAN DEASON: Ms. Kaufman, let me ask you a
5 question. What about the argument that for there to be a
6 level playing field for competitors, if you are too
7 lenient on one competitor and impose costs on another then
8 that is not a fair competitive field? And I have heard
9 the argument basically from BellSouth here today that
10 these are significant costs that they are bearing, and
11 they have got to compete against your clients. And if we
12 don't adopt this rule then that is a cost you don't have
13 to bear, and you have got an advantage.

14 MS. KAUFMAN: Well, my response to that is it is
15 not usually my role to analyze issues for BellSouth or the
16 ILECs. And I guess what I would say in that regard is
17 that if the ILECs had a problem with this rule, then the
18 time for them to come forward was today, or actually I
19 guess in their case it was at the time the rules were
20 adopted in regard to them.

21 They had the same opportunity that my clients
22 are availing themselves of, which is to point out whether
23 they have problems with your statutory authority to do
24 this, whether they think the costs are burdensome, you
25 know, whatever concerns they may have had had with the

1 rule they have had the opportunity to raise those to you.

2 So, I guess, my response to you, Commissioner
3 Deason, is I'm not all that sympathetic. And I think what
4 we're hearing is exactly what you pointed out. Well, you
5 know, we said we would do it, so you better make them do
6 it, as well. And I don't think that that is a reason for
7 you to impose these costs and restraints on the clients
8 that I represent.

9 The other thing I wanted to discuss briefly with
10 you is the SERC, which I talked to Mr. Hewitt about, and I
11 would refer you to that same section that I discussed with
12 him, which is 120.541. I would suggest to you, and I
13 would put on the record at this time that the SERC in this
14 case is inadequate to support the rule that you are
15 considering.

16 If you look at Subsection 2, there is a laundry
17 list of items that have to be included in the SERC
18 including, for example, a good faith estimate of the
19 number of individuals and entities likely to be required
20 to comply with the rule. I don't think you have that.
21 Subsection C requires a good faith estimate of the
22 transactional costs likely to be incurred by individuals
23 and entities. Again --

24 COMMISSIONER JABER: What is the cite, again,
25 Ms. Kaufman?

1 MS. KAUFMAN: It is 120.541, Subsection 2. And
2 then there is A through D. No, excuse me, A through F.
3 And those are all requirements that have to be included in
4 a SERC. I think that the SERC in this case falls far
5 short of what is required by an agency. And I would
6 suggest to you that that may well be a material flaw in
7 this rulemaking.

8 Finally, just to respond briefly to Mr. Goggin,
9 I don't think anyone disagrees that you can treat ALECs
10 differently than you treat ILECs. As I have mentioned
11 before, Bell agreed to comply with the rule, has not
12 challenged it, nor raised any concerns until this point in
13 the proceeding. In contrast, we, being the competitive
14 side of the industry, followed this rule very closely and
15 are very concerned with the burden that we see that it
16 will impose.

17 And I don't know if this is a good thing or bad
18 thing, but we really haven't missed any opportunity to try
19 to tell you that that is the case and to suggest to you
20 that as you try and move to a competitive market that you
21 want to try to go to less regulation and not more
22 regulation and you want to try to impose less costs, not
23 more costs on competitors.

24 And so we suggest to you that these two
25 subsections should not be applicable to either ALECs or

1 IXCs. Thank you.

2 CHAIRMAN DEASON: Thank you.

3 COMMISSIONER JACOBS: Ms. Kaufman, it was
4 unclear from the testimony to what extent there might be
5 ALECs that participate in the third-party billing
6 business. Do you have any idea whether or not ALECs
7 participate, whether or not there will be some manner or
8 some level of restriction that they could place on their
9 third-party billers that would limit or restrict the kinds
10 of practices we have seen from the third parties we have
11 seen with the ILECs?

12 MS. KAUFMAN: Commissioner Jacobs, I do not know
13 that. But I would suggest that there might be some ALEC
14 company witnesses that might be able to answer that
15 question for you.

16 CHAIRMAN DEASON: Sprint.

17 MS. BROWN: Mr. Chairman, may staff ask a couple
18 of clarifying questions of Ms. Kaufman?

19 CHAIRMAN DEASON: Surely.

20 MS. BROWN: Thank you.

21 Ms. Kaufman, how many of your member companies
22 bill for themselves at present?

23 MS. KAUFMAN: I don't know.

24 MS. BROWN: Could we please ask for a late-filed
25 exhibit that would give us those numbers?

1 MS. KAUFMAN: I will be happy to check, Ms.
2 Brown. At this point I can't commit to providing that
3 unequivocally, but I will certainly check. And if I can
4 provide it, I will do so. And you want to know how many
5 of the members of FCCA and ASCENT bill for themselves?

6 MS. BROWN: Yes, at present.

7 CHAIRMAN DEASON: That will be Late-filed
8 Exhibit 7.

9 MS. BROWN: And if there are any that bill for
10 themselves at present, we would also like a copy of the
11 bills that they provide, a sample bill, as well.

12 CHAIRMAN DEASON: And that would just be part of
13 Exhibit 7.

14 (Late-Filed Exhibit Number 7 marked for
15 identification.)

16 MS. BROWN: If I might just take a minute to
17 walk you through a comparison of Section 364.604(1), the
18 first part of it, and Subsection 2 of the rule that is
19 proposed to apply to ALECs and IXC's.

20 Now, I think this first section of the rule has
21 been read by someone into the record, but I'm going to
22 read it again to establish this framework so we can walk
23 through the rule. It says, Subsection 1 says each billing
24 party must clearly identify on its bill the name and toll
25 free number of the originating party, the

1 telecommunications service or information service billed,
2 and the specific charges, taxes, and fees associated with
3 each telecommunications or information service.

4 Did I read that correctly, Ms. Kaufman?

5 MS. KAUFMAN: Yes, ma'am.

6 MS. BROWN: Now, is it your understanding that
7 that is a requirement of the statute that applies to all
8 telecommunications companies?

9 MS. KAUFMAN: For each billing party.

10 MS. BROWN: Yes.

11 MS. KAUFMAN: Yes. And I think we -- you know,
12 then we have the question or concern about who is a
13 customer and is it applicable only to residential or only
14 to business.

15 MS. BROWN: But would you say that this applies
16 to each telecommunications company that is a billing
17 party? Yes or no, please.

18 MS. KAUFMAN: Well, I would have to give you the
19 residential/business caveat. So, no, I wouldn't agree
20 each billing party.

21 MS. BROWN: All right. Let's move on to see how
22 the rule, Subsection 2 differs from the requirements of
23 the statute. Subsection A, would you describe what that
24 deals with? Subsection 2, Sub A. Or I'll do it, I will
25 ask you the question. That applies to taxes, doesn't it?

1 MS. KAUFMAN: (2) (a)?

2 MS. BROWN: Yes.

3 MS. KAUFMAN: No. I think that that applies to
4 headings, if I am looking at the correct -- oh, I'm sorry,
5 yes, you're right, it applies to Florida taxes and fees,
6 yes, ma'am.

7 MS. BROWN: Right. And it requires that the
8 billing party identify those taxes on the customer's bill,
9 correct?

10 MS. KAUFMAN: Yes.

11 MS. BROWN: Okay. Now, Subsection B says that
12 the billing party must provide a plain language
13 explanation of any line item and applicable tax, fee, and
14 surcharge to any customer who contacts the billing party
15 and requests that, correct?

16 MS. KAUFMAN: Correct.

17 MS. BROWN: Right. And our statute requires
18 each billing party to clearly identify on its bill the
19 name and toll free number of the party and the services
20 and charges, correct?

21 MS. KAUFMAN: Yes.

22 MS. BROWN: All right. The second part, ii of
23 Subsection B requires that if the customer needs an
24 explanation of what these charges are on their bill the
25 company is required to give it to them, correct? And in

1 writing, if asked.

2 MS. KAUFMAN: Yes.

3 MS. BROWN: Right. And we go back to our
4 statute, which says each billing party must clearly
5 identify on its bill the nature of the charges and taxes
6 and fees assessed, correct?

7 MS. KAUFMAN: Yes, ma'am.

8 MS. BROWN: All right. Then the following, the
9 last subsection of Subsection 2 provides that if there is
10 a recurring charge due and payable and it is not itemized,
11 each bill shall just contain a statement that the company
12 will provide that itemization if requested?

13 MS. KAUFMAN: Yes, that is correct.

14 MS. BROWN: In what way does this rule exceed
15 the requirements of the statute?

16 MS. KAUFMAN: Well, Ms. Brown, I don't know that
17 I can give you an itemization at this point. If what you
18 are suggesting is that it is the same information that is
19 required by the statute, then I would suggest to you that
20 you don't need the rule. Because if all you are doing is
21 parroting what the statute already requires, then the rule
22 is unnecessary. So that alone gives me pause.

23 I think that it is clear that at the minimum
24 parties that bill residential customers have to contain
25 somewhere or in some manner on their bill the information

1 that is set forth in Subsection 1 of the statute, okay. I
2 think that -- I don't think they are --

3 MS. BROWN: I'm sorry, let me follow up on that.
4 So are you saying that whether or not we have this rule,
5 ALECs will provide the matters contained in the rule?

6 MS. KAUFMAN: No. That seemed to be your
7 premise. I thought you were asking me what is the
8 difference between the statutory section and what the rule
9 requires. And all I was saying is if you are suggesting
10 there is no difference, then I am suggesting that you
11 don't need the rule. I am not prepared at this moment to
12 orally analyze for you the differences between the rule
13 and the statute, if that is your question.

14 MS. BROWN: Well, let me ask you this question.
15 How do your companies intend to comply with the provisions
16 of 364.604, Sub 1, if we don't have this rule?

