

COPY

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 010650-TX - Petition for
declaratory statement by Level 3
Communications LLC, that collocation revenues
reported by Level 3 should not be included as
"gross operating revenues derived from
intrastate business" as contemplated by Rule
25-4.0161, F.A.C., and sections 350.113(3)(b)
and 364.336, F.S., for purposes of calculating
regulatory assessment fee for calendar year
1999.

BEFORE: CHAIRMAN E. LEON JACOBS, JR.
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 4

DATE: Tuesday, July 24, 2001

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

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PARTICIPANTS:

MARTHA BROWN, on behalf of the Commission Staff.
CHERYL BULECZA-BANKS, Commission Staff.
WALTER D'HAESELER, Commission Staff.
KEN HOFFMAN, on behalf of Level 3
Communications.
GREG ROGERS, Level 3 Communications.
DENISE VANDIVER, Commission Staff.

STAFF RECOMMENDATION

ISSUE 1: Should the Commission issue a declaratory statement that Level 3 is not required to pay regulatory assessment fees on the revenues it receives from collocation in its Florida facilities?

RECOMMENDATION: No. The Commission should issue a declaratory statement that Level 3 is required to pay regulatory assessment fees on the revenues it receives from collocation in its Florida facilities.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission votes to dispose of the petition for declaratory statement, the docket should be closed.

1 CHAIRMAN JACOBS: Item 4.

2 MS. BROWN: Commissioners, Item 4 is
3 another declaratory statement petition. Level 3
4 has requested that the Commission find that its
5 collocation revenues are excluded from the
6 Commission's regulatory assessment fee statutes.
7 Staff has recommended otherwise. Level 3's
8 collocation revenues are gross revenues from
9 intrastate business pursuant to the statute and
10 should be included in Level 3's regulatory
11 assessment fee calculation.

12 This position is consistent with the
13 language and the logic of the statute, it is
14 consistent with the Commission's traditional
15 standard treatment of revenues from the lease of
16 communications facilities, and it is the more
17 reasonable policy for the fair assessment of
18 fees to cover the costs of the Commission's
19 regulation.

20 Basically, Commissioners, there is nothing
21 new under the sun here. The Commission has
22 traditionally treated leasing revenues from the
23 leasing of facilities as included in the
24 regulatory assessment fee calculations. It
25 would be a change of policy to change it here,

1 and we don't think the statute permits it or
2 requires it.

3 Level 3 Communications has asked to address
4 the Commission.

5 CHAIRMAN JACOBS: Very well. Mr. Hoffman.

6 MR. HOFFMAN: Thank you, Mr. Chairman. My
7 name is Ken Hoffman. With me to my right is
8 Greg Rogers, who is with Level 3 Communications,
9 and Mr. Rogers will make Level 3's presentation,
10 which addresses the petition that we filed for
11 declaratory statement, as well as the staff
12 recommendation.

13 CHAIRMAN JACOBS: Mr. Rogers.

14 MR. ROGERS: Good morning. I'm Greg
15 Rogers. I'm here on behalf on Level 3
16 Communications.

17 I said to Mr. Hoffman last night at dinner
18 that I appreciated, I enjoyed the humidity,
19 coming from Colorado.

20 CHAIRMAN JACOBS: Oh, there's more to
21 come.

22 MR. ROGERS: I wasn't expecting this this
23 morning. It's a little excessive, in my view,
24 and I obviously wasn't prepared.

25 But I appreciate the opportunity to address

1 you this morning and feel it's important to
2 address the Commission on this issue not only
3 because of Level 3's concerns in this particular
4 dispute over the regulatory assessment fees that
5 the staff feels are due, but because of the
6 precedential value that this would have on the
7 ALEC industry as a whole.

8 And that's really why I'm here, is because
9 staff's recommendation runs the risk of sending
10 the Commission down a very slippery slope and
11 regulating all telecommunications -- excuse me,
12 all services provided by a certificated
13 carrier. And that is our concern, that there is
14 not a distinction that is being made between
15 telecommunications services and other
16 nonregulated services that an ALEC may be
17 providing.

18 Level 3 believes that its regulatory
19 reporting and accounting practices are common to
20 competitive carriers across the country, and in
21 this instance, with regard to revenues that are
22 associated with collocation services, and that
23 is based on the fundamental understanding that
24 collocation is not a telecommunications service.
25 This is the first instance that Level 3 has had

1 where a Commission is attempting to exert
2 jurisdiction over a nonregulated service.

3 Staff's position in their analysis seems to
4 be based primarily on the reasoning that if
5 ILECs must pay regulatory assessment fees on
6 collocation services, then ALECs must as well.
7 And as was stated earlier, they see that there
8 is no legal justification for Level 3 or ALECs
9 to not pay them when ILECs are paying them.

10 We feel that the exact opposite is true,
11 that the fundamental underpinnings of
12 telecommunications regulatory law dictate in
13 this instance that ILECs and ALECs be treated
14 differently, and that is the result of the
15 Telecommunications Act itself, that ILECs are
16 regulated as a monopoly provider, and ALECs are
17 regulated as competitive providers. And that
18 exists in Florida in Section 364 in many
19 examples. Tariffing, rate determinations,
20 unbundling of networks, all those are examples
21 of different treatments between how ILECs are
22 treated and ALECs are treated.

