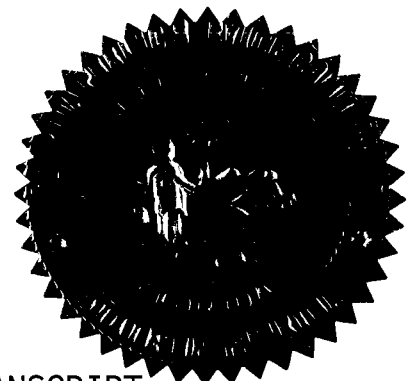


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000075-TP (PHASE II)

In the Matter of
INVESTIGATION INTO APPROPRIATE
METHODS TO COMPENSATE CARRIERS
FOR EXCHANGE OF TRAFFIC SUBJECT
TO SECTION 251 OF THE
TELECOMMUNICATIONS ACT OF 1996.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER LILA A. JABER
 Prehearing Officer

DATE: Wednesday, June 13, 2001

TIME: Commenced at 9:30 a.m.
 Concluded at 10:15 a.m.

PLACE: Betty Easley Conference Center
 Room 152
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
 FPSC Division of Records & Reporting
 Chief, Bureau of Reporting
 (850) 413-6732

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4 Telecom of Florida, Inc.

5 JIM LAMOREAUX, AT&T Communications of the Southern
6 States, Inc., 101 North Monroe Street, Suite 700,
7 Tallahassee, Florida 32301-1549, appearing on behalf of AT&T
8 Communications of the Southern States, Inc., MediaOne Florida
9 Telecommunications, Inc. and TCG of South Florida.

10 NANCY B. WHITE, E. EARL EDENFIELD and JAMES MEZA, c/o
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13 Telecommunications, Inc.

14 NORMAN H. HORTON, JR., Messer, Caparello & Self,
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17 e.spire Communications, Inc.

18 JON C. MOYLE, JR, Moyle Law Firm, The Perkins House,
19 118 North Gadsden Street, Tallahassee, Florida 32301, and
20 CHRISTOPHER SAVAGE, Cole, Raywid & Braverman, L.L.P, 1919
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1 APPEARANCES CONTINUED:

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3 Ecenia, Underwood, Purnell & Hoffman, P. O. Box 511, 215 South
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5 appearing on behalf of Level 3 Communications, LLC, and US LEC
6 of Florida, Inc., AT&T Communications of the Southern States,
7 MediaOne, TCG of South Florida, and Allegiance Telecom of
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9 JOSEPH A. McGLOTHLIN, McWhirter, Reeves, McGlothlin,
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12 Florida Competitive Carriers Association.

13 DONNA C. McNULTY, 325 John Knox Road, Suite 105,
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15 WorldCom, Inc.

16 SUSAN S. MASTERTON, P. O. Box 2214, Tallahassee,
17 Florida 32316-2214, appearing on behalf of Sprint-Florida,
18 Incorporated, and Sprint Communications Limited Partnership.

19 KAREN CAMECHIS and PETE DUNBAR, Pennington,
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1 APPEARANCES CONTINUED:

2 KIMBERLY CASWELL, P. O. Box 100, FLTC0007, Tampa,
3 Florida 33601-0110, appearing on behalf of Verizon Florida,
4 Inc.

5 SCOTT A. SAPPERSTEIN, One Intermedia Way, MC FLT-HQ3,
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7 Communications, Inc.

8 MICHAEL R. ROMANO, 1025 Eldorado Boulevard,
9 Broomfield, Colorado 80021, appearing on behalf of Level 3.

10 RICHARD D. MELSON, Hopping Green Sams Smith, P.A.,
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13 FELICIA BANKS and BETH KEATING, Florida Public
14 Service Commission, Division of Legal Services, 2540 Shumard
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16 behalf of the Commission Staff.

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

2 COMMISSIONER JABER: Good morning.

3 Counsel, read the notice.

4 MS. BANKS: Pursuant to notice issued May 23rd, 2001,
5 this time and place has been set for a prehearing in Docket
6 000075-TP, which is the investigation into appropriate methods
7 to compensate carriers for exchange of traffic subject to
8 Section 251 of the Telecommunications Act of 1996.9 COMMISSIONER JABER: Let's take appearances. We
10 don't have anyone on the phone, right?

11 MS. BANKS: No. That is correct, Commissioner Jaber.

12 COMMISSIONER JABER: Go ahead.

13 MR. EDENFIELD: Good morning. Kip Edenfield for
14 BellSouth.

15 MS. MASTERTON: Susan Masterton for Sprint.

16 MS. CASWELL: Kim Caswell for Verizon Florida.

17 MR. McDONNELL: Martin McDonnell, and I am here with
18 Ken Hoffman on behalf of AT&T Communications of the Southern
19 States, TCG, MediaOne, Level 3, Allegiance Telecom, and US LEC.
20 And if I could I would like to enter an appearance for Jim
21 Lamoreaux on behalf of AT&T, Morton Posner on behalf of
22 Allegiance Telecom, and Michael Romano for Level 3.23 COMMISSIONER JABER: I need you to back up and repeat
24 it. Mr. Lamoreaux on behalf of AT&T. These are --

25 MR. McDONNELL: They are in the prehearing order,

1 Commissioner Jaber.

2 COMMISSIONER JABER: -- in the new prehearing order,
3 Felicia?

4 MS. BANKS: Yes. I don't see Mr. Lamoreaux. I think
5 that is an additional one.

6 MR. McDONNELL: James Lamoreaux is along with Marsha
7 Rule on the top of Page 2 of my draft.

8 MS. BANKS: Okay. I'm sorry. Thank you.

9 MR. McDONNELL: And Morton Posner on behalf of
10 Allegiance is on Page 3; and Michael Romano on behalf of Level
11 3 is on Page 2.