17 MS. KAUFMAN: They would intend to read the
18 statute and do what is required.

19 MS. BROWN: All right. Thank you.

20 MS. KAUFMAN: You're welcome.

21 CHAIRMAN DEASON: I believe Sprint is next.

22 COMMISSIONER JABER: Mr. Rehwinkel, before you
23 get started I should probably announce that I am going to
24 leave at 1:45 to catch a flight. I fully intend to read
25 the record.

1 CHAIRMAN DEASON: And if we are not finished at
2 1:45, that is when we are going to take our break.

3 MR. REHWINKEL: Thank you, Mr. Chairman,
4 Commissioners. My name is Charles Rehwinkel, I am here on
5 behalf of Sprint Communications Company, a limited
6 partnership.

7 Just to summarize up front, Sprint has four
8 principal objections to the proposed rule amendments. The
9 first objection is you will see we strongly disagree with
10 BellSouth's analysis. We believe that the Public Service
11 Commission is required to consider the criteria set out in
12 Section 364.01 pursuant to Section 364.337, Subsections 2
13 for ALECs and 4 for IXCs. The burden is clearly on the
14 Commission to ensure that their rulemaking comports with
15 those criteria. But, even if it is as BellSouth suggests,
16 the record overwhelmingly meets whatever burden we would
17 putatively be required to meet.

18 Secondly, the rules proposed, if adopted, would
19 unlawfully apply to business service even if the
20 legislative criteria I discussed above is met otherwise.

21 Third --

22 CHAIRMAN DEASON: Let me ask you a question on
23 that point. There are basically two things being proposed
24 here; one is a billing block, and the second one is a
25 billing content, a bill content. Are you saying that if

1 we by rule indicate what should be contained within the
2 bill that we only have the authority to require it for
3 residential bills?

4 MR. REHWINKEL: Commissioner, I think the clear
5 intent of the 364.600 sections is that this is intended to
6 apply for residential customers, except for 603, which
7 uses the term subscriber and deals with PIC changes. I
8 think that is the clear intent. I would have
9 difficulty -- I would have more difficulty with the
10 itemization requirement saying that is limited to business
11 customers only than I would with the bill block option. I
12 think it is very clear that Subsection 2, which is the
13 wellspring of authority for the bill block option, is
14 clearly limited to business customers, for that purpose.

15 CHAIRMAN DEASON: Just a second. 364.604(1),
16 describes each billing matter must, and then there is a
17 lot of requirements. Unless I am mistaken, I don't see
18 the term customer within that particular section. Do you?

19 MR. REHWINKEL: Well, it is not within the first
20 sentence, I would agree with you there.

21 CHAIRMAN DEASON: So is it plausible then to
22 read into that that that is applicable to all customers?
23 If you are a billing party and you render a bill,
24 regardless of whether it is to a government entity, a
25 residential customer, a business, or whomever, this is

1 what has got to be on the bill?

2 MR. REHWINKEL: Commissioner, I think that that
3 is a more plausible approach than for the bill block
4 option, yes, I would concede that.

5 CHAIRMAN DEASON: Thank you.

6 MR. REHWINKEL: The third point is that there is
7 no authority in the statutes implemented with respect to
8 ALECs for the bill block option to be implemented for
9 either business or residential customers.

10 And, fourth, if a bill block option is
11 authorized it cannot be for all charges other than the
12 ones specified, but it must be limited to
13 telecommunications or information service charges.

14 CHAIRMAN DEASON: Can you say that last one
15 again, please. Billing block can only apply to what?

16 MR. REHWINKEL: The bill block option cannot
17 apply to all charges as the rule is currently written, but
18 it can only apply to information service or
19 telecommunications service charges.

20 CHAIRMAN DEASON: So the example we have been
21 using of pet insurance, where does it fit?

22 MR. REHWINKEL: Commissioner, it was -- my
23 argument that I made in my written comments was that you
24 could not require the blocking for Internet charges. But
25 I have been persuaded that there is a problem here with

1 charges like pet insurance. That those are neither
2 telecommunications services nor Internet service charges.
3 And whether that is a defect in the rule as applied to
4 ILECs, you know, that is not the matter we are here to
5 address today. All ILECs have failed to stand on their
6 rights there. That doesn't mean that we have to carry
7 forward any authorization defect into application to
8 ALECs.

9 But with respect to the first point, and this is
10 one that we have made since September when we filed the
11 very first round of comments through our additional two
12 rounds of comments, is that Section 364.01 normally does
13 not apply as substantive authority for the Commission to
14 implement rules. It is legislative intent. Everything
15 after 364.01, starting with 364.015, is authority that the
16 Commission can rely on pursuant to Chapter 120.

17 But what is unusual about this case is that
18 Section 364.337(2) and -- Subsections 2 and 4 reach back
19 into that intent language. And they say to the Commission
20 that when you are adopting rules applicable to ALECs or
21 IXCs you shall -- those rules shall be consistent with
22 364.01.

23 I think we have made this point today. I had
24 intended to go over each and every subsection of 364.014,
25 but in the interest of time I don't think I need to do

1 that. I think the Commissioners are very familiar with
2 the legislative intent that there can and should be two
3 tiers of regulation in this transitional period. And we
4 believe that the record that is before you today
5 overwhelmingly supports the concept that there is no need
6 to apply these rules to ALECs today, especially with
7 respect to the bill block option, which has, as you will
8 hear testimony today, a significant cost both in terms of
9 identifiable dollars as well as from hindering new
10 services and innovation being brought to the market.

11 The Commission should be very concerned about
12 any allegation that competition should be limited to the
13 narrow strata of price. Competition is going to be about
14 everything from the way you paint your trucks, to how you
15 bill your services, to what you charge and the types of
16 services you provide. Putting rules in here where there
17 is no demonstrable need for them, where there is clearly a
18 competitive impact, will hinder both current competitors
19 and future competitors. And I don't believe that is
20 consistent with what the legislature intended. And we
21 have made written remarks along these lines and I will
22 stand on those.

23 I would like to add, though, with respect to the
24 waiver point that Mr. Goggin raised, I raised that back on
25 September 17th of 1999 in my initial comments. It is our

1 point that that very unusual language you will see in
2 364.337(2) and (4) about waiver of the statute is a basis
3 for the Commission to not act. BellSouth refers to you
4 having to do these rules unless you have permission or
5 discretion to not act. If you have the authority to waive
6 a statute on an individual case basis and you have got all
7 of these CLECs that are here today coupled with the record
8 you have, you have an abundant public interest
9 demonstration that there is a good case to grant a blanket
10 waiver in the form of not acting at all. And that is what
11 we are here to ask you today. We have asked that since
12 September of last year.

13 Commissioners, with respect -- I think the
14 bottom line here is that you have a solution that is in
15 search of a problem. And there is no disrespect meant to
16 the consumer protection folks at the Commission. They
17 have dealt with a very difficult issue. They have been
18 besieged and battered by these cramming complaints, and
19 they were successful in getting the legislation passed in
20 '98, and as well the rules passed earlier this year that
21 have gone a long way towards addressing the problem. We
22 don't think that there is any need to carry that forward
23 to competitors who we believe will do a better job in the
24 competitive marketplace to bring better consumer
25 protection to customers.

1 With respect to the application of the rule to
2 business customers, we definitely believe that the bill
3 block option language that is -- well, let me step back.
4 We definitely believe that Subsection 2 of 364.604 is
5 unequivocal in that it can apply only to residential
6 customers. There is no independent authorization cited by
7 the staff or any advocate for this rule for applying the
8 bill block option to business customers.

9 CHAIRMAN DEASON: Mr. Rehwinkel, where do we
10 have the authority to require a billing block option
11 within Chapter 364?

12 MR. REHWINKEL: Commissioner, I don't believe
13 that that authority exists. Sprint, the incumbent local
14 exchange company that I also represent, although not in
15 this phase of the hearing, did not object to the
16 application of this bill block option to it in the State
17 of Florida.

18 There are two reasons for that, maybe three.
19 One is we are already required to do this in the State of
20 Tennessee. So, you know, I don't know what the
21 authorization in Tennessee is, but once having been
22 required to do it in Tennessee, it was really not a
23 problem for us in Florida.

24 CHAIRMAN DEASON: Well, then are you saying if
25 we require Sprint, the ALEC in Florida, then when it goes

1 to other states it is going to be okay because you are
2 already required to do it in --

3 MR. REHWINKEL: Well, it won't be okay because
4 you don't have the authority to do it.

5 CHAIRMAN DEASON: Okay. Well, that is my
6 question. You are saying we don't have the authority.
7 Regardless of whether it is residential, business, or
8 whatever, we don't have the authority?

9 MR. REHWINKEL: I believe that you do not.

10 CHAIRMAN DEASON: Regardless of whether it is an
11 incumbent LEC, or an ALEC, or an IXC, we don't have the
12 authority?

13 MR. REHWINKEL: That is correct. Commissioner,
14 I believe in 1998 that in response to a legislative
15 inquiry, the staff drafted basically the core of what is
16 in 604, plus a bill block option that did not make it to
17 the final version. You know, I can't cite that as
18 legislative authority saying that clearly there was a
19 legislative intent not to authorize it, but it didn't make
20 it there.

21 What survived was, I think, very good support
22 for what is in Subsection 18. And the ILECs and the CLECs
23 have allowed that to go in and they have not challenged
24 it. Even the CLECs are agreeing that 18 is basically the
25 way you ought to do business. But you go across the line

1 when you go to the bill block option.

2 Just because the ILECs have not stood on their
3 rights does not mean you carry the defect forward in the
4 application to ALECs. I don't know if there is still a
5 chance or a window of opportunity to challenge those
6 rules. But I think that folks are letting them go into
7 place. I think that the ILECs saw that there was a
8 problem and did not want to stand in the way of a good
9 consumer protection package, so nobody challenged it.

10 That doesn't mean that it is something that you
11 should impose on these competitive carriers, which I think
12 would have a much stronger case in light of 364.01,
13 .337(2) to challenge your implementation of that rule with
14 respect to ALECs.