23 The fact that ILECs are required to provide
24 collocation under the '96 Act, under Section
25 251(c)(6) of the Act, does not mean that

1 collocation is a telecommunications service. It
2 simply means that it is a regulated service that
3 ILECs must provide. So because ILECs must pay
4 it does not make it telecommunications service
5 that then triggers the regulation of ALECs.

6 COMMISSIONER DEASON: Mr. Rogers, if it's
7 not a telecommunications service, what is it? I
8 understand there has been some suggestion that
9 it's like a real estate transaction.

10 MR. ROGERS: Essentially. I mean, it is
11 the leasing and renting of space within a
12 building that Level 3 owns.

13 COMMISSIONER DEASON: So let's draw that
14 analogy a little bit further. Well, then
15 BellSouth could come in and say that when they
16 decide to construct a building, or if they lease
17 a building from someone to install a central
18 office, that the building, the lease is not
19 telecommunications and therefore is not part of
20 the cost of providing service to customers, and
21 this Commission has no jurisdiction over that,
22 that's a real estate transaction. Tell me how
23 they --

24 MR. ROGERS: They could come in and say
25 that that is not a telecommunications service as

1 telecommunications are defined. However, they
2 nonetheless are required to provide collocation
3 services under the Telecommunications Act. And
4 that is the analysis --

5 COMMISSIONER DEASON: Well, let me just for
6 a second -- you're not required to provide any
7 service in this state, are you?

8 MR. ROGERS: That's correct. We're not
9 required to provide --

10 COMMISSIONER DEASON: So why do we collect
11 anything? Under that analysis, under that
12 viewpoint, why is it that you have to pay any
13 regulatory assessment fees in this state,
14 because you're under no obligation to provide
15 service in this state?

16 MR. ROGERS: That's right. And that was
17 actually my very next point, is that ALECs are
18 not required to provide any service. However,
19 if they choose to provide services that are
20 regulated, they should be assessed regulatory
21 assessment fees for those services.

22 But there are ALECs that are providing
23 collocation in a corporate structure such that
24 collocation is broken out as a nonregulated
25 entity, and there are non-ALECs who are

1 providing collocation as a nonregulated service
2 because it is not a telecommunications service,
3 and thus, the Commission does not have the
4 jurisdiction to regulate that service, and those
5 providers that are not ALECs are not required to
6 become certificated.

7 COMMISSIONER DEASON: Well, I mean, if
8 someone is going to come to you and lease
9 collocation space, it is for the precise purpose
10 of providing telecommunications service. Would
11 you agree with that?

12 MR. ROGERS: No, I do not.

13 COMMISSIONER DEASON: So somebody is going
14 to come to you and lease your collocation
15 service thinking they're going to get a corner
16 office with a nice view to put in and do
17 something totally different than
18 telecommunications service?

19 MR. ROGERS: There's a very important
20 distinction that staff has not drawn between
21 telecommunications services as they are defined
22 and information services or unregulated
23 services.

24 And essentially what Level 3 is providing
25 is access to the Internet. They also are

1 providing interstate services in large part. And
2 so to the extent that you are regulating
3 intrastate revenues, there's mixed jurisdiction
4 here. There's also nonregulated service
5 primarily that is being offered as part of our
6 collocation provisioning.

7 So the limitations in staff's analysis that
8 says that collocation is related to
9 telecommunications service, which is a new rule
10 that's sort of being made up for the first time
11 as far as I can tell, is not accurate, in that
12 the majority of what Level 3 is providing is not
13 telecommunications service.

14 COMMISSIONER DEASON: But you get your
15 collocation space from the incumbent LEC. I
16 guess you enter into lease agreements with the
17 incumbent LEC for collocation space.

18 MR. ROGERS: No, this is a different
19 scenario. We are providing collocation on our
20 own entirely. This is not a function of
21 interconnecting with the incumbent.

22 COMMISSIONER DEASON: Okay.

23 MR. ROGERS: I want to go on a little bit,
24 if I may, about the possibility that exists in
25 corporate structuring, in that this is -- it's

1 problematic. Staff's position is problematic
2 because it says that the corporation or the
3 company should be regulated rather than the
4 services that are being provided being
5 regulated. And that creates this situation
6 where a company could come to Florida and decide
7 to provide and choose, as an ALEC could choose
8 to provide basic local exchange service, and it
9 could choose to provide collocation. And that
10 same company could create two subsidiaries, one
11 that provides basic local exchange service and
12 one that provides collocation. The basic local
13 exchange service would need to be certificated.
14 The collocation provider would not have to be
15 certificated, and it would not be subject to
16 regulatory assessment fees.

17 The fact that an ALEC can do that means
18 that just because Level 3 has not done that, it
19 could be treated differently than another
20 company that did choose to set up its corporate
21 structure in that fashion.

22 COMMISSIONER JABER: Mr. Rogers --

23 CHAIRMAN JACOBS: That brings up a good
24 question, because we have these CLEC hotels out
25 there now. Are we taking the same position with

1 them?

2 MS. BROWN: I'm sorry. I didn't hear the
3 first part. With hotels?

4 CHAIRMAN JACOBS: We have these private
5 companies out there, and as I understand what
6 they do, they develop a site essentially for
7 collocation. They don't do anything else.