12 COMMISSIONER JABER: Thank you.

13 MR. McGLOTHLIN: Joe McGlothlin for the FCCA. I am
14 also appearing this morning for Intermedia Communications and
15 would like to enter the appearance of Scott Sapperstein.

16 COMMISSIONER JABER: Thank you.

17 MR. MELSON: Rick Melson on behalf of MCI WorldCom.

18 Ms. McNULTY: Donna McNulty on behalf of MCI
19 WorldCom.

20 MS. CAMECHIS: Karen Camechis on behalf of Time
21 Warner Telecom.

22 COMMISSIONER JABER: Ms. Camechis, I do not see your
23 name on the draft. Does that mean she hasn't -- that Time
24 Warner didn't intervene, Felicia, or am I missing her name?

25 MR. MELSON: On the top of Page 3.

1 COMMISSIONER JABER: Thank you. Mr. Dunbar.

2 MR. DUNBAR: I'm sorry, Jon Moyle on behalf of Global
3 NAPS. And I would also like to enter an appearance on behalf
4 of Mr. Savage. And we are reflected accurately on Page 2 of
5 the draft.

6 COMMISSIONER JABER: Thank you.

7 MR. HORTON: And Norman H. Horton, Jr., for e.spire
8 Communications.

9 COMMISSIONER JABER: Anyone else?

10 Mr. Moyle, I take it since you are here I am to
11 disregard the request to be excused from the prehearing
12 conference?

13 MR. MOYLE: Yes, ma'am. I did that out of a
14 precautionary measure. That was something that we were able to
15 resolve in circuit court, it settled this morning. So we can
16 just disregard that.

17 COMMISSIONER JABER: Okay. Any preliminary matters,
18 Ms. Banks?

19 MS. BANKS: I would like to enter an appearance,
20 Felicia Banks and Beth Keating on behalf of Commission staff.

21 COMMISSIONER JABER: Thank you.

22 Ms. McNULTY: Commissioner Jaber, just a minor thing
23 before we move on. I just have a minor correction to Page 2.
24 Although staff has promoted me to general counsel, if you just
25 put esquire that would be fine. Thank you.

1 COMMISSIONER JABER: Felicia told me that she had
2 heard a rumor that --

3 (Laughter.)

4 MS. MASTERTON: Commissioner Jaber, I also have a
5 minor correction. On Page 1 it should say Sprint-Florida,
6 Incorporated and Sprint Communications Company, Limited
7 Partnership.

8 COMMISSIONER JABER: You are okay with esquire, then?

9 MS. MASTERTON: Yes.

10 COMMISSIONER JABER: All right. Any other changes to
11 the appearances?

12 MR. McDONNELL: Yes. Commissioner Jaber, on Page 2,
13 Michael R. Romano, he is third from the bottom, it should read
14 Level 3 Communications, LLC, deleting the Inc.

15 COMMISSIONER JABER: All right. Any other changes?

16 MS. BANKS: There was one more. On Page 3, the
17 second to the last listing, it should be Norman H. Horton, Jr.

18 COMMISSIONER JABER: Uh-huh, I saw that.

19 Mr. Edenfield, can we take Nancy White and James Meza off?

20 MR. EDENFIELD: I wish you would leave them. Let me
21 make an appearance on their behalf, then, Ms. Nancy White and
22 James Meza. Mr. Meza is going to try the case with me, and
23 possibly Ms. White, but I'm not sure yet.

24 COMMISSIONER JABER: All right.

25 MS. CAMECHIS: And, Commissioner Jaber, I would like

1 to enter an appearance for Pete Dunbar, as well. Thank you.

2 COMMISSIONER JABER: All right.

3 MS. MASTERTON: I have a question. Sprint has a
4 pending motion to accept a revised prehearing statement.
5 Should we just wait for pending motions? But then when you get
6 to the issues list, Issue 18 doesn't have a statement for
7 Sprint. So if that motion is granted then there will be one.

8 COMMISSIONER JABER: It was my intent to take that up
9 into the preliminary matters. But apparently there have been
10 lots of changes to the appearances section. So before we move
11 on to the preliminary matters, let's make sure there are no
12 other changes to Pages 1, 2, and 3. All right.

13 Go ahead, Felicia.

14 MS. BANKS: On June 6th, Sprint filed what Ms.
15 Masterson just referenced, a motion to accept revised
16 prehearing statement. It is my understanding that Sprint has
17 conferred with parties and there is no objection.

18 COMMISSIONER JABER: All right. Let's confirm there
19 are no objections to Sprint's motion to revise its prehearing
20 statement.

21 MR. EDENFIELD: BellSouth has no objection.

22 COMMISSIONER JABER: Parties? All right. Show
23 Sprint's motion to accept a revised prehearing statement
24 granted. What is next?