15 COMMISSIONER JABER: You don't think that in
16 364.01 the references to our obligation to protect the
17 consumer is enough authority for implementation of a
18 billing block option, specifically Sub 3 that says that
19 during the transition into competition there should be
20 appropriate regulatory oversight to protect the customers,
21 and then later on in (4) to protect the public health,
22 safety, and welfare?

23 MR. REHWINKEL: Commissioner, I have a very
24 strong view that 364.01 is not an affirmative grant of
25 authority to the Commission. And I think the intent there

1 is clear. It is further expounded in Subsection 4(a) and
2 4(i) that the Commission's historical role as a surrogate
3 for competition is for monopoly services and basic
4 services, and that is where the legislature intended the
5 Commission to focus its consumer protection efforts. That
6 is essentially a safety net for customers who decide they
7 don't want to venture out and explore the competitive
8 choices and options. But it is not an affirmative source
9 of authority for the Commission.

10 COMMISSIONER JACOBS: The whole section, you
11 argue that all of 364.01?

12 MR. REHWINKEL: Yes, Commissioner. I do not
13 believe that is substantive authority.

14 COMMISSIONER JACOBS: Well, what about the
15 language in Subsection 4, you don't think that is a grant
16 of authority?

17 MR. REHWINKEL: No. I think that if you are
18 looking independent of the mandate that when you are
19 adopting rules that you shall do so consistent with
20 364.01, if you are not operating in that arena, if you are
21 only adopting rules with respect to ILECs, 364.01 tells
22 you how to interpret the rest of the sections, the
23 substantive law that follows from 364.015 on through the
24 600 section. That is all those sections do.

25 And I think that the case law and Chapter 120

1 are pretty persuasive on that point, that this does not
2 give you the authority to act. And this is not where the
3 authority exists for implementing a bill block option for
4 ILECs.

5 CHAIRMAN DEASON: And you say there is no such
6 authority, right?

7 MR. REHWINKEL: I'm sorry?

8 CHAIRMAN DEASON: You are saying there is no
9 such authority?

10 MR. REHWINKEL: Yes, Commissioner.

11 Commissioner Jaber, did you ask me a question?

12 COMMISSIONER JABER: You mentioned case law.
13 What does the case law say exactly?

14 MR. REHWINKEL: Well, I don't have it before me,
15 Commissioner, but 364.01 -- I just know that generally,
16 and I can address this in post-hearing comments, is that
17 this precatory or intent language does not operate as
18 independent authority.

19 COMMISSIONER JABER: It would be helpful if you
20 addressed it in your brief.

21 MR. REHWINKEL: I would be glad to. The Chapter
22 120 authority that I am referring to is 120.536. And in
23 Subsection 1 it says a grant of rulemaking authority is
24 necessary, but not sufficient to allow an agency to adopt
25 a rule. A specific law to be implemented is also

1 required. An agency may only adopt rules that implement,
2 interpret, or make specific the particular powers and
3 duties granted by the enabling statute. No agency shall
4 have the authority to adopt a rule only because it is
5 reasonably related to the purpose of the enabling
6 legislation and is not arbitrary and capricious, nor shall
7 an agency have the authority to implement statutory
8 provisions setting forth general legislative intent or
9 policy. And I believe that is the Chapter 120 citation I
10 was referring to.

11 Commissioners, I will forgo the rest of my
12 remarks. I think we have generally explored and discussed
13 the application of the bill block option and the language
14 in Subsection 18. I mean, Rule Subsection 18 and 364.604,
15 Subsection 2.

16 CHAIRMAN DEASON: Are you finished?

17 MR. REHWINKEL: Yes.

18 CHAIRMAN DEASON: Thank you.

19 MR. REHWINKEL: Mr. Ragan has comments on
20 behalf of Sprint.

21 CHAIRMAN DEASON: I think you have pretty much
22 expired your ten minutes.

23 MR. RAGAN: I will keep mine brief.

24 CHAIRMAN DEASON: It better be brief.

25 Thereupon,

1 MICHAEL RAGAN

2 appeared as a witness before the Commission and testified
3 as follows:

4 DIRECT STATEMENT

5 MR. RAGAN: Okay. Good afternoon. I would like
6 to thank the Commission for taking this opportunity to
7 share Sprint's concerns regarding the pending rules
8 regarding ALEC invoice presentation.

9 My name is Michael Ragan, I am Manager of State
10 Regulatory Compliance for Sprint Long Distance and ALEC
11 activities. I have responsibility for assuring that
12 Sprint complies with the state requirements for long
13 distance and ALEC offerings.

14 I am here today to urge you to impose -- to
15 decline to impose the bill formatting and billing blocking
16 rules for competitive service providers. Clearly the need
17 for regulatory oversight is necessary in a closed market
18 environment where there is little to no competition, where
19 the customer does not have a choice of service providers.
20 The regulatory rules serve as a surrogate for competition,
21 assuring that a single provider is operating in a fair and
22 reasonable manner.

23 With the introduction of competition and
24 alternative service providers, the need for regulatory
25 oversight is reduced and/or eliminated. In a competitive

1 marketplace service quality, the features, the bill
2 presentation will be established through customer demand.
3 Providers with service quality and features including
4 billing and the invoice practices that do not meet the
5 customer demand will be forced to meet the customer demand
6 or will be forced out of the market in its entirety.

7 CHAIRMAN DEASON: Mr. Ragan, how do you propose
8 to comply with 364.604, Section 1? Paragraph 1, rather.
9 You are saying that we should not mandate anything in a
10 rule, but there is Florida Statutes that says this is what
11 is going to be in a bill. So how are you going to comply
12 with that?

13 MR. RAGAN: We are going to comply with the bill
14 formatting. We do that today. I mean, we have the
15 ability to show the state taxes on the bill. The issue
16 that we have problems with is being able to put the
17 labeling on there as far as the Sprint gross receipts
18 taxes.

19 CHAIRMAN DEASON: So you are saying that there
20 is things in the rule that go beyond what is in the
21 statute?

22 Mr. Rehwinkel.

23 MR. REHWINKEL: Commissioner, I think our
24 concern is that the rule, the statute -- and I think this
25 goes to the comments that Ms. Kaufman was making -- is

1 that the statute is not necessarily self-executing. And
2 what you are doing is attempting to implement the statute
3 pursuant to Subsection 5, which says the Commission may
4 adopt rules to implement this section. I don't think
5 that -- I think there is some discretion that parties
6 would have in how they implement Subsection -- I mean,
7 364.604. We don't believe that we are out of compliance
8 with it today, it's just that how much detail do you go
9 into.

10 CHAIRMAN DEASON: Well, how are you out of
11 compliance with the proposed rule, then, today?

12 MR. REHWINKEL: Well, I don't think that we are.
13 But part of the concern that we have is that down the road
14 when it comes to offering competitive services or
15 innovations is that there may be customers that all they
16 want is tell me how much I owe. Mr. Ragan can address
17 some of the magnetic billing options that we give
18 customers today that have nothing to do with what is --

19 MR. RAGAN: In the competitive environment,
20 especially when it gets into the business market, we go
21 beyond what is in the rules. We will actually provide the
22 customer mag tapes so they can do full analysis of their
23 bills.

24 And, again, as far as the information we have
25 from customers regarding the quality -- the quantity of

1 information they are interested in, we haven't done
2 quantitative studies. We have done some qualitative. And
3 some of them are very interested in reducing the level of
4 billing that they are receiving, the actual number of
5 pages they receive.

6 COMMISSIONER JACOBS: I have a question that is
7 probably better going back to Mr. Rehwinkel's argument,
8 but I will wait until you are done. Why don't you go
9 ahead and finish.

10 MR. RAGAN: Okay. We do plan -- providers of
11 the service quality and features will be actually included
12 in the billing and --

13 CHAIRMAN DEASON: I'm sorry, I hate to interrupt
14 again. But if there is a customer out there who says,
15 Sprint, I want you as my carrier, but all I want is one
16 single page that has got a number on it and that is what
17 I'm going to pay you. Does the law allow you to do that?
18 Regardless of what our rule says, does the law allow you
19 to do that?

20 MR. RAGAN: Chairman, I don't know the answer.
21 I am not an attorney.

22 CHAIRMAN DEASON: Mr. Rehwinkel.

23 MR. REHWINKEL: Commissioner, if you define your
24 service that way, I think the law would allow you to do
25 that.

1 CHAIRMAN DEASON: So you are saying that --

2 MR. REHWINKEL: You can define your service. It
3 can include, you know, a bundle of telecom information and
4 none of those services. And you can say we are just going
5 to just bottom line bill you. And if the customer is
6 willing to accept that, that is the service that he is
7 being billed for.

8 CHAIRMAN DEASON: The statute says specific
9 charges, taxes, fees. The statute. That is not the
10 Commission saying that, this is the legislature of Florida
11 that said this is what is going to be on a telephone bill
12 in the State of Florida.

13 MR. REHWINKEL: Commissioner, again, I think
14 that you can say that this is the service that you are
15 getting, bottom line billing, and that would comply with
16 the statute.

17 COMMISSIONER JACOBS: Since you have that line
18 of questioning, let me go through this. I have quickly
19 scanned through Part 5 of Chapter 25-4 of the rules. You
20 don't need to turn there. Basically it is the general
21 service provisions. And in there are listed the
22 availability of service requirements, extension of
23 facilities, grades of service, interruption of service,
24 adequacy of service, transmission requirements, all of
25 those general provisions that relate to how we oversee

1 general service provisions of telephone companies to their
2 customers.

3 And I would represent to you, subject to your
4 checking, that in virtually each one of those sections
5 they list the law implementing it as 364.01, Subsection 4,
6 which you would argue today is not sufficient authority
7 for those.