8 MS. BROWN: The statute specifically
9 addresses that in the one exception that it
10 permits, which is -- which can be found in the
11 -- in two places, primarily in the definitions
12 section, where it says that a provider that
13 provides only facilities to other
14 telecommunications providers is not considered
15 to be a telecommunications company under our
16 statute.

17 So if there is a company out there that
18 provides only facilities, whether it be fiber
19 optic cable -- for instance, TECO does that in
20 its internal network around Tampa -- or if it
21 just provides an Internet hub, then it would not
22 be considered a telecommunications company. It
23 wouldn't have to be certificated, and it
24 wouldn't be subject to the fees that are based
25 on the costs of regulating a telecommunications

1 company.

2 COMMISSIONER JABER: But that goes right
3 to Mr. Rogers' point, I think, that they've
4 chosen not to set up the corporation that way,
5 and it could be that they're being penalized for
6 not setting up the corporation that way, that
7 they could have established a brand new company
8 affiliated, but it would be a brand new company
9 that would market itself solely for the purpose
10 of providing that sort of hub, Internet or telco
11 services.

12 MS. BROWN: well, I wouldn't consider that
13 to be a penalty by any means.

14 COMMISSIONER JABER: well, what is the
15 purpose of our collecting regulatory assessment
16 fees from CLECs?

17 MS. BROWN: From CLECs?

18 COMMISSIONER JABER: Uh-huh.

19 MS. BROWN: It's to cover the costs of
20 regulating telecommunications companies, whether
21 they be ILECs, ALECs. The statute doesn't at
22 all say -- add these exclusions that Level 3
23 would like to add to them.

24 COMMISSIONER JABER: But Level 3's argument
25 notwithstanding, what would be -- it's to

1 compensate the agency, the State, for the cost
2 of regulation.

3 MS. BROWN: Yes, the costs of its
4 regulatory activities.

5 COMMISSIONER JABER: Right.

6 MS. BROWN: which encompass something much
7 broader than only oversight of particular
8 services.

9 COMMISSIONER JABER: Right. And with the
10 ILECs, we definitely have a cost associated with
11 collocation, in that the ILECs are required to
12 provide collocation through the Act, and we are
13 required to make sure that that happens. And in
14 fact, it's part of every arbitration that I've
15 seen thus far. Is that correct?

16 MS. BROWN: Yes.

17 COMMISSIONER JABER: Now, with the ALECs,
18 what part of their agreement with another ALEC
19 or an Internet company for collocation do we
20 monitor, enforce, review?

21 MS. BROWN: well, there are many things.
22 And I think, number one, collocation is simply
23 the lease of communications facilities, as any
24 telecommunications company that had a telephone
25 pole would lease space on its telephone poles to

1 cable providers.

2 The regulatory fee statute contemplates
3 assessment of fees based on gross intrastate
4 revenues. It doesn't even say from
5 telecommunications services or anything like
6 that. And its designed to be broad, because the
7 Commission's regulation of telecommunications
8 companies, ALECs, ILECs, payphone providers --

9 COMMISSIONER JABER: But I'm trying to
10 understand --

11 MS. BROWN: -- is broad. And if you go
12 through the particular statutes, Commissioner,
13 and you look at it -- and unfortunately, I left
14 mine upstairs.

15 COMMISSIONER JABER: But, Martha, I'm not
16 talking to you about the statute. I'm trying to
17 understand our review of this agreement. And a
18 lot of it has to do with my lack of
19 understanding of what it is we do with ALECs.
20 Do we review the collocation agreements? Do we
21 -- is there some work on our part that happens
22 with respect to their collocation agreements?

23 MS. BROWN: No, there is no -- not that I
24 can think of. But we also have general
25 regulatory authority over service quality for

1 ALECs. We have general regulatory authority to
2 preclude anticompetitive behavior, which an ALEC
3 as well as an ILEC can engage in. There are --
4 we have a lot of regulatory authority that you
5 can't tie to a particular service over customer
6 relations.

7 COMMISSIONER JABER: Okay. So is your --

8 MS. BROWN: And all of these things --

9 COMMISSIONER JABER: So then is your point
10 that our assessing regulatory assessment fees to
11 an ALEC for collocation services, we can justify
12 that by saying that we have the authority to
13 monitor their service?

14 MS. BROWN: Well, yes. But once again,
15 it's -- Level 3 mentioned a slippery slope. This
16 is a very slippery slope for the Commission to
17 go down to try to tie the costs of regulation to
18 specific services that telecommunications
19 companies can offer. It hasn't been the
20 standard policy for the Commission to do that,
21 and the reason is that we still have the costs
22 to cover all of these broad-based regulatory
23 activities that you really can't tie to a
24 particular service. We will continue to have to
25 assess fees to cover those costs, but the base

1 upon which we will assess those fees narrows
2 considerably if you start down this path.

3 COMMISSIONER JABER: But I'm trying to
4 understand, though, the purpose of collecting
5 regulatory assessment fees. That's the nexus
6 I'm trying to establish. And I thought the
7 purpose of collecting regulatory assessment fees
8 was to compensate the state for work performed.

9 MS. BROWN: Yes, yes.

10 COMMISSIONER JABER: Okay. So I'm trying
11 to get my hands around what work we perform for
12 Level 3's collocation agreements, regardless of
13 who's on the other side. Do we require them to
14 file their collocation agreements?