25 MS. BANKS: The next thing, and I think I will allow

1 or defer to Mr. Hoffman, there is a matter that I believe the
2 Joint ALECs want to discuss.

3 COMMISSIONER JABER: Go ahead, Mr. Melson.

4 MR. MELSON: I will probably take this up. We are
5 going to ask that you consider continuing the hearing in this
6 case. It is currently scheduled for the 5th and 6th of July.
7 Obviously right after the -- I would say the 4th of July
8 weekend, except the fourth of July is on Wednesday this year.
9 That is causing some travel concerns for our witnesses,
10 probably nothing that is insurmountable.

11 But given the nature of the issues in this case, none
12 of which appear to be of a nature that require immediate
13 resolution, given the recent FCC activities which may have
14 bearing on some of the issues, we have consulted with the
15 parties and to the best of my knowledge all the parties
16 represented here would support continuing this hearing out of
17 July to some later date that fits on the Commission calendar.

18 We don't have a specific suggestion about time frame.
19 Obviously, we wouldn't want it to languish forever, but it is
20 not the type of thing where we feel like we need to find
21 hearing dates within the next month in order to get the issues
22 resolved. And so we would respectfully ask that you consider
23 the possibility of finding some alternative dates for the
24 hearing.

25 MS. BANKS: Commissioner Jaber, if I could. Staff

1 just wants to note that I don't know if it is something that
2 would change the position to look at the possibility of
3 continuing, but at best if this were to be continued, it is a
4 full Commission matter, it probably would be mid to late
5 February of 2002. Just so that parties are aware, that is kind
6 of the current state of affairs at this moment.

7 COMMISSIONER JABER: If those dates were not reserved
8 for something else. Do all of the parties agree with the
9 motion for continuance?

10 MR. EDENFIELD: I have no objection to it, but I just
11 want to make sure -- you know, BellSouth has a pending 271
12 application, and I just want to make sure that by agreeing to
13 this continuance that I am in no way prejudicing that docket,
14 and that nobody is going to raise this continuance and the
15 postponement of these issues as something against BellSouth in
16 that docket. I just want to kind of get a general consensus
17 that I'm not agreeing to something that somebody is going to
18 come back and haunt me with later.

19 COMMISSIONER JABER: Mr. Melson, I think
20 Mr. Edenfield is asking for your commitment not to raise this
21 in the scheduling of the 271 matter.

22 MR. MELSON: Commissioner, I had not thought about
23 the interplay between this docket and 271. There is at least
24 one issue in this docket that may have some relationship to
25 271, which is the -- what I call the tandem interconnection

1 issue, because I think it has been WorldCom's position
2 elsewhere in 271 dockets that until that tandem interconnection
3 issue is settled appropriately that BellSouth is not providing
4 interconnection in compliance with the Act. And I guess as I
5 sit here today, on behalf of WorldCom I can't agree to waive
6 that issue, although I'm not sure that is something that could
7 not be, at least for BellSouth, addressed in the context of the
8 271 proceeding.

9 COMMISSIONER JABER: Ms. Caswell, you wanted to say
10 something?

11 MS. CASWELL: Yes. I just wanted to point out that
12 Verizon fully supports the motion for continuance. As
13 expressed in our prehearing statement, we believe that it
14 probably is the most prudent approach at this point given the
15 FCC's recent release of its unified intercarrier compensation
16 rulemaking. We believe that that rulemaking will directly
17 affect the issues here. And pushing the hearing out even until
18 mid to late February of next year may be the best approach to
19 give us some opportunity to see where the issues end up at the
20 federal level.

21 COMMISSIONER JABER: Ms. Banks, when are the briefs
22 due? When the declaratory ruling was issued, I know that we
23 directed the parties to submit briefs on the effect of the
24 order. Was it limited to Phase 1?

25 MS. BANKS: Yes. And those briefs are due June 21st,

1 which is next Thursday.

2 COMMISSIONER JABER: Let me give all the parties
3 notice that I am not going to rule on the motion for
4 continuance today. So that will give you, Mr. Melson, and you,
5 Mr. Edenfield, time to discuss whatever impact you believe you
6 might want to have on 271. But fair warning to the parties, I
7 am not inclined -- the reason I'm not going to rule on the
8 motion for continuance today is I'm not inclined today to grant
9 the motion for a continuance. I want to go back and look at
10 the Commission calendar.

11 MR. MELSON: Commissioner Jaber, in that regard there
12 is a pending motion in the Sprint/Verizon phase of the UNE
13 docket that if granted would potentially free up some dates in
14 late July.

15 COMMISSIONER JABER: Right. There are many things to
16 consider. One of the things, though, that I want to tell the
17 parties that I will be considering in all fairness to staff is
18 the effect that these continuances have on our staff work load.
19 It creates a domino effect on cases. When we push back cases
20 at your request, whether it be for travel considerations or FCC
21 decisions, it has a long-lasting effect on staff work load. It
22 is a domino effect.

23 And I think that you are not appreciative of that
24 because you are not seeing the internal happenings of the
25 agency, but I have to be conscious of that. So that will weigh

1 heavy on my mind and my decision. I will also note that this
2 case has been scheduled for July 5th and July 6th for quite
3 some time. So with respect to travel considerations, you
4 should have taken that into account awhile ago.