8 MR. REHWINKEL: Yes, absolutely, Commissioner.
9 I mean, I can give you an example. There is a requirement
10 that you have what they call warm line 911. I don't think
11 there is statutory authorization for that. You could go
12 look at your rules. You have many places where authority
13 for the rules is shaky at best. It relies on repealed
14 sections. I'm not saying that those aren't out there in
15 the past. But I think the Commission should be very
16 careful in a competitive -- with respect to competitive
17 providers going and relying on statutory authority that
18 other portions of the statute say are not adequate.

19 COMMISSIONER JACOBS: Let's narrow in to one
20 specific one. Answer time requirements presently
21 specifically relies on 364.01, Sub 4. You argue today
22 that that rule is invalid?

23 MR. REHWINKEL: Well, no. I would say you would
24 have to look and see if that authority is coupled with
25 another substantive section. And I think maybe what -- if

1 I could recall, I think maybe 364.025 is one.

2 COMMISSIONER JACOBS: Right, it does.

3 MR. REHWINKEL: And that has got -- you know,
4 you have got carrier of last resort obligations and
5 some -- I think there is one other.

6 COMMISSIONER JACOBS: Yes, there are others.

7 MR. REHWINKEL: I think you have got to kind of
8 put those two together to get there. But if it is
9 independent authority, I think it would be unlawful to do
10 it.

11 COMMISSIONER JACOBS: Okay.

12 MR. RAGAN: In closing, the market will hold the
13 ALEC providers to the same standards as the ILEC. Most
14 likely the ILEC -- excuse me, most likely the ALEC will be
15 under more customer scrutiny than the ILEC being that it
16 is a new entry. They are going to be looking at us more
17 closely. And it will be the ALEC customer, if they
18 determine that the provider is participating in
19 questionable invoicing or billing practices, they will
20 have the option to return back to the ILEC or have another
21 ALEC that they can go to for their service offering. We
22 believe that the proposed rules are unnecessary and create
23 a barrier to us meeting the customers' needs. Thank you.

24 CHAIRMAN DEASON: Thank you. We are going to
25 take a lunch recess until 2:45.

1 MR. WAHLEN: Commissioner, I don't have anything
2 else to add to this hearing. With your permission I would
3 like to be excused so I can file my prehearing statement
4 in the UNE docket.

5 CHAIRMAN DEASON: You certainly may be excused.

6 MR. WAHLEN: Thank you.

7 CHAIRMAN DEASON: See you at 2:45.

8 (Lunch recess.)

9 CHAIRMAN DEASON: Call the hearing back to
10 order.

11 Ms. Brown.

12 MS. BROWN: Thank you, Mr. Chairman. Before we
13 start with a couple of questions that staff has of Sprint,
14 I would like to ask if Mr. Goggin may be excused from the
15 hearing. He has a plane to catch and he wanted me to ask
16 you that.

17 CHAIRMAN DEASON: By all means, he needs to
18 catch his plane.

19 MR. GOGGIN: Thank you, Commissioner. I hated
20 to raise issues and run, but I appreciate it. Thank you.

21 EXAMINATION

22 BY MS. BROWN:

23 Q Staff just has one or two questions to ask of
24 Sprint, and I will ask it to whomever can answer. Does
25 the Sprint ALEC bill for other entities at this time?

1 A No.

2 Q Do you have any estimate of -- specific estimate
3 in-house or not of costs that there would be to the Sprint
4 ALEC to develop a bill or to develop bill blocking if you
5 were not billing for other entities at this time?

6 A First of all, back on your prior question if I
7 may. When you said "bill for others," you mean bill --

8 Q As a billing agent.

9 A -- for third parties as we have talked about
10 here today?

11 Q Yes.

12 A And the answer is no. The answer to your
13 question about developing a cost, we have not for several
14 reasons. Primarily, the bill block option would be one
15 that we would have to implement on a national basis and it
16 would be quite a job to develop that. We have asked and
17 no one has done that specifically.

18 Q All right. I have one other question. Does the
19 Sprint ALEC or the Sprint ILEC provide their own bills at
20 present or do they bill through Sprint the ILEC?

21 A They are doing their own invoicing.

22 Q Both the ALEC and the ILEC IXC?

23 A Yes.

24 Q Could we ask for a late-filed exhibit that would
25 be an example of the bill from the Sprint IXC and the

1 Sprint ALEC so we can see what the bills look like now?

2 A Yes. It would have to be marked up or redacted.

3 MR. REHWINKEL: That would be fine. What we are
4 looking at is what it looks like, the content, not the
5 name of the customer.

6 MR. REHWINKEL: We would be glad to provide
7 that. You mean for the State of Florida?

8 MS. BROWN: Yes.

9 MR. RAGAN: Okay.

10 CHAIRMAN DEASON: That will be Late-filed
11 Exhibit 8.

12 (Late-Filed Exhibit Number 8 marked for
13 identification.)

14 MS. BROWN: And we have no further questions.
15 Thank you.

16 MR. REHWINKEL: May Mr. Ragan be excused to
17 return?

18 CHAIRMAN DEASON: Yes.

19 COMMISSIONER JACOBS: I'm sorry. In 364.025(2),
20 this speaks to consumer information and consumer
21 assistance. Specifically, though, at the end there -- in
22 fact, the very last sentence, it says (inaudible) I'm
23 sorry, I do that occasionally, don't I? And alerting
24 consumers to how they can avoid having their service
25 changed or unauthorized charges added to their telephone

1 bills.

2 Now, you would take a very narrow view of this
3 statute to say we can only inform consumers about this and
4 we couldn't really take any actions outside of informing
5 them?

6 MR. RAGAN: Yes, Commissioner. I mean, to me
7 the plain language of the statute it that it is for the
8 purpose of educating and informing customers and it
9 doesn't provide dependent authority for a bill block
10 option. And it is not ever -- for the entire life of this
11 docket, it has never been cited as authority for acting.

12 COMMISSIONER JACOBS: Thank you.

13 CHAIRMAN DEASON: MCI.

14 MS. McNULTY: Good afternoon, Commissioners.
15 Today I would like to introduce Richard Bondi, and he is
16 with our Mass Markets Division, and he is Senior Manager
17 of Consumer Affairs and Quality.

18 Thereupon,

19 RICHARD BONDI

20 appeared as a witness before the Commission and testified
21 as follows:

22 DIRECT STATEMENT

23 MR. BONDI: Hi. My name is Richard Bondi, and I
24 wanted to speak briefly on the topics at hand here this
25 afternoon. MCI WorldCom recognizes that

1 telecommunications companies have an obligation to provide
2 customers with the information they need to make informed
3 choices. In fact, unlike incumbents, MCI Worldcom has had
4 to compete for its customers, and its customers have
5 always had the option of selecting another carrier if they
6 were not happy with their MCI WorldCom service.

7 If customers don't like the service, they leave.
8 If they don't like any aspect of the bill, its content, or
9 its format, and that dislike is strong enough, experience
10 has shown that they leave. Consequently, MCI WorldCom has
11 always been focused on competing for and retaining its
12 customers.

13 The Commission must carefully balance
14 appropriate consumer protection against the benefits of a
15 fully competitive environment. This Commission is to
16 promote competition without unnecessary regulatory
17 constraints. It is critical that the Commission not
18 impose additional rules that would unnecessarily increase
19 carriers costs by millions of dollars. WorldCom believes
20 that the proposed bill formatting and blocking rules
21 should not be applicable to ALECs or IXC's.

22 Regarding the bill formatting rule, the most
23 frequent and regular way we communicate with our customers
24 is via our bill. Being acutely aware of this, MCI
25 WorldCom has for a number of years continually worked to

1 improve its customers billing. Additionally, we routinely
2 hold focus groups to solicit customer feedback. Topics
3 routinely include bill format, presentation, bill clarity,
4 et cetera. Sometimes billing is the only topic of a focus
5 group.

6 One anecdote I would like to share with you
7 concerning focus groups and billing. Several years ago we
8 had a group, we called a focus group together, and after
9 the group had started it was uncovered that the members of
10 the group had been inadvertently switched from block
11 billing to MCI's direct remit billing. And we started to
12 apologize for that mistake and offered to switch them all
13 back. And the customers were adamant that they preferred
14 the MCI direct billing very strongly to the block billing
15 that they had been receiving on MCI's behalf prior to that
16 point.

17 And I only cite that story just to show you that
18 customers have very strong preferences as far as the bills
19 that they receive and choose their carriers based on
20 different formats that they find in the marketplace and
21 like.

22 Additionally, MCI WorldCom is planning on
23 holding focus groups in October to get feedback from
24 customers based on the FCC-mandated truth in billing rules
25 that will be implemented prior to that time.

1 Specifically regarding the bill formatting rule,
2 there have been no specific or general problems with the
3 customer bills identified that justify the substantial
4 cost to carriers of implementing the proposed rule.
5 Additionally, the FCC has mandated certain changes --

6 CHAIRMAN DEASON: Let me interrupt for a second
7 You do not have third-party billing on your bills or do
8 you have third-party billing?

9 MR. BONDI: On the MCI WorldCom companies we do
10 not today.

11 CHAIRMAN DEASON: Okay. So how could there be
12 any complaints with your billing? I guess the question I
13 have is as I understand the proposed rule, it addresses
14 things that are required on your bill when you engage in
15 third-party billing.

16 MR. BONDI: Correct. But there are different
17 arms of the MCI WorldCom companies. And I believe some of
18 those companies might be doing third-party billing. As
19 well as the part of the company that I am from is
20 considering doing that in the future.

21 CHAIRMAN DEASON: Okay. Now, I am concerned
22 about MCI the IXC.

23 MR. BONDI: Right.

24 CHAIRMAN DEASON: Right now you do not have
25 third-party billing?

1 MR. BONDI: That's correct, we do not.

2 CHAIRMAN DEASON: Okay. But I assume it is a
3 business option, and at some point you may wish to do so?

4 MR. BONDI: Right. As well as the ALEC.

5 CHAIRMAN DEASON: As well as the ALEC. And the
6 requirements that staff has in the proposed rule, they
7 only -- these only apply if you engage in third-party
8 billing, correct?