15 MS. BROWN: No.

16 COMMISSIONER JABER: Does our staff review
17 any of their collocation agreements?

18 MS. BROWN: No.

19 COMMISSIONER JABER: Are they ever included
20 in arbitration matters?

21 MS. BROWN: No. We don't require ILECs to
22 file their leasing agreements with cable
23 companies to put their cables on their telephone
24 poles either, or fiber from a purely interstate
25 provider in a vault or a conduit.

1 COMMISSIONER JABER: Right.

2 MS. BROWN: To me, there's nothing
3 different.

4 COMMISSIONER JABER: Now, let's talk -- you
5 were going to take me to the statutes. Let me
6 ask you to analyze for me -- there's a statute,
7 364.01, that talks about the Commission -- that
8 directs the Commission to basically provide a
9 lesser level of regulatory oversight to new
10 entrants. And help me reconcile that with your
11 recommendation. How much weight should I give
12 that statute, Ms. Brown?

13 MS. BROWN: In this situation?

14 COMMISSIONER JABER: Yes.

15 MS. BROWN: When you're not dealing with
16 the substance of the quality of the regulation,
17 I think you should give it not very much weight
18 at all. You should instead look at the plain
19 language of the regulatory assessment fee
20 statute and not try to carve out further
21 exceptions in it that are not there.

22 COMMISSIONER PALECKI: Ms. Brown, what if
23 Level 3 rented the space to a grocery store?

24 MS. BROWN: I think that's arguable,
25 although I do know that incumbent LECs following

1 the Uniform System of Accounts lease space in
2 their office buildings to businesses that are
3 totally unrelated to the provision of
4 telecommunications service, and they include
5 those revenues as rent revenues in the
6 regulatory assessment fee base.

7 COMMISSIONER PALECKI: So you believe that
8 even for Level 3, a CLEC to lease space totally
9 unrelated to telecommunications would still
10 require a regulatory assessment fee?

11 MS. BROWN: That isn't the question
12 presented here, number one.

13 COMMISSIONER PALECKI: I understand that,
14 but I'm trying to --

15 MS. BROWN: And T wrote in the
16 recommendation that one could argue that leasing
17 space on the sidewalk to a hotdog vendor would
18 not be considered. And I said one could argue
19 that, because I think one could. But one could
20 also argue that other telecommunications
21 providers do include that revenue in their
22 assessment fees, and all telecommunications
23 companies should.

24 So I don't know the answer. I could argue
25 either way.

1 COMMISSIONER PALECKI: What I'm trying to
2 focus on is, I think we would still have a
3 legitimate question if Level 3 rented the space
4 to, for example, a cell phone provider that was
5 in no way interconnected with the
6 telecommunications system at the site. I think
7 it would still be arguable if they rented the
8 space to a telecom company that was just using
9 it for general office purposes. But when
10 they're renting the space to a telecom company
11 that uses it to interconnect with Level 3's
12 system, perhaps it becomes more clear that this
13 is a telecom purpose that should be subject to a
14 regulatory assessment fee.

15 MS. BROWN: I agree with that. I think
16 that's true. I'm not certain whether the
17 Commission should ever get into the position of
18 trying to decipher what the business of the
19 lessee is in this circumstance. And I go back
20 again to the poles that hold cable TV cables.
21 It hasn't -- we haven't done that before.
22 Whether we might want to at some point,
23 probably.

24 Let me make one other point here, and that
25 is, from my review of it, it appears that

1 including these fees and considering them to be
2 similar to other rental revenues for space in
3 telecommunications facilities, poles, vaults,
4 conduits, is the present practice and policy of
5 the Commission, and it has a good logical base
6 in statutory construction as well as policy.

7 We are in a declaratory statement procedure
8 here. If, as Level 3 says, this is going to
9 have some basic broad precedential value for our
10 regulation of all ALECs, we shouldn't be here in
11 a declaratory statement. We should be in a
12 rulemaking, because what staff is recommending
13 that you do here is what you have done all
14 along. If you're going to change that and it's
15 going to affect the whole industry, I think we
16 better take a different tack.

17 COMMISSIONER JABER: But, Ms. Brown, I
18 don't see it as a change. I see it as a
19 distinction. And I'm trying to keep in the back
20 of my mind the focus of the changes in the
21 Florida Act in '95, which was to transition this
22 entire industry into a competitive market. So,
23 yes, we collect regulatory assessment fees from
24 ILECs, but we continue to transition into a
25 competitive market by requiring ILECs to do

1 certain things to comply with our own statute
2 and also with the Act.

3 To impose a regulatory assessment fee on an
4 ALEC, when specifically the intent of the
5 changes to our statute was to treat ALECs in a
6 fashion that had lesser regulatory oversight, I
7 can't mesh the two. To impose a regulatory
8 assessment fee smacks of regulation, when I
9 think the direction we've been given is to --
10 well, I know the direction that I've been given
11 is to deregulate.

12 So I have to -- and I say this really to
13 give the Commissioners a heads-up on where I'm
14 going. I'm not going to agree with staff's
15 recommendation. So for the benefit of the
16 Commissioners, I just wanted you to know where I
17 was and why.