5 Saying all of that, I will take it under advisement.
6 And in the prehearing order or before, we will issue a decision
7 on the motion for a continuance.

8 MR. MELSON: Thank you.

9 MR. McGLOTHLIN: Commissioner, FCCA supports the
10 motion for a continuance.

11 COMMISSIONER JABER: Thank you.

12 MR. McGLOTHLIN: You're welcome.

13 COMMISSIONER JABER: Any other preliminary matters
14 before we turn to the draft prehearing order?

15 Mr. Edenfield, did you have something to say?

16 MR. EDENFIELD: Not that it is particularly relevant
17 to your decision, but I was just inquiring, I thought that
18 BellSouth had settled an IDS arbitration that had some dates
19 also in July that would not require another case to be moved,
20 but may have opened up some dates.

21 COMMISSIONER JABER: You may have. But the world
22 doesn't revolve just around telecommunications. We have got
23 other hearings in other industries, so I will take all of that
24 into account.

25 MR. EDENFIELD: I understand. That's why I said it

1 might not be relevant to your decision.

2 COMMISSIONER JABER: Okay. Mr. Moyle.

3 MR. MOYLE: And just so the record is clear, it is my
4 understanding there has not been an actual written motion for a
5 continuance filed, but I guess it is ore tenus on behalf and
6 Global NAPS would join in it.

7 COMMISSIONER JABER: Thank you. Let the record
8 reflect unless someone raises their hand and tells me
9 otherwise, that the parties, all of the parties concur with the
10 motion for a continuance.

11 MR. EDENFIELD: Pending my working this out with Mr.
12 Melson on this issue of tandem switching, I cannot agree to the
13 motion for continuance until I get that answered. 271 has a --

14 COMMISSIONER JABER: Mr. Edenfield, how do you
15 propose you bring that to our attention?

16 MR. EDENFIELD: I will file a letter as soon as I can
17 get a chance to talk to Mr. Melson. Either today or -- close
18 of business today. I am traveling today back to Atlanta. I
19 will get something by close of business tomorrow, I will have a
20 letter back to the Commission advising them whether I can agree
21 or not, if that is acceptable.

22 COMMISSIONER JABER: That's fine. We will not issue
23 an order until we hear back from you.

24 MR. EDENFIELD: Thank you.

25 MR. McDONNELL: Commissioner Jaber, I'm sorry. Our

1 law firm is not involved in the 271 docket, so the clients we
2 represent here we do not represent there, and I am
3 uncomfortable waiving anything that that counsel may have in a
4 271 docket.

5 COMMISSIONER JABER: So it sounds like Mr. Edenfield
6 has to touch base with all the parties is what you are saying.

7 MR. McDONNELL: Please.

8 MR. EDENFIELD: I will do that.

9 COMMISSIONER JABER: Sounds good. All right. I'm
10 ready to move to the draft prehearing order. I don't want to
11 go page-by-page unless we have to. So why don't we --

12 MS. BANKS: Commissioner Jaber, I believe that we can
13 start on Page 7.

14 COMMISSIONER JABER: I am assuming there are no
15 changes or concerns with respect to the confidential
16 information section, the post-hearing procedure section, is
17 that correct? No concern with respect to the amount of pages
18 in the brief.

19 MR. EDENFIELD: None from BellSouth.

20 COMMISSIONER JABER: All right. Page 7, order of
21 witnesses.

22 MS. BANKS: There is one correction which could be
23 inserted at the bottom of Page 7. In Section 6, order of
24 witnesses, it should reflect under each section, the subsection
25 labeled rebuttal should include Ed Beauvais, who would be

1 proffered by Verizon.

2 COMMISSIONER JABER: Edward C. Beauvais?

3 MS. BANKS: Yes. And Terry Haynes who would also be
4 proffered by Verizon.

5 COMMISSIONER JABER: This would be a good time to
6 discuss if the motion for a continuance is denied, there is a
7 possibility of starting the hearing mid-day July 5th. Would
8 that alleviate some of your concerns, Mr. Melson, with respect
9 to travel?

10 MR. MELSON: It would certainly help.

11 COMMISSIONER JABER: All right. And, Ms. Banks, we
12 will take up direct and rebuttal at the same time?

13 MS. BANKS: That is correct, Commissioner Jaber.

14 COMMISSIONER JABER: Is there any objection to doing
15 it that way?

16 MR. McDONNELL: In that vein, Commissioner, if I
17 might, William Hunt, III on behalf of Level 3 has requested
18 that he testify as late as possible on the 6th if he could be
19 accommodated. Assuming, of course, that the case is not
20 continued. He is over on the west coast, Commissioner Jaber,
21 and he is going to have a tough time getting here, and has a
22 conflict early on Thursday.

23 COMMISSIONER JABER: Is there any objection to taking
24 up Mr. Hunt in the afternoon of July 6th? All right.

25 MS. BANKS: Excuse me, just a point of clarification.

1 If I understand correctly, is counsel asking that maybe
2 Mr. Hunt be -- we have a place holder for him to come last in
3 the witness list or --

4 COMMISSIONER JABER: Yes. You could put an asterisk
5 next to his name and just indicate that he will be the last
6 witness on July 6th.