9 MR. BONDI: That's correct. But in the near
10 future we might be engaging in that.

11 CHAIRMAN DEASON: Okay. So I guess the concern
12 that I have is when you say there has not been any
13 consumer complaints with the way you bill now. I mean,
14 that is recognizing that you do not engage in third-party
15 billing. So that if -- for example, once you engage in
16 third-party billing, if you don't provide the information
17 that is suggested by staff, you may get some consumer
18 complaints. Would you acknowledge that?

19 MR. BONDI: Certainly.

20 CHAIRMAN DEASON: Okay.

21 MR. BONDI: Additionally, the FCC has mandated
22 certain changes to end user bills in its truth in billing
23 rulings. The changes as a result of those rules are in
24 the process of being implemented throughout the industry.
25 And what those rules are doing is changing the billing

1 landscape as we know it. Arguably, these rules impose a
2 greater burden on IXCs and ALECs, who are more likely to
3 be operating nationwide billing systems rather than ILECs.

4 MCI WorldCom urges the Commission to find that
5 these formatting rules should not apply to ALECs and IXCs
6 at this time, because at this time there is no
7 demonstrated problem shown to exist. Further, MCI
8 WorldCom urges patience; to wait until the year 2001 when
9 the full ramifications of truth in billing and its effects
10 on customer bills are fully visible and then readdressing
11 the remaining billing issues with IXCs and ALEC bills at
12 that time. And would ask that any conversations be based
13 on specific issues so that a viable solution can be
14 adopted.

15 Because of the lack of supporting documentation
16 that a significant problem certainly exists, this rule
17 would force ALECs and IXCs to undergo costly development
18 which would eventually be borne by the end user with no
19 assurance that the customer perception of their bill would
20 actually improve. The estimated impact on WorldCom to
21 comply with the rules are found in my written comments.
22 Uniquely from an ALEC perspective this type of regulation
23 does not promote competition, it acts to deter it.

24 On the matter of bill blocking, again, this is
25 going to be very costly to implement. Our preliminary

1 estimates are that it would be more costly than the bill
2 formatting rules.

3 In this instance there have been no ALEC
4 complaints and very few IXC complaints of cramming. This
5 Commission must weigh appropriate consumer protection
6 against consumer benefits of a fully competitive
7 environment. This rule imposes significant restrictions
8 on ALECs at the very time when the Commission should be
9 acting to promote competition. Regarding application of
10 the rule to IXCs, it has not been demonstrated that enough
11 of a problem exists to justify the significant costs of
12 development that this rule would impose. Thus, cramming
13 has not been demonstrated to be enough of a problem with
14 ALECs or IXCs to justify the development costs.

15 CHAIRMAN DEASON: Does that conclude your
16 comments?

17 MR. BONDI: Yes, that does.

18 CHAIRMAN DEASON: Okay. Questions?

19 MS. BROWN: Staff has a few.

20 EXAMINATION

21 BY MS. BROWN:

22 Q Currently is the MCI WorldCom ALEC providing its
23 own bills to customers?

24 A Yes.

25 Q And the MCI IXC is also providing its own bills

1 to customers?

2 A Let me just clarify that there would be two
3 ALECs, and they would both be providing their own bills.

4 Q And the IXC, as well?

5 A The MCI WorldCom IXC?

6 Q Yes.

7 A Yes, but not exclusively.

8 MS. BROWN: Staff would like to ask for
9 late-filed exhibits, examples of those bills for both
10 ALECs and for the IXC.

11 MS. McNULTY: Martha, for the ALECs bills we do
12 not have any residential customers at this time. Are you
13 still interested in seeing an example of an ALEC bill?

14 MS. BROWN: Yes.

15 MS. McNULTY: We will see if we can get one.

16 MS. BROWN: Thank you.

17 CHAIRMAN DEASON: That will be Late-filed
18 Exhibit 9.

19 MS. BROWN: Thank you.

20 (Late-Filed Exhibit Number 9 identified.)

21 BY MS. BROWN:

22 Q Mr. Bondi, you spoke of MCI WorldCom's
23 commitment to improved customer billing. What does the
24 staff's -- the rule proposed here require of you that you
25 are not doing in your billing right now?

1 A There is some additional specificity in the way
2 that we would have to display taxes on the customer bill.
3 And our experience to date has shown that this would be
4 confusing to customers, especially if customers aren't
5 asking those questions.

6 Q Can you give --

7 CHAIRMAN DEASON: Excuse me a second. I'm
8 trying to -- are you indicating that you believe that
9 customers would prefer to see an amount for taxes and fees
10 only on one place on the bill as opposed to for each
11 individual -- for example, if you were engaged in third
12 party billing, that it would not be preferable for
13 customers to see the taxes associated with that
14 third-party billing in that section of the bill?

15 MR. BONDI: No, that is not what I'm saying. I
16 would agree with what you are saying, that if we are
17 engaged in third-party billing, that taxes associated with
18 that third-party product should be on that part of the
19 bill.

20 CHAIRMAN DEASON: Okay. So you are concerned
21 with the requirement within staff's proposal which
22 regardless of whether it is third-party billing or not the
23 requirements concerning taxes, fees, and surcharges?

24 MR. BONDI: Right. As well as the requirement
25 that customer service reps explain all the nuances of the

1 different tax rates and the different taxing authorities
2 down to the county level.

3 CHAIRMAN DEASON: Well, what do you do now when
4 someone calls up your 800 number, if they can get through
5 in a reasonable amount of time, what do you tell them when
6 they ask that question?

7 MR. BONDI: We would provide a general breakout
8 of taxes that is specific to the region that that customer
9 is calling in. But what we wouldn't do, and what we don't
10 do today is take that customer's bill, the one that he is
11 questioning, and dissect those charges specific to his
12 question on that specific bill. Generally, we would
13 provide rates and say this is your rate today, this is how
14 we have arrived at these charges, but in the more general
15 vein than actually dissecting the charges as they are
16 presented on his individual bill.

17 CHAIRMAN DEASON: I guess I'm having difficulty
18 understanding what this rule would require you to do
19 beyond what you are doing now.

20 MR. BONDI: Our interpretation of the rule is
21 that what we would need to do is provide additional
22 breakout to each of our customer bills so that if the
23 customer called in, the customer rep would have to be able
24 to see that breakout, and understand it, and explain it to
25 the customer for each of his bills, which includes the

1 local authority for each tax.

2 CHAIRMAN DEASON: So the problem is down to the
3 local level, then?

4 MR. BONDI: Yes.

5 CHAIRMAN DEASON: So if a customer calls you
6 today and has some question about a local tax, what do you
7 tell them?

8 MR. BONDI: We would explain to them -- the
9 customer service reps can go into a tool that explains in
10 general what those rates are that that customer is subject
11 to and tell him what the percentages are and how, in
12 general, those are calculated. What we perceive this rule
13 to require is that we take that specific bill, and say it
14 is a charge of \$3, and actually walk through and tell him
15 what portion of that \$3 relates to each of the taxes that
16 may be applicable.

17 CHAIRMAN DEASON: Okay.

18 MR. BONDI: So it is explaining it in the more
19 general sense versus explaining each specific instance on
20 the customer bill. Today if a customer has a question to
21 that level of granularity we can provide that. But our
22 objection is that we would be forced to provide that to
23 all customers, or forced to have that available to all
24 customers when all customers might not have that question.

25 CHAIRMAN DEASON: While we are on this subject,

1 can staff explain their interpretation?

2 MS. BROWN: Well, I will give it a shot, but I
3 sure would like Mr. Moses to be here if I misspeak, which
4 I might well do. Or if you would rather hear from Mr.
5 Moses. I think -- if you wouldn't mind Mr. Moses
6 responding, I think that would be smarter.

7 CHAIRMAN DEASON: That's fine with me.

8 MR. MOSES: I'm not that totally familiar with
9 the billing portion of it, that was Sally's part. But my
10 understanding is that the companies when they receive a
11 call should have the ability to answer the questions of
12 the customers as far as every charge on that bill. I
13 mean, it is their bill. Whether they are doing it for
14 third parties or otherwise, it is their bill they are
15 producing, so that is the reason it was formatted the way
16 it is.

17 CHAIRMAN DEASON: Well, let me see if -- what I
18 understood staff's motivation to be, and correct me if I'm
19 wrong, is that if there is third-party billing, that there
20 should be an amount for that, you need to identify who the
21 third party is, and how they can be contacted and all of
22 that, and there needs to be an amount associated with that
23 third-party billing that is taxes. And customers need to
24 understand the amount of taxes associated with that
25 particular charge.

1 MR. MOSES: That's correct.

2 CHAIRMAN DEASON: Okay.

3 MS. BROWN: Commissioner Deason, reading this
4 section that we are talking about starting in Subsection
5 2, the billing party shall either identify Florida taxes
6 and fees, including but not limited to gross receipts tax,
7 franchise fees, municipal utility tax and sales tax, and
8 identify the assessment base and rate or provide a plain
9 language explanation of any line item and applicable tax,
10 fee, and surcharge to any customer who contacts the
11 billing party. And then Subsection ii says if the
12 customer still doesn't understand, the company is to
13 provide the information in writing and provide a further
14 explanation.

15 I suppose we should ask Mr. Bondi if this
16 doesn't really correspond to what he has been describing
17 MCI does now?

18 MR. BONDI: On a general level it does describe
19 what we are doing now. But if you look down at (2)(b)(2),
20 that is beyond what we are doing now with the assessment
21 base for each percentage-based tax, fee and surcharge, and
22 then as well above that, the local authority for each tax.