18 And the distinction -- the reason I say
19 there's a distinction, I agreed with staff's
20 recommendation in the Verizon item, as I recall,
21 because it was -- I was convinced that Verizon
22 was required to publish directories, and Verizon
23 in fact, even though there was an affiliate,
24 held itself out to the consumer as the directory
25 that was backed up by -- I forgot the exact

1 words, but something like GTE being the good
2 company, and it really kind of went out of its
3 way to support the directory. And I see that as
4 being a distinction, plus Verizon is an ILEC and
5 was functioning as an ILEC in that situation.

6 So I see this as a distinction. I'm not
7 going to support staff's recommendation.

8 COMMISSIONER PALECKI: I would like to ask
9 staff --

10 CHAIRMAN JACOBS: Commissioners, before you
11 go, we have a lot more questioning on this item,
12 a lot more discussion. We had an item with a
13 time certain at 11:30. Let me hear your
14 pleasure, Commissioner Palecki, about --

15 COMMISSIONER DEASON: Well, let me just do
16 this. Let me make a motion that we approve
17 staff's recommendation. Is there a second? We
18 might can dispose of it.

19 CHAIRMAN JACOBS: Okay. Is there a second?
20 Not --

21 COMMISSIONER DEASON: Well, I tried.

22 CHAIRMAN JACOBS: Sounds like we then have
23 some further discussion at least.

24 COMMISSIONER DEASON: Well, is there a
25 motion to deny it?

1 COMMISSIONER JABER: Or I can make a
2 motion, yes.

3 CHAIRMAN JACOBS: Is there an alternate
4 motion?

5 COMMISSIONER JABER: I can move to deny
6 staff's recommendation.

7 CHAIRMAN JACOBS: Is there a second on that
8 motion?

9 COMMISSIONER BAEZ: Just for argument's
10 sake, I would like to discuss further what this
11 means and the precedential value that it's going
12 to have, because I think --

13 COMMISSIONER PALECKI: I would as well.

14 CHAIRMAN JACOBS: Okay. So --

15 COMMISSIONER JABER: Should I withdraw the
16 motion?

17 CHAIRMAN JACOBS: well, you can withdraw
18 it later.

19 COMMISSIONER BAEZ: It's your motion.

20 CHAIRMAN JACOBS: well, actually, there was
21 no second, was there? So we will, I guess,
22 defer further discussion on this particular item
23 and take up out of order Item 25, and then we'll
24 revert back to this item after that, or perhaps
25 after lunch, one of the two.

* * *

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2 CHAIRMAN JACOBS: We'll readjourn agenda,
3 and we will now revert back to our discussion in
4 Item 4.

5 Mr. Hoffman. Mr. Hoffman and Mr. Rogers,
6 you were in the middle of your presentation.

7 COMMISSIONER BAEZ: I --

8 CHAIRMAN JACOBS: Actually, I'm sorry. You
9 had a question. You're right.

10 COMMISSIONER BAEZ: Questions and perhaps
11 some thoughts beforehand. I guess the reason I
12 wanted to continue this discussion is because,
13 although I understand what we hope in the long
14 run are ramifications of declaratory statements,
15 I somehow go back to the thought that in
16 reality, they don't always work out the way we
17 intend them.

18 And my concerns, although in principle I
19 hear where Commissioner Jaber is coming from and
20 I think I agree with her, I'm concerned that if
21 it goes as it seems to be lining up, that we
22 need to pay more attention to the kind of
23 distinction that we're going to draw here. And
24 for that reason, I wanted to continue with the
25 discussion. And I guess just to get clear in my

1 mind, I wanted to ask staff one question for
2 starters, and we'll see how it goes.

3 We had discussed before about, or it was
4 brought up in the discussion about an ILEC's
5 responsibility to offer collocation. Is the
6 ILEC's responsibility in the law, does that
7 extend to situations absent interconnection with
8 their own facilities? Maybe I'm not being
9 clear. Would BellSouth or Verizon be required
10 to offer collocation in its COs in an event
11 where the company that was collocating wasn't
12 going to interconnect with the ILEC's
13 facilities?

14 MS. BROWN: It's not my understanding that
15 that would be the case. The requirement for
16 collocation is to interconnect for purposes of
17 access to unbundled network elements and for
18 resale purposes under the Act. There's no --

19 COMMISSIONER BAEZ: With one zone. I mean,
20 I guess what I'm trying to get at is that there
21 is no -- there's no third entity contemplated in
22 that.

23 MS. BROWN: No.

24 COMMISSIONER BAEZ: Any responsibility or
25 obligation to collocate that exists now in the

1 law is related with an interconnection to one's
2 own facilities.

3 MS. BROWN: Yes, that's true. I don't
4 think the ILECs have any responsibility to offer
5 collocation to Internet service providers who
6 are not competitive carriers.

7 COMMISSIONER BAEZ: All right. Having said
8 that, if an ILEC decided to gain revenues from
9 holding out those -- and there was a way -- and
10 I understand they have to reserve space for real
11 interconnections and so on. But if there was a
12 case where the ILECs were involved in that type
13 of activity, what would be our reaction to it?
14 What would be our --

15 MS. BROWN: In typical fashion -- and maybe
16 Denise can back me up on this. The ILECs would
17 book that as rents revenues and pay regulatory
18 assessment fees on it.

19 COMMISSIONER BAEZ: And you had mentioned
20 before -- so that falls into the category of
21 them renting office space, you know, in their
22 office buildings to people that are unregulated.

23 MS. BROWN: Well, to me, it's more like
24 leasing space in their poles and vaults and
25 conduits for telecommunications-related

1 facilities.