7 MR. McDONNELL: Thank you.

8 MS. BANKS: Thank you.

9 COMMISSIONER JABER: Any other changes to the order
10 of witnesses? All right. Changes to basic position.

11 MR. HOFFMAN: Commissioner, before you move forward
12 to the next section, Mr. Moyle and I were discussing a
13 provision that might be helpful for all concerned if the
14 hearing moves forward. And that is if we were to move forward
15 on the 5th and 6th, you know, we have already talked about some
16 of the travel constraints particularly with folks coming from
17 the western part of the country. Perhaps we could set a
18 deadline for the potential stipulation of any witnesses,
19 whether it is five days or seven days before the 5th, so that
20 they could plan accordingly.

21 COMMISSIONER JABER: That's a good idea. So that you
22 don't -- they don't make travel plans at all.

23 MR. HOFFMAN: Right.

24 COMMISSIONER JABER: That's not a bad idea. I would
25 hate for that to restrict, though, a last-minute stipulation.

1 We would not want to send a message that last-minute
2 stipulations can't happen.

3 MR. HOFFMAN: Perhaps we can at least encourage the
4 parties a week in advance if they know that they can stipulate
5 certain witnesses that they advise all parties of such.

6 COMMISSIONER JABER: I don't think I need to order
7 that. I think that is a very courteous and professional thing
8 to do anyway. So why don't you all read through the testimony
9 as quickly as possible, and get ready as quickly as possible,
10 and call your respective counsels and your clients and see if
11 that request can be accommodated. I think it is a good idea,
12 but I also think you all are professional and you don't need me
13 to order you to do that.

14 MR. EDENFIELD: I have one question for you. There
15 is an issue -- is it Number 11 that is informational only.

16 COMMISSIONER JABER: Yes, we are on page 8.

17 MR. EDENFIELD: Oh, I'm sorry. I was just thinking
18 from an order of witnesses standpoint in stipulating, is it
19 your intention to have these folks come and answer questions
20 from the Commission.

21 COMMISSIONER JABER: Well, we are going to talk about
22 that. I have a problem with that issue, so we will wait until
23 we get to that. But, no. Any changes to basic positions?

24 All right, let's talk about Issue 11, then, which is
25 on Page 13. I don't want to skip over any concerns, though.

1 So if I'm going too fast you need to let me know.

2 Issue 11. Staff, I don't want to have an issue that
3 is informational. If I am understanding the way this issue is
4 worded, it doesn't require a Commission vote.

5 MS. BANKS: That is correct.

6 COMMISSIONER JABER: Is there testimony on Issue 11?

7 MS. BANKS: Yes, there is.

8 COMMISSIONER JABER: So the information will be
9 included in the record.

10 MS. BANKS: That is correct.

11 COMMISSIONER JABER: Is this staff's issue?

12 MS. BANKS: Yes. I just wanted to note that I
13 believe for the majority of these issues, I believe I can say
14 all of the issues that are in Phase 2 of this proceeding are
15 issues that were submitted by staff and for the purposes of
16 information, just to give staff some idea as pertaining to this
17 particular Issue, Number 11, of the various network
18 architectures. But it is more for information and educational
19 purposes.

20 COMMISSIONER JABER: And the primary witness would be
21 a BellSouth witness, Mr. Edenfield?

22 MR. EDENFIELD: BellSouth certainly filed a witness
23 solely to answer that question. But I think all the parties
24 have probably addressed the issue.

25 COMMISSIONER JABER: I see Verizon and Sprint.

1 MS. BANKS: Yes.

2 COMMISSIONER JABER: I am inclined to eliminate the
3 issue. I think, you know, in terms of information the
4 information is in the record and staff can include it where
5 appropriate. It doesn't require a vote, and I would hate to
6 start doing this, identifying issues for purposes of
7 information. So, if I understand Mr. Edenfield correctly, this
8 may actually start the ball rolling with stipulating some
9 witnesses.

10 MR. EDENFIELD: That is correct. And I am prepared
11 to handle it any way you would like. I am even prepared to
12 stipulate in -- at least from my standpoint, I am willing to
13 stipulate in everybody's witness on Issue 11, and I assume they
14 would extend the same courtesy to me.

15 COMMISSIONER JABER: Ms. Caswell, do you want to sit
16 here and have a microphone all the time or -- I see you jumping
17 up and down.

18 MS. CASWELL: Well, I agree with Mr. Edenfield, we
19 could stipulate in everybody's testimony on Issue 11.

20 COMMISSIONER JABER: Ms. Masterton, do you agree?

21 MS. MASTERTON: Yes. Sprint agrees with that, as
22 well.

23 COMMISSIONER JABER: Mr. McDonnell.

24 MR. McDONNELL: Yes, Commissioner.

25 COMMISSIONER JABER: Mr. Melson.

1 MR. MELSON: Yes.

2 MR. McGLOTHLIN: Yes.

3 COMMISSIONER JABER: Let's drop this issue, Felicia.

4 MS. BANKS: Okay.

5 COMMISSIONER JABER: And it sounds like the parties
6 are willing to indicate that Mr. -- is it Tolar?

7 MR. McDONNELL: Yes, ma'am.

8 COMMISSIONER JABER: His testimony, Mr. Jones'
9 testimony, it looks like a portion of Mr. Hunsucker's
10 testimony, a portion of Mr. Hunt's testimony. Would it be
11 easier to just reflect that all testimony related to Issue 11
12 will be stipulated into the record as though read?