23 BY MS. BROWN:

24 Q Well, didn't you say that if a customer
25 continues to be confused about his bill and the taxes on

1 it that you would continue to explain to him and break it
2 down even further, but only if he asked for it, isn't that
3 what you testified to?

4 A Right. What we would do today is, again, if a
5 customer called in with a question about how his taxes
6 were displayed on his bill, is the rep has information at
7 his disposal to speak to the general percentages in the
8 jurisdictions where that customer is residing. And if the
9 customer still had questions, we could -- depending upon
10 what his questions were, he would be transferred to an
11 appropriate group. And eventually if the customer still
12 had issues, we could provide something in writing.

13 But we don't experience that that happens very
14 much. And the way we are interpreting this rule is that
15 these explanations need to be more detailed at the
16 up-front customer rep level.

17 Q All right. Would you agree that you could
18 interpret this rule differently than that? You could
19 interpret Subsection A to be what you do with the customer
20 rep at the customer rep level, correct? Would you like me
21 to repeat that question?

22 A Yes.

23 Q Subsection 2(a) could be interpreted to be -- to
24 require just what you do at the customer rep level right
25 now, a general statement of the applicable area and its

1 charges. And then if a customer specifically asks for
2 additional information or more clarifying information, you
3 would provide a full explanation at that point, correct?

4 But wouldn't you agree that you could interpret
5 this rule to mean that only if the customer asked for
6 further information would you be required to give it to
7 them?

8 A True. We wouldn't be giving them information if
9 they hadn't asked for it, so I would agree with your
10 interpretation.

11 Q All right. Thank you.

12 CHAIRMAN DEASON: Let me ask this question.
13 When the customer requests or continues to express
14 difficulty then there is a further requirement, and I
15 guess this is directed to staff. There is a further
16 requirement. What is envisioned is to be provided at that
17 stage as opposed to what is contained in the plain
18 language explanation?

19 What are we trying to accomplish here? The i
20 plain language explanation, and then ii goes into a
21 situation where the customer continues to express
22 difficulty. So what is required in that next step?

23 MS. BROWN: Well, from what staff is whispering
24 in my ear, I think that, number one, it has to be in
25 writing; and, number two, the third little tier of these

1 things if the customer still doesn't understand is to lay
2 out the exact taxes, the entity that is requiring those
3 taxes, and the base rate, and the charges on which those
4 taxes are applied. The whole schematic of exactly, so
5 that the customer himself at this point can make sure that
6 the correct taxes are being applied to the charges and can
7 figure the taxes himself.

8 CHAIRMAN DEASON: It has to be in a written
9 format, correct?

10 MS. BROWN: Yes.

11 CHAIRMAN DEASON: And what is the time frame for
12 giving that information?

13 MS. BROWN: I don't think that the rule requires
14 a particular time frame.

15 CHAIRMAN DEASON: Well, let me -- Mr. Bondi, is
16 that correct?

17 MR. BONDI: Yes.

18 CHAIRMAN DEASON: Let me ask you this.
19 Currently if you have a customer who wants to understand
20 and is persistent enough, what do you do? Do you say,
21 well, I will get back with you later, I will write you a
22 letter, or I will send that information, or do you say,
23 sorry, you are a valued customer, but I'm just not
24 prepared to answer your questions?

25 MR. BONDI: Well, generally we don't get a lot

1 of questions of this type asking for the specific details
2 specified in Section ii. But when we do get those, what
3 we would do on a case-by-case basis is address those if a
4 customer had a particular question about a particular
5 subset of a tax, we would answer that particular question.
6 But the individual customer reps aren't trained to do
7 that, so this involves follow-up with the customer
8 sometimes in writing, sometimes with a phone call.

9 CHAIRMAN DEASON: Okay. So you do that now?

10 MR. BONDI: We do that now, but we don't get a
11 lot of it, and --

12 CHAIRMAN DEASON: Well, just because we adopt a
13 rule you don't anticipate there is going to be an increase
14 in your work load just because -- customers habits aren't
15 going to change just because we pass this rule, are they?

16 MR. BONDI: I think what we are objecting to in
17 part is that if a customer says I just want to understand
18 the assessment base, we would answer that question. And
19 the way we are interpreting the rule is that we have to --
20 in replying to the customer, we have to include all of
21 these components, okay. Nevermind. (Pause.)

22 We have to do it in writing, which is not always
23 how we respond to these complaints, these questions.

24 CHAIRMAN DEASON: You know, I appreciate the
25 discussion we are having here. I guess the bottom line is

1 I'm not so sure that what we want you to do is not what
2 you are already doing and that there is just a
3 misunderstanding as to what is required. And I may be
4 wrong on that. But, I mean, I know you value your
5 customers and you want to provide them information, and
6 sometimes it has to be done on a case-by-case basis and
7 there has to be some type of a follow-up. And what you
8 are telling me is that you do that. It doesn't happen
9 very often, and I can recognize that, and I don't think by
10 us adopting this rule it is going to happen any more often
11 than what it is now.

12 But apparently what staff wants you to do is
13 basically what I hear you saying that you are doing now in
14 those rare instances, unless staff knows of something that
15 I don't.

16 MS. BROWN: No, Commissioner, that is our view
17 of what we want and what Mr. Bondi is saying.

18 CHAIRMAN DEASON: Now, maybe the language is not
19 clear, and maybe the language needs to be changed to where
20 you are more comfortable with that. But from the level
21 that I am hearing this is that when its necessary you
22 provide your customers with detailed information.

23 It doesn't happen very often, but when a
24 customer is persistent enough that you recognize he or she
25 is entitled to that information, and it may take some work

1 and it may take a case-by-case analysis, and it may take
2 written follow-up later on, that you may not be able to
3 answer those questions in a realtime manner on the
4 telephone. But that you do that and you are willing to do
5 that. And I think that is what staff is saying that this
6 rule language does.

7 MR. BONDI: I would agree.

8 MS. BROWN: One more question of Mr. Bondi, Mr.
9 Chairman.

10 BY MS. BROWN:

11 Q Mr. Bondi, you discussed the focus groups that
12 you are going to be having, I think you said in October,
13 with respect to the FCC truth in billing rules. Do you
14 remember that?

15 A Yes.

16 Q How familiar are you with the FCC's truth in
17 billing rules?

18 A I would say I am somewhat familiar.

19 Q Well, you did say that you felt that Florida's
20 rules would conflict with the truth in billing rules?

21 A No, I don't believe I said that. What I was
22 intending to convey is that what the FCC truth in billing
23 rules have done is they have changed the landscape. And
24 we feel that it is not the right time to come in with
25 Florida-specific rules on top of that landscape until it

1 has settled out.

2 Q But there is nothing that you are aware of in
3 your review of the truth -- FCC's rules and Florida's
4 proposed rules that are contradictory, correct?

5 A That's correct.

6 MS. BROWN: Okay. We have no further questions.
7 Thank you.

8 CHAIRMAN DEASON: Thank you. AT&T.

9 MS. RULE: Thank you, Mr. Chairman. A side note
10 before we get onto the rule provisions, BellSouth BSE does
11 indeed have an ALEC certificate in Florida and is
12 currently competing in Florida. Now, I don't know
13 specifically, and I'm not sure of any way to know whether
14 they are competing actively in the Miami area, for
15 example, but I know they do have the authority to do so
16 and that issue was specifically litigated when BellSouth
17 BSE got its certificate, and the Commission gave BellSouth
18 the authority basically to compete against itself. So
19 BellSouth could well compete for customers and stand on
20 the same footing as the rest of the competitive providers.

21 CHAIRMAN DEASON: I appreciate that. It seems
22 like I had remembered that that had happened and you have
23 refreshed my memory.

24 MS. RULE: So much has happened since then. And
25 now I would like to address the two sections of the rule

1 that we are here to talk about, and I have with me Mr.
2 Dewey Alexander, who then has some comments about one of
3 the sections.

4 We have got two sections that you are looking
5 at, and the first one we call the formatting section. I
6 know Ms. Simmons talks about the content section, and that
7 is Subsection 2. And our position is that the Commission
8 does have authority to implement Subsection 2. But we are
9 asking you, however, not to implement it through rules at
10 this time.

11 And, Chairman Deason, you have pointed out that
12 Section 364.04, Subsection 1, is mandatory. We are
13 already required to comply with those provisions and we
14 will comply with them. But as Mr. Alexander will
15 demonstrate, there is more than one way to skin a cat.
16 There are different ways to design a bill and still be in
17 compliance with the statute.

18 The staff has a rather prescriptive method of
19 designing a bill. You can only design your bill in
20 staff's methodology and be consistent with the rule. We
21 are basically asking for more leeway. As long as we
22 comply with the statute and give the customers the
23 information that they are entitled and they need, I think
24 at this point at least it is too early to consider
25 prescriptive methods of presenting a bill to customers.

1 With regard to Subsection 19, the billing block
2 provision, however, that is a little different. We don't
3 believe the Commission has authority under the statutes to
4 implement a bill block. Now, Section 120, or Chapter 120
5 of the Florida Statutes provides basically a rulemaking
6 recipe. The Commission first has to identify the powers
7 and duties granted by statute and cite to it. And in this
8 case staff has identified Section 364.04, Subsection 2 as
9 its statutory authority. So that is the piece of the pie
10 we are going to look at when trying to decide what the
11 Commission can and should do in Subsection 19.

12 Once you have identified your statutory
13 authority, Chapter 120 says then you have to have
14 rulemaking authority, and you do in Section 364.04,
15 Subsection 5. So the next question is what can you do
16 with the rules? Well, under the provision that Mr.
17 Rehwinkel cited to you, your rules have to be able to make
18 the statute specific, interpret it, or implement it. So
19 there has to be some hint or clue in the statute as to the
20 action that you are going to ask us to take through
21 rulemaking. And there is nothing in Section 364.604,
22 Subsection 2 that even hints at the ability to require
23 companies to spend millions and millions of dollars to
24 develop a bill blocking capacity.