2 COMMISSIONER BAEZ: We should stay away
3 from that, although I think you opened the door
4 to perhaps -- I don't know if you threw up a
5 flag to the rest of the Commissioners, but you
6 certainly threw it up to me. If I had a
7 telephone pole, could I carry on that business
8 without a certificate?

9 MS. BROWN: If all you did was lease your
10 telephone pole to other telecommunications
11 providers, you would have an exemption under the
12 statute.

13 COMMISSIONER BAEZ: Martha, here's the
14 problem that I'm having. I'm seeing a
15 distinction, and I'm not seeing the logic beyond
16 what the staff has already suggested, like let's
17 rope everything -- you know, we're casting a
18 wide net for some reason or another. And this
19 kind of highlights one of those considerations.
20 It may not be limited to collocation alone, and
21 that concerns me for other reasons. You don't
22 want a rain of declaratory statements coming in.

23 But I think I understand what Commissioner
24 Jaber is saying, in that this is -- you know, I
25 think I can buy into the whole rent, real estate

1 transaction notion, especially in a case where
2 -- and maybe I'm adding a finer point to a
3 distinction, but especially in a case where it
4 may just be a pass-through situation, where
5 Level 3 is not -- there is no interconnection to
6 their system involved, if they are just
7 providing space.

8 And I say that because there's plenty of
9 people that are out there -- I think the
10 Chairman pointed it out. There's a lot of
11 people out there that are doing this very same
12 thing, and they're not certificated, and I don't
13 think they should be, and therefore not subject
14 to RAFs or any type of regulation at all. And
15 I'm having trouble making the jump of why one
16 and not the other.

17 MS. BROWN: well, from my perspective, the
18 guidance comes from the statute itself. And it
19 says, notwithstanding any provisions of law to
20 the contrary, each telecommunications company
21 licensed or operating under this chapter shall
22 pay a regulatory assessment fee based on gross
23 intrastate business, gross revenues from
24 intrastate business. And that's the standard.
25 And if what we're doing by narrowing that

1 standard is creating extra statutory exceptions
2 to the regulatory assessment fees, that's one
3 concern I have.

4 And then, of course, I wanted --

5 COMMISSIONER PALECKI: Ms. Brown, after
6 that concern, based upon the statutory provision
7 you just read, if Level 3 had broken out a
8 separate real estate business that was separate
9 and apart from its telecommunications operation
10 and it was called Level 3 Real Estate, then we
11 would not have an issue with regard to
12 regulatory assessment fees here, would we?

13 MS. BROWN: No.

14 COMMISSIONER PALECKI: So it's because of
15 this statutory language that specifically uses
16 the words "each telecommunications company" and
17 "gross operating revenues derived from
18 intrastate business" that is the reason for the
19 staff's recommendation here.

20 MS. BROWN: Yes. Yes, that's correct, and
21 that is because Level 3 is a certificated
22 regulated company subject to the
23 responsibilities and benefits of Commission
24 regulation. I don't think you can argue that
25 this -- one can argue cogently that this is

1 anything other than intrastate business. It's
2 business from leasing communications facilities
3 in Florida.

4 COMMISSIONER PALECKI: So under staff's
5 recommendation, clearly, Level 3 would need to
6 pay the regulatory assessment fee for this past
7 year. But if they tomorrow split out a separate
8 corporation, a real estate company, and did the
9 same exact thing, allowed their building to be
10 collocated by another telecommunications
11 company, then they would not have to pay the
12 regulatory assessment fee next year.

13 MS. BROWN: Yes, probably for two reasons,
14 one because then they would just be providing
15 telecommunications facilities to others really
16 on sort of a wholesale basis, although that's
17 probably a bad word to use, to other
18 telecommunications provider, and they would be
19 exempt from the definition of telecommunications
20 company, for that reason as well as for any
21 other.

22 COMMISSIONER PALECKI: Was Level 3's
23 operations, their actual physical plant that
24 we're talking about in this docket, were they
25 certificated under 364.33?

1 MS. BROWN: Yes. They're certificated, as
2 I understand it, as an interexchange carrier and
3 an alternative local exchange company.

4 COMMISSIONER PALECKI: And that particular
5 statute requires that anyone before building,
6 construction, or operation of a
7 telecommunications facility needs to go through
8 the Commission and get a certificate, and that
9 did happen in this particular instance?

10 MS. BROWN: Yes, that's my understanding.

11 COMMISSIONER PALECKI: So there would be
12 some level of regulation that has already
13 occurred just to open up their operation.

14 MS. BROWN: Yes, and there is a lot of
15 other regulation that Level 3 enjoys from the
16 Commission, not necessarily --

17 CHAIRMAN JACOBS: That's a word --

18 COMMISSIONER DEASON: I don't know of
19 too many folks that we regulate that enjoy it,
20 but --

21 MS. BROWN: Which was why I kind of
22 laughed.

23 Well, there are some benefits to the
24 regulation. Of course, there are some
25 responsibilities as well. But you can start at

1 the beginning of 364 and go through a whole
2 series of statutes in 364 that apply to and that
3 require the Commission to engage in activity
4 that costs money that affects directly the
5 ALECs. First of all, 364.01(2) talks about the
6 Commission's regulation of telecommunications
7 companies, all telecommunications companies.