13 MS. BANKS: I believe that probably would be most
14 expedient. Thank you.

15 COMMISSIONER JABER: Mr. Melson. We will reflect
16 that in the prehearing order. Mr. Edenfield, with the
17 understanding that Mr. Tolar, and, Ms. Caswell, with the
18 understanding that Mr. Jones do not have to be at the hearing.

19 MR. EDENFIELD: Thank you.

20 MR. MOYLE: Just so the record is clear, I don't
21 think we would have an objection, but I do need to talk to my
22 client with respect to the stipulation. So, if I could just
23 say that, you know, unless you hear from us by the end of the
24 week with respect to an objection that we would join the
25 stipulation.

1 COMMISSIONER JABER: By the end of the day tomorrow.
2 All right. Any changes to the rest of the issues?

3 MS. BANKS: I don't believe there is a change. I
4 believe there may be a possible stipulation on Issue Number 16,
5 and I will defer to Ms. Caswell on that.

6 MR. McGLOTHLIN: If I may respond to that. The FCCA
7 has throughout the case regarded Issue 16 as lending itself to
8 a stipulation either by removing the issue entirely or if that
9 is not acceptable, by some substantive wording. We have
10 approached the other parties and some shoulder diplomacy is
11 going on. I don't have proposed language that I can say
12 everyone has signed off to, but I wanted to apprise the
13 prehearing officer and staff that we are still working on that.

14 COMMISSIONER JABER: All right. And certainly we can
15 leave it into the prehearing order and just have it brought to
16 our attention at the beginning of the hearing if we need to.

17 MR. McGLOTHLIN: That would be fine. It is my hope
18 that we can arrive at something prior to that time.

19 COMMISSIONER JABER: Let's do this. Ms. Banks, if
20 you receive word that they have actually entered into a
21 stipulation with respect to Issue 16 prior to the issuance of
22 the prehearing order, have the order reflect that.

23 MS. BANKS: Okay. Will do.

24 COMMISSIONER JABER: All right. Any other changes to
25 any of the issues?

1 MS. MASTERTON: I would just like to note that on
2 Page 25, Sprint's position on Issue 18 from the revised
3 prehearing statement should be inserted into the prehearing
4 order.

5 COMMISSIONER JABER: On Issue 18?

6 MS. MASTERTON: Right.

7 COMMISSIONER JABER: Ms. Banks, do you understand
8 what the change is and can you incorporate it into that issue?

9 MS. BANKS: Yes. If I just could clarify, Ms.
10 Masterton, for Issue Number 18 it should be inserted what is
11 reflected in Sprint's revised prehearing statement?

12 MS. MASTERTON: Correct.

13 MS. BANKS: Okay. Thank you.

14 COMMISSIONER JABER: Any changes to the exhibit list?

15 MS. BANKS: There is one change on Page 30. Under
16 rebuttal, witness proffered Ed Beauvais by Verizon should be
17 added under the subsection labelled rebuttal. And the ID
18 number would be E as in Edgar, C as in cat, B as in boy, dash
19 3. And the description is point of interconnection scenarios.

20 COMMISSIONER JABER: Ms. Caswell, is that the only
21 exhibit that was left off?

22 MS. CASWELL: Yes, ma'am.

23 COMMISSIONER JABER: Mr. Edenfield.

24 MR. EDENFIELD: Commissioner Jaber, also there are a
25 number of exhibits that were associated with testimony on Issue

1 11. Mr. Tolar had an exhibit identified as NDT-1. I assume
2 those would also have been stipulated into the record along
3 with the testimony, but I just wanted to make sure I was clear
4 on that.

5 COMMISSIONER JABER: Right. Under the proposed
6 stipulation, Ms. Banks, do this. State that parties have
7 stipulated that all testimony and exhibits related to Issue 11
8 will be stipulated into the record.

9 MS. BANKS: Okay.

10 COMMISSIONER JABER: And for the witnesses that were
11 prepared to testify only on Issue 11, indicate that their
12 presence is not necessary for the hearing, that they are
13 excused from the hearing. Is there anything else related to
14 Issue 11 that we should spell out in a stipulation? All right.

15 There are no pending motions except for the motion
16 for a continuance, which you need to go ahead and indicate
17 under pending motions an oral motion for a continuance.

18 MR. MCGLOTHLIN: Commissioner, if this is the
19 appropriate time, there is no written motion, but on behalf of
20 Intermedia, Intermedia participated with the joint ALECs for
21 purposes of stating the position. Intermedia does not sponsor
22 a witness, and Mr. Sapperstein would like to be excused from
23 the hearing.

24 COMMISSIONER JABER: Yes. There are several requests
25 by parties to be excused from the hearing. Mr. Sapperstein may

1 be excused from the hearing.

2 Ms. Banks, wasn't there someone else?

3 MS. BANKS: Commissioner Jaber, I believe that is the
4 only one that I am aware of at this time. I know that FCTA and
5 XO and KMC have already been excused from the prehearing and
6 hearing. But to my knowledge that is all the parties that have
7 requested excuse.