25 And you have before you a SERC prepared by

1 staff. And AT&T's estimates alone range between 2.5 and
2 4.8 million to develop that capability. I would point
3 out, however, that you do have ample authority to
4 implement Subsection 18, that you already did, and I think
5 that is a direct implementation of the statute. The
6 statute says that a customer shall not be liable for any
7 charges for telecommunications or information services
8 that the customer did not order or that were not provided
9 to the customer.

10 And in Subsection 18 that is exactly what you
11 do. You instruct the companies that if such a charge
12 appears on a customer's bill you are supposed to take it
13 off and not charge the customer for it. And I think that
14 is very, very clearly within your authority.

15 CHAIRMAN DEASON: I hate to ask this question,
16 but I need to ask it. Does that mean, then, that if we --
17 the pet insurance example, is that a service that we can
18 require to be removed, a charge that we can require to be
19 removed from the bill?

20 MS. RULE: Well, I will have to confess to you
21 that the whole theory of whether it is an information
22 service or not I haven't concentrated on before today, so
23 I'm not really prepared to answer it. I would say,
24 however, that if you have Subsection 18 in place, which
25 you do, there will be no company that I know of refusing

1 to remove a pet insurance charge. They will have in place
2 a process and procedure for removing disputed charges from
3 bills. That process and procedure is in place by rule. I
4 don't know anybody who would say, nah, I'm going to leave
5 that pet insurance on there. I think as a practical
6 matter your rule will ensure that the problem won't arise
7 again.

8 Let's go on and assume just for a moment that we
9 could derive some authority or further authority from this
10 rule's statutory section. Chapter 120.4 -- I'm sorry,
11 Chapter 120 further provides that you are, as a
12 Commission, to adopt rules that are less costly as long as
13 they substantially accomplish the regulatory objectives.
14 And, again, you have got to look back to the statute to
15 find out what the regulatory objective is. And the
16 regulatory objective in Section 364.604, Sub 2, is to make
17 sure that customers aren't being held liable for charges
18 that they didn't incur. And you have already got a rule
19 in place that does that. That is your less costly
20 alternative.

21 And finally there is a competitive issue
22 involved. Even for companies that don't bill for third
23 parties at this time, as Mr. Rehwinkel pointed out, if
24 they ever want to provide an innovative service to
25 customers, it may require them to spend the 2.5 to \$4.8

1 million to develop a bill block before they can offer the
2 service. And that is a direct barrier to competition. It
3 is not the sort of thing, I think, the Commission has in
4 the past been asking carriers to do. I think instead what
5 you want to do is to have customers experience the
6 benefits of the types of services that will become
7 available when competition begins to thrive.

8 I would like now to introduce Mr. Dewey
9 Alexander, and he is going to discuss with you some
10 activities AT&T has taken with regard to mostly issues
11 relating to Subsection 2 of the rule.

12 Thereupon,

13 DEWEY ALEXANDER

14 appeared as a witness before the Commission and testified
15 as follows:

16 DIRECT STATEMENT

17 MR. ALEXANDER: Good afternoon. My name is
18 Dewey Alexander. I work at AT&T in Basking Ridge, New
19 Jersey. I am responsible for AT&T consumer billing and
20 legal and regulatory compliance. And what we do is AT&T
21 talks to our customers regularly about our bills and our
22 bill formats. And one of the things that becomes readily
23 apparent to us is that there is no one bill or one bill
24 format that all customers like. There are customers that
25 would like to see a bill that only contains bottom line

1 charges without a lot of what they would call unnecessary
2 information. There are also customers that say I want to
3 know all the details, give me everything that I want.

4 And what AT&T in the residential consumer
5 business tries to do is meet those consumer needs.
6 Consumers want invoicing options. They have asked us for
7 online billing capability where there are certain
8 consumers who are now Internet enabled who want to be able
9 to go to the Internet and I want to get my bill on the
10 Internet. I don't want to get paper bills anymore.

11 There are also customers that say that is
12 absolutely not an option for me. Whether I am Internet
13 enabled or not, I want a paper bill and I want it
14 delivered the way it has been delivered to date.

15 There are also customers that have said to me
16 could you provide us with just a postcard summary, a
17 summarized bill on a postcard and then it would direct me
18 to your Internet site to say if I wanted to see additional
19 detail the detail would be available there.

20 The bottom line, customers express interest in a
21 myriad of billing options. And what we need to do is have
22 the flexibility to deliver to all of those customers the
23 way they choose to be billed.

24 Specifically, where AT&T bills customers for IXC
25 services, AT&T long distance charges oftentimes are

1 included on the same invoice with non-AT&T basic local
2 service. In those invoices we have far less control over
3 the overall bill presentment. One of the things that we
4 do require is that an AT&T toll free number is provided on
5 the bill for the customers' inquiries; that AT&T charges
6 are separated by service provider; that AT&T's
7 descriptions are full and straightforward for those bill
8 charges.

9 We fully support the goals of the Florida Public
10 Service Commission to keep customers informed about their
11 service providers and the charges that are included on
12 those invoices. Where AT&T is the local service provider,
13 AT&T basic local service bills provide customers with the
14 name of the service provider associated with each charge.
15 Charges are separated by service provider. There are
16 clear and conspicuous notifications of any change in
17 service provider. Charges for services and products
18 rendered are accompanied by a brief, clear what we
19 consider to be plain language description.

20 AT&T consumer billing issues and concerns. We
21 are very concerned as a national carrier trying to bring
22 competition and local service throughout the nation that
23 state-specific billing rules and bill formats impede a
24 national carrier's ability to enter multiple markets. In
25 a mobile society we think consumers expect their carrier

1 of choice to provide the same format and functionality
2 across jurisdictions.

3 The current trends indicate that there will be
4 more rules and regulations for billing unless we and the
5 regulators work together to develop billing standards that
6 meet the needs of consumers and that are supported by the
7 industry and regulators alike. We have spent lots of time
8 and money educating not only our consumers, but also our
9 service reps on the charges as well as descriptions for
10 those charges that appear on our bills.

11 Any changes to those require us to respend money
12 to retrain not only our customer service reps who are
13 serving a national customer base, but also to retrain our
14 consumers who now have picked up a bill that looked one
15 way last month and it now looks another way. That change
16 in and of itself creates problems for us in that customers
17 call, what is different. Customers are used to looking at
18 the bills and being able to identify where those charges
19 appear.

20 CHAIRMAN DEASON: Let me ask you a question. As
21 your counsel indicated, 364.604, Paragraph 1 is part of
22 the statute, and it requires certain items to be included
23 within a bill. Now, I take it that it is your position
24 that you are already complying with that, correct?

25 MR. ALEXANDER: Correct.

1 CHAIRMAN DEASON: But you are concerned that the
2 language contained in staff's recommended rule takes away
3 your -- some of your discretion or flexibility in
4 complying with the statute?

5 MR. ALEXANDER: Yes, sir. Specifically, I look
6 at the Rule 24-4.110(2)(b), which states the toll free
7 customer service number of the service provider or
8 customer service agent must be conspicuously displayed in
9 the heading, immediately below the heading, or immediately
10 following a list of charges for the service provider. We
11 consider that to be going beyond content and moving into
12 the area of bill format, and that's where we have
13 concerns.

14 CHAIRMAN DEASON: Is there anything else within
15 the rule that you find objectionable?

16 MR. ALEXANDER: Our objections strictly are to
17 where the Commission goes beyond content and moves into
18 the area of format.

19 CHAIRMAN DEASON: And if we go beyond content --
20 the statute is just content, is that correct?

21 MR. ALEXANDER: That is my understanding, yes.

22 CHAIRMAN DEASON: Okay. So where we go beyond
23 what is in the statute that is what you find
24 objectionable?

25 MR. ALEXANDER: Yes, sir.

1 CHAIRMAN DEASON: Staff.

2 EXAMINATION

3 BY MS. BROWN:

4 Q Mr. Alexander, does AT&T, the IXC, provide its
5 own billing to its customers at this point or do they
6 always bill through the ILECs?

7 A We do both.

8 Q In Florida do you do both?

9 A Yes.

10 Q And I think you testified that as an ALEC you
11 provide your own bills?

12 A Yes.

13 Q Do you bill for third parties at this point?

14 A No.

15 MS. BROWN: Staff would like to ask for a
16 late-filed exhibit from AT&T with examples of their bills
17 from IXCs where they bill for themselves and ALECs, as
18 well.

19 CHAIRMAN DEASON: That will be Late-filed
20 Exhibit 10.

21 MS. BROWN: Thank you.

22 (Late-Filed Exhibit Number 10 identified.)

23 MS. BROWN: I think Ms. Rule discussed rather
24 large cost figures that AT&T mentioned in its comments for
25 the billing block option, and I think for the billing

1 portion of staff's rule. Does AT&T have anything written
2 down that specifically explains, or itemizes, or
3 delineates the costs that AT&T has alleged that they would
4 incur?

5 MS. RULE: I don't think so. But it has been
6 awhile since we have filed those. If we did have it, it
7 would be filed with our comments.

8 MS. BROWN: Well, if AT&T doesn't have anything
9 written down on what the costs would be that specifically
10 delineates them, what are we -- what is the allegation in
11 the comments that the costs would be in the millions of
12 dollars based on?

13 MS. RULE: In order to provide a cost estimate
14 to staff, I have to go to many different groups within
15 AT&T. And I asked each of them to identify areas that
16 would be effected and to provide me with a cost.
17 Sometimes it is done by phone call and they talk me
18 through it. Sometimes I receive something written. You
19 know, this was sometime ago that we filed it, and I
20 honestly don't know what is in my files.

21 I would suggest, though, that we have accurately
22 totaled up what my clients have given me. And Mr.
23 Alexander can attest to the fact that getting those costs
24 is a very painful process. It entails a lot of time, and
25 I know there are parts of the company where there are

1 written -- there is some sort of written record, I just
2 don't know that I have them all or could even gather them
3 this late in the game.