8 Promoting competition in local
9 telecommunications markets doesn't just -- it
10 doesn't at all, I think we all realize, mean
11 lesser regulation of alternative local exchange
12 companies. It might be different, but it's not
13 -- our regulatory activity hasn't lessened any
14 with our duties to promote competition.

15 There's also the question of transitioning
16 to competition, which requires regulatory
17 oversight, which benefits alternative local
18 providers, which can't be tied to a particular
19 service. Resolving disputes between companies
20 and their customers, we do that for all
21 telecommunications customers.

22 And staff has told me in the interim that
23 while we do not now approve at the outset
24 collocation agreements between ALECs and their
25 customers, we do have Chapter 364.19, which says

1 that we can make reasonable rules to regulate
2 contracts between telecommunications companies
3 and their patrons. And if there were
4 allegations of adverse effects to the
5 development of competition in Florida or
6 anticompetitive behavior on the part of Level 3
7 or another ALEC, staff informs me that they
8 would certainly consider addressing those
9 allegations. That's just the beginning.
10 There's more.

11 COMMISSIONER JABER: Ms. Brown, can I
12 interrupt you there just to clarify, to make
13 sure I understand what you just said, and then I
14 have a follow-up question. You said we would
15 all agree that there isn't less oversight for
16 alternative providers?

17 MS. BROWN: It's different. On a global
18 basis, Commissioner, the regulatory activity
19 that the Commission engages in now pursuant to
20 364, the changes in '95 and the Telecom Act, is
21 different than rate of return regulation, rate
22 base regulation. It's not necessarily less.

23 COMMISSIONER JABER: Okay. Let me --

24 MS. BROWN: I can turn --

25 COMMISSIONER JABER: Then explain to me

1 what (4)(d) means, because (4)(d) uses exactly
2 those words, and I can't reconcile what you're
3 saying with this, promote competition by
4 encouraging new entrants into telecommunications
5 markets and by allowing a transitional period in
6 which new entrants are subject to a lesser level
7 of regulatory oversight than local exchange
8 telecommunications companies.

9 MS. BROWN: I think where we're talking
10 past each other, Commissioner, is that I'm
11 considering this from the Commission's
12 perspective, what are the Commission's
13 regulatory costs. Those have not lessened with
14 different regulatory oversight. And in a
15 substantive instance where we don't rate base
16 regulate ALECs, the oversight is lessened, but
17 there are increased impositions on the
18 Commission's resources; that --

19 COMMISSIONER JABER: Generally speaking --

20 MS. BROWN: -- come from implementing this
21 regulatory statute.

22 COMMISSIONER JABER: Okay. And that brings
23 me back to my initial question in trying to act
24 on this declaratory statement. I thought with
25 declaratory statements, you have to answer the

1 specific question that's presented to you, and
2 that's where I'm coming from. I am not trying
3 to set -- I'm not trying to open any doors; I'm
4 not trying to close any doors; I'm not trying to
5 establish policy here today.

6 Level 3 has asked us a very specific
7 question. And in trying to decide that, and the
8 crux of my motion, which still stands, is that I
9 can't understand from you all what costs of
10 regulation we're trying to be compensated for in
11 Level 3's collocation services. That's the very
12 narrow focus. That's a very specific question
13 that I'm trying to answer, and that's the crux
14 of my motion. It's not to establish ILEC RAFs
15 going forward. It's not to establish ALEC RAFs
16 going forward.

17 MS. BROWN: Well, that's -- I'm concerned
18 that that's what will happen if we do go forward
19 there.

20 I would also tell you that I don't consider
21 that to be the question that's being asked by
22 this declaratory statement petition. It's are
23 these collocation revenues gross intrastate
24 revenues for purposes of collecting regulatory
25 assessment fees, which are designed to cover the

1 whole global costs of Commission regulation.
2 They're not specifically directed to specific
3 services. They are -- here is where I think we
4 end up. I think we end up with a little
5 nit-picking, nicking away at the scope of the
6 base, and we end up with plain old telephone
7 service customers paying the full costs of all
8 of the Commission's regulation that cannot be
9 attributed to just plain old telecommunications
10 service.

11 COMMISSIONER JABER: And in a declaratory
12 statement --

13 MR. BROWN: And I still have more on my
14 list.

15 COMMISSIONER JABER: Ms. Brown, in a
16 declaratory statement, it behooves the companies
17 to be real specific in asking the question, and
18 we will act on that. Perhaps, though, in some
19 sort of policy-making proceeding, whatever that
20 needs to be, in a workshop or whatever, we need
21 to revisit or visit our policy with respect to
22 regulatory assessment fees.

23 But, Mr. Rogers, what is the specific
24 question you're asking us to address in this
25 regulatory statement?

1 MR. ROGERS: The petition that we filed
2 requests that the Commission find that the
3 regulatory assessment fees that are being
4 applied or sought to be applied by staff to
5 collocation revenues do not constitute gross
6 operating revenues derived from intrastate
7 business according to the statute, in other
8 words, to exclude revenues from collocation in
9 the regulatory assessment.

10 COMMISSIONER DEASON: And why is that?
11 Because it's not intrastate or it's not your
12 business?

13 MR. ROGERS: It is our business --

14 COMMISSIONER DEASON: As a regulated
15 entity. It's not the business of a regulated
16 entity, and it's not intrastate?