8 COMMISSIONER JABER: All right. We should officially
9 then, state that FCTA's request to be excused from the hearing
10 is granted. XO's request to be excused from the prehearing
11 conference was granted. KMC Telecom's request to be excused
12 from the prehearing conference was granted.

13 MS. BANKS: And if I would just clarify XO and KMC
14 requested excusal from prehearing and hearing.

15 COMMISSIONER JABER: Oh, and for the hearing?

16 MS. BANKS: Yes.

17 COMMISSIONER JABER: Okay. Reflect that that is
18 granted. All right. Opening statements. We did 30 minutes
19 last time. That didn't seem to go very well. It was also very
20 lengthy. But I really want to open this up for discussion,
21 because if parties believe they need 30 minutes per side,
22 certainly we can do that. I was toying with the idea of 20
23 minutes per side, but I also want to discuss what should be
24 taken up in the discussion of opening statements.

25 MS. CASWELL: Commissioner Jaber, maybe I can make a

1 suggestion. Do any of the parties believe that they need
2 opening statements or the Commissioner? Perhaps we can do away
3 with them.

4 COMMISSIONER JABER: I don't think the Commissioners
5 have a very strong preference for opening statements.

6 MS. CASWELL: I didn't think so. And if the parties
7 don't have a preference in this case, perhaps we can do away
8 with them.

9 COMMISSIONER JABER: Is there agreement there? Thank
10 you. No opening statements in this case. Now that is what
11 staff counsel is going to tell the Chairman, and that is what
12 the Chairman will rely on. All right. Summaries of testimony.
13 In the draft prehearing order it should say five minutes per
14 witness. I am assuming that is still adequate. All right.
15 The next thing I want to get some input on relates to a new
16 section that we added in the prehearing statement related to
17 the impact of FCC decisions and court decisions and what impact
18 they have on PSC proceedings. Apparently Sprint and the Joint
19 ALECs did include some discussion of that in the prehearing
20 statement.

21 Ms. Banks has taken a stab and created a new section
22 in the draft prehearing order that I think is helpful. But I
23 do know that some of the parties did not include that kind of
24 information in their prehearing statements. I would note that
25 they are not precluded from putting together an official

1 recognition list, but I want to get some input from you on what
2 you all believe this Section 14 does. Is it helpful, is it
3 confusing?

4 MS. CASWELL: I didn't know this -- I didn't notice
5 that this section would be in here, but we did discuss these
6 same issues in the context of the specific positions. I do
7 think it is probably helpful in light of all the FCC decisions
8 coming out, the court rulings, to have it set forth in one
9 place. And I would like to point out that Verizon joins with
10 Sprint and the Joint ALECs, particularly with regard to the
11 rulemaking on the unified intercarrier compensation regime. We
12 believe that will affect the proceeding. If you need me to do
13 a revised prehearing statement with a new position that would
14 be fine. Thank you.

15 COMMISSIONER JABER: No, but I would bring to your
16 attention that new Section K. My intent in starting this was
17 to avoid discussion of these cases for the first time at the
18 agenda conference when the Commission is taking the vote. So
19 this certainly puts everyone on notice that there might be some
20 pending decisions that impact this case going forward, or any
21 other case going forward for that matter. Maybe we should take
22 out, Felicia, the titles of the companies and just say that in
23 the prehearing statements parties reflected the following
24 decisions as having potential impact on the cases.

25 MS. BANKS: If there is no objection by parties on

1 the presentation of that, that is fine. They were submitted in
2 the form as presented in the prehearing statements.

3 COMMISSIONER JABER: We'll work on some language, and
4 this will change. This is a transitional thing, so it will
5 change. But to the degree you all have ideas and want to pass
6 them on to staff counsel, I would appreciate it.

7 MR. MOYLE: I don't know if this is the right time to
8 raise this matter, but I know there has been discussion
9 previously with respect to the official recognition list and
10 its impact, import. I have understood that there have been
11 occasions where staff has taken the position that if something
12 was not on the official recognition list then it could not be
13 relied upon in post-hearing briefs. I never, in other context,
14 understood it that way. That it was helpful so everybody could
15 kind of be aware of cases out there that could impact it. And
16 I think that is a good idea both in the pre-prehearing and on
17 official recognition list so long as it didn't act as a
18 preclusion for parties not being able to rely upon or cite some
19 precedent. My view is that, you know, it is kind of like
20 preparing a brief at the Eleventh Circuit, that anything that
21 could be helpful to the person making the decision ought to be
22 in the post-hearing brief.

23 COMMISSIONER JABER: Ms. Keating, in these new --
24 certainly in the last year with telecom we have started adding
25 the issue related to jurisdiction. Parties have been on notice

1 to include discussion of pending FCC or court of appeals cases
2 and how they impact the PSC decision. So it's almost like we
3 have covered all of the bases, but I think Mr. Moyle raises a
4 good point. To the degree there is an order or a court case
5 that hasn't been put on the official recognition list, can
6 parties rely on it in their briefs?

7 MS. KEATING: Well, Commissioner, and I hope you all
8 can understand me I am a little hoarse today. Quite frankly,
9 there has been sort of an internal debate on the import of the
10 official recognition list and it has gone on for a number of
11 years. It has been my understanding that the prevailing
12 thought has been that orders upon -- that parties are going to
13 use as factual support for their arguments need to be on the
14 list. Things that they believe are dispositive of issues need
15 to be on the list to put other parties on notice that they are
16 going to use those cases.