4 MS. BROWN: Well, then would it be -- would you
5 feel it sufficient for the Commission just to rely on your
6 assertions and give it the weight that they believe it is
7 due in their consideration of this rule?

8 MS. RULE: Yes, ma'am. That's what the statute
9 provides, that staff gathers the information and we
10 provided it. You know, in a drawn-out hearing we probably
11 would have to put on witnesses about costs, if you wanted
12 that. But at this point, yes, I do believe it highly
13 appropriate for the Commission to rely upon those figures.

14 MS. BROWN: I have one more question I think
15 probably best directed to Ms. Rule, and it has to do with
16 the section that Commissioner Jacobs brought up, Section
17 364.025(2). I would like her view of the applicability of
18 that section to these rules that the staff has proposed.

19 MS. RULE: .025(2), that is the expansion of
20 consumer information?

21 MS. BROWN: Yes. And let me specifically
22 explain why I want you to do that a little bit. This rule
23 contains a lot of information. And it appears to be a
24 rule that talks about expanding consumer information
25 programs. And then it also goes into customer assistance

1 and rulemaking authority. And it is a bit of a more meaty
2 rule than one might expect from the beginning. And I
3 would like your consideration of the sections that discuss
4 the Commission's duty, because it is phrased in terms of
5 shall, to assist customers in resolving any billing and
6 service disputes that customers are unable to resolve
7 directly with the company. And then the following section
8 where the Commission may pursuant to this program require
9 companies to develop and provide that information to
10 customers.

11 And then it goes on to say that the Commission
12 may specify by rule the types of information to be
13 developed and the manner by which the information will be
14 provided to the customers. And then, of course, the last
15 section, which Commissioner Jacobs mentioned, which was to
16 inform consumers and alert them to how they can avoid
17 having their service changed or unauthorized charges added
18 to their bills.

19 MS. RULE: Well, my first comment would be that
20 this statute has absolutely no applicability to this
21 rulemaking. Chapter 120 requires the Commission to
22 identify the statute that it is pursuing rulemaking under.
23 And this has not been identified. So it has not been
24 subject to the cost process, it has not been subject to
25 any comments, and it is outside the purview of this

1 proceeding. Now, given that, could the Commission make
2 rules based upon this? Certainly.

3 MS. BROWN: Now, do you think that it is too
4 late in this process to include this provision in the
5 specific rulemaking sections of this proposed rule?

6 MS. RULE: Yes, ma'am. Because the parties have
7 been -- comments have been invited, the hearing has been
8 noticed, the SERC has been collected. All the normal
9 procedural steps that would allow parties to comment upon
10 the Commission's authority, provide cost estimates, and
11 provide lower cost alternatives have passed.

12 Now, I think there is probably a possibility for
13 continuing the proceeding, putting it in and allowing
14 those steps to continue, or to be reopened. I'm not sure
15 that you gain anything by it, though.

16 MS. BROWN: Can you cite me to specific sections
17 of --

18 MS. RULE: I knew you were going to say that.

19 MS. BROWN: -- of 120 that support that position
20 that you just took, and any case law that you might have?

21 MS. RULE: You will have to give me just a
22 minute on this.

23 CHAIRMAN DEASON: Ms. Brown, would it be better
24 just to have the parties address this in post-hearing
25 filings?

1 MS. BROWN: That would be fine. That was going
2 to be my next suggestion.

3 MS. RULE: No problem.

4 MS. BROWN: I have one more question of
5 Mr. Alexander.

6 BY MS. BROWN:

7 Q When AT&T provides a bill to a customer, where
8 does it put toll free numbers on the bills for different
9 providers?

10 A AT&T doesn't bill for different providers.

11 MS. BROWN: I'm sorry, I forgot that. Thank
12 you. I withdraw the question.

13 No further questions.

14 CHAIRMAN DEASON: All right. I believe
15 Time-Warner is scheduled next.

16 MR. REHWINKEL: Mr. Chairman, while Time-Warner
17 is coming up, can I ask if before we adjourn for the day
18 if we could understand a little more clearly what this
19 post-hearing issue is going to be on. I was just
20 wondering. We don't have to do it right this second, but
21 before we close. Thank you.

22 CHAIRMAN DEASON: Yes, we will address that.

23 MR. GROSS: Good afternoon. My name is Michael
24 Gross, and I would like to make a couple of comments on
25 behalf of Time-Warner and the FCTA. And I appreciate, Mr.

1 Chairman and Commissioner Jacobs, giving me the
2 opportunity to speak this afternoon.

3 I would like to state on the record that
4 Time-Warner and the FCTA join with those parties who have
5 earlier today stated their opposition to application of
6 the billing format and billing block rule amendments to
7 ALECs. And I think those parties have articulated their
8 positions very well, and I'm not going to reiterate them
9 as far as issues of statutory construction, rulemaking,
10 and administrative procedure. But I would like to say
11 that at a minimum as a matter of discretionary policy that
12 it would not be good policy to impose these rule
13 requirements on ALECs insofar as the Commission endeavors
14 to promote competition in the local telephone exchange
15 market.

16 I would like to point out that earlier this year
17 at the Florida Communications Policy Symposium 2000 that
18 is held annually by Florida State University, ALTS, an
19 ALEC-based organization issued its first annual report on
20 the state of local telecom competition dated February 2nd,
21 2000. And I would just like to point out two of the
22 findings of that report that I think are relevant to the
23 issue of a burden that would be placed on ALECs, and that
24 the burden in terms of the cost is not to be
25 underestimated.

1 The ALTS report found, based upon reports from
2 its members, that not one CLEC has made a profit since the
3 '96 act came into being. And that CLECs or ALECs invest
4 over 56 percent of their revenues in capital expenditures
5 as opposed to 23.3 percent for ILECs. And these are the
6 kind of financial data that really need to be considered
7 and shouldn't be overlooked in giving very close scrutiny
8 to the question of increasing the burdens on competition.

9 Thank you.

10 CHAIRMAN DEASON: Questions?

11 MS. BROWN: Staff has no questions.

12 CHAIRMAN DEASON: I believe that is the last
13 presentation scheduled?

14 MS. BROWN: Yes, Mr. Chairman, it is.

15 CHAIRMAN DEASON: We have had a request to
16 review what is envisioned by any type of post-hearing
17 filings, particularly the subject matter which you
18 discussed with Ms. Rule. If now is an appropriate time,
19 we can do that.

20 MS. BROWN: All right. Would you like me to
21 provide the parties with the dates of the post-hearing
22 schedule at this time?

23 CHAIRMAN DEASON: Yes. Sure.

24 MS. BROWN: I have not yet provided a time for
25 the late-filed exhibits. But the transcript of the

1 hearing should be available August 30th. And if the
2 parties are agreeable, it seemed to me a good time for the
3 filing of the late-filed exhibits, as well. The
4 post-hearing comments would be due September 13th.
5 Staff's recommendation would be due October 5th for an
6 agenda conference on October 17th.

7 CHAIRMAN DEASON: Does everyone have the
8 schedule? Very well.

9 MS. BROWN: And just as a suggestion for what
10 the comments should cover with respect to the many, many
11 legal issues that have been brought up today, I would
12 suggest all of them with as much actual citation to
13 statutory and case authority as possible. And in
14 particular, to address the applicability of Section
15 364.025(2) to this rulemaking proceeding. Does that help
16 anything?

17 MR. REHWINKEL: I assume that would mean we
18 would discuss whether it was omitted in the rulemaking
19 that underlay the ILEC rules that were adopted? Because I
20 don't believe it was cited in that one as authority for
21 those rules. Is that, I guess --

22 CHAIRMAN DEASON: What I understand the question
23 to be is can we consider that particular statutory
24 provision in this, where we find ourselves now, or that is
25 precluded? And if we want to consider it, how and when do

1 we start over, or if we start over, or what do we do?

2 That's what I understand the question to be.

3 MR. REHWINKEL: I would probably like to also
4 raise whether it was a defect then in the ILEC rules as it
5 was not included as authority there.

6 CHAIRMAN DEASON: I think that would be your
7 prerogative to address it in that manner if you see fit.

8 MR. REHWINKEL: Okay.

9 MS. BROWN: I would just add the comment, Mr.
10 Chairman, that I would think that it would be helpful to
11 the Commission to address these issues as broadly and
12 comprehensively as possible.

13 CHAIRMAN DEASON: Well, let me say this. I
14 don't mind giving the parties an opportunity to address
15 the statutory provision. But let me just say I am
16 uncomfortable at this point, this very, very late phase of
17 this hearing to be interjecting a new statutory provision
18 which was not part of the original notice. And it gives
19 me great reason to pause and think about it.

20 I don't mind it being addressed. But it seems
21 to me that it is late in the game to be relying upon new
22 statutory authority. I say not new in the sense that it
23 is recently adopted, new in the sense that it was not
24 originally noticed as being part of the consideration of
25 this rule amendment.

1 But having said that, is there anything else to
2 come before the Commission at this time?

3 MS. BROWN: Staff is not aware of anything else.

4 CHAIRMAN DEASON: Okay. Thank you all for your
5 participation. This hearing is adjourned.

6 (The hearing concluded at 3:50 p.m.)

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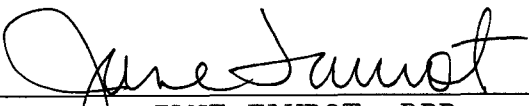
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
FPSC Commission Reporter, do hereby certify that the
hearing in Docket No. 990994-TP was heard by the Florida
Public Service Commission at the time and place herein
stated.

It is further certified that I stenographically
reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
transcript, consisting of pages 1 through 214 constitutes
a true transcription of my notes of said proceedings.

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

DATED this 30th day of August, 2000.



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