17 Anything that essentially presents purely legal
18 argument did not necessarily have to be on the official
19 recognition list. There has also been some debate about
20 whether the Commission orders even really need to be on the
21 official recognition list.

22 But at least the prevailing thought was that to the
23 extent possible, if parties knew ahead of time what they were
24 going to use, they should put them on the official recognition
25 list particularly in view of the fact that there is a provision

1 in Section 120 that anything that parties are going to use in
2 that vein other parties need to have the opportunity to respond
3 to. So if you toss it into your brief at the last minute there
4 is really not an opportunity for parties to respond to it. But
5 that being said, there is quite frankly still an internal
6 debate on exactly what that means.

7 COMMISSIONER JABER: Mr. Moyle, we had asked -- the
8 Commissioners in a different hearing asked general counsel to
9 give us his opinion on how to handle that once and for all.
10 And I would suggest Ms. Keating get with Harold, make sure you
11 have a final decision on that before this hearing and let the
12 parties know.

13 Mr. Moyle, I think what Ms. Keating is trying to say,
14 to the degree you are trying to make your case by citing an
15 order or decision, then you really should include that on an
16 official recognition list because that provides notice to the
17 parties. I think its a notice and fairness issue in that
18 regard. You know, we have got this on-going debate, that is
19 correct, with respect to Commission orders, I still don't see a
20 need to take official recognition of any Commission orders
21 because, you know, they are Commission orders. It seems silly
22 to take official recognition of your own decision. But work
23 that out with Legal, and we will have a final decision by then.

24 MR. MOYLE: Okay. I guess could I ask the follow-up
25 question, with respect to it being an internal debate and a

1 policy, would it ultimately be promulgated in a rule with
2 respect to the Commission?

3 COMMISSIONER JABER: You are just asking too much
4 today. No, I think we asked Harold McLean to brief us probably
5 in something similar to an Internal Affairs.

6 MR. MOYLE: It will be an Internal Affairs or some
7 other mechanism.

8 COMMISSIONER JABER: It might be at Internal Affairs,
9 but certainly you all will know.

10 MS. KEATING: Commissioner, if it would be of any
11 assistance to the parties, I can point them to the provision
12 that has sort of been the underlying reason for the debate. It
13 is 120.569, Subsection 2(i).

14 COMMISSIONER JABER: Are there any other matters that
15 need to come before us at the prehearing conference?

16 MS. BANKS: Commissioner Jaber, if I could, please.
17 I guess in the same vein of the discussion with the official
18 recognition list, staff would like to request that parties
19 submit their list to us, and maybe we can put it in one
20 complete composite exhibit, official recognition list.

21 And if parties are in agreement to do this, staff
22 would like to request that the official recognition list be
23 submitted to us maybe a week prior to hearing if that is
24 possible. Which according to my calendar that would be
25 Thursday, June 28th.

1 COMMISSIONER JABER: And you would distribute it to
2 the parties or do they need to distribute it?

3 MS. BANKS: Staff would take the responsibility of
4 distributing it, if they will submit it to us.

5 COMMISSIONER JABER: Mr. Melson, I am recalling the
6 discussion at the Nocatee hearing with respect to official
7 recognition. Do you remember anything else coming up? I
8 thought that Mr. McLean was going to prepare something and get
9 back to everyone, and I thought we said Internal Affairs.

10 MR. MELSON: I'm not sure you said where, you sort of
11 directed him to get back with you. I was looking at the
12 evidence code just now. And as I read it, at least Florida
13 decisional law, and it is unclear to me whether that would
14 include Commission decisions, are entitled to official
15 recognition. There is no provision for notice or anything
16 else.

17 So at least with regard I would think to Florida
18 court decisions it is absolutely clear with respect to your own
19 decisions, it is probably almost as clear that you would not
20 need to officially recognize those. When you move to decisions
21 of the FCC and other states, it probably gets a little fuzzier.

22 I have always felt, though, that to the extent you
23 are citing them as legal precedent that that was fair game for
24 the briefs whether they had been officially recognized or not.
25 And, frankly, while there is an advantage to doing your

1 homework in advance of the hearing, in the real world sometimes
2 homework doesn't get done until the brief is being written.
3 And I would hate to see anything that would preclude parties
4 from citing to applicable decisions simply because they had not
5 got them on an official recognition list.

6 COMMISSIONER JABER: Right. We will have an answer
7 for you before this hearing, because it is an issue that comes
8 up a lot, and it's time to just resolve it once and for all.
9 So, anything else?

10 We will get you a decision on the motion for
11 continuance as soon as possible so that you can adequately
12 prepare one way or the other. Mr. Edenfield, you will let us
13 know by the close of business tomorrow whether you have an
14 objection or not?

15 MR. EDENFIELD: Yes, ma'am.

16 COMMISSIONER JABER: All right. This prehearing is
17 adjourned. Thank you.

18 (The prehearing concluded at 10:15 a.m.)
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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4
5 I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
6 FPSC Commission Reporter, do hereby certify that the foregoing
7 proceeding was heard at the time and place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript constitutes a true transcription of my notes of said
12 proceedings.

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

18 DATED THIS 25TH DAY OF JUNE, 2001.

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