17 MR. ROGERS: It is not a telecommunications
18 service, first and foremost.

19 COMMISSIONER DEASON: No, you just read the
20 statute. It says from intrastate business.

21 MR. ROGERS: Correct.

22 COMMISSIONER DEASON: You're implying that
23 means intrastate regulated telecommunications
24 business?

25 MR. ROGERS: What we would recommend

1 essentially is a reading that says intrastate
2 telecommunications business. Telecommunications
3 companies should pay regulatory assessment fees
4 on gross operating revenues derived from
5 intrastate telecommunications service.

6 COMMISSIONER BAEZ: And the staff reads it
7 a little broader than that. Is that --

8 MS. BROWN: Yes, yes. There's nothing in
9 the statute that implies otherwise. And I
10 believe that the breadth of the statute reflects
11 the breadth of the Commission's regulation, that
12 it covers a much broader scope, and that it's
13 not simply telecommunications service, and it's
14 not particular services, because you can't -- if
15 we went down that path where we tried to say,
16 "Okay. Which is a regulated telecommunications
17 service? How much does it cost to regulate that
18 service?" we're missing all of the broader
19 things. And it is the policy, and imposing upon
20 basic telecommunications customers the full
21 burden of Commission regulatory costs that I
22 foresee if we go down this path.

23 Now, let me just say one thing --

24 COMMISSIONER JABER: What does that mean?
25 what? We're imposing on who?

1 MS. BROWN: If we go down --

2 COMMISSIONER BAEZ: We're narrowing the
3 base.

4 MS. BROWN: -- this path and we nick away
5 at everything, we end up -- because in Level 3's
6 petition, they make a distinction that I could
7 never really quite figure out between required
8 services and regulated telecommunications
9 services. And I can envision, just as we are
10 here today dealing with this because of one
11 little bit of language in the Verizon
12 declaratory statement, that we would end up with
13 everyone saying, "well, all you can really
14 assess your costs on are basic local phone
15 service. Forget all of the rest."

16 COMMISSIONER JABER: You know, I am really
17 trying to stay focused on the declaratory
18 statement, and there has to be a way to do that
19 without making some sort of policy statement.
20 And if it's such a policy, why aren't we
21 assessing regulatory assessment fees -- Level 3
22 cannot be the only ALEC that has established
23 internal hotels for these kinds of services.
24 They can't be. I would be very impressed if
25 they were, because --

1 MS. BROWN: Well, those ALECs should be
2 paying regulatory assessment fees on that
3 intrastate business.

4 COMMISSIONER JABER: And have you been
5 assessing that?

6 MS. BROWN: I think what you're trying to
7 get at, I see that you're concerned about
8 imposing costs of regulation upon ALECs in a
9 regulatory environment that you foresee as
10 directing you to lessen the regulatory
11 impositions on ALECs. And if you want --

12 COMMISSIONER JABER: And add to that --
13 that's absolutely right, Ms. Brown, and then add
14 to that regulation that is not on the service
15 currently, because, see, I guess I'm
16 interpreting it even more than you are with
17 respect to imposing RAFs. It's actually
18 imposing regulation. The collection of
19 regulatory assessment fees is regulation.

20 MS. BROWN: Well, it's the indirect costs
21 of the broader substantive regulation, I would
22 say. But if you like that idea, I don't think
23 you ought to do it in this declaratory
24 statement. If you're going to change your
25 policy here -- and I know you don't want me to

1 argue this again, but I do think this is --
2 there isn't much new with leasing of
3 telecommunications facilities as revenue of
4 telecommunications companies. And if you want
5 to make the distinction, I really would -- I
6 think the law requires you do it in a rulemaking
7 proceeding, because it will have tremendous
8 precedential effect. And it would also need the
9 careful analysis that a rulemaking --

10 COMMISSIONER JABER: In that sense, we
11 agree with you that there is a policy, I can't
12 find the policy. Where is it we've articulated
13 that policy?

14 MS. BROWN: Well, I don't know that we have
15 articulated it, but in our practices, that is
16 what we have done. And the statute itself is
17 broad enough to, I think, more logically
18 contemplate that practice than the one urged by
19 Level 3.

20 COMMISSIONER DEASON: Let me ask you this
21 question. First of all, let me make this
22 observation. I think there are a lot of
23 ramifications, potential ramifications of going
24 down this path, and maybe they need to be
25 explored.

1 But one of those questions that I have, and
2 I'll just raise it at this point, is, let's
3 assume for a moment that there is a regulated
4 entity which is providing a regulated service in
5 the State of Florida, and they happen to lease
6 facilities from Level 3. Now, the payment that
7 they make to Level 3, Level 3 being another
8 certificated company, that payment, they reduce
9 their revenues that they then -- that reduces
10 their base that they then turn and apply the
11 percentage and submit regulatory assessment
12 fees. And it seems to me that there has to be
13 fees collected somewhere along the line.

14 So if we exempt Level 3, then it is no
15 longer exempt from the company that is leasing
16 from them, and they're going to have to pay, and
17 they may have a dog in this fight and want to
18 present that argument to the Commission. It
19 seems to me that there may be incumbent
20 companies out there that are saying, "If you
21 exempt collocation services from regulatory
22 assessment fees, perhaps to be" -- and that is a
23 question that could be debated. I could see
24 both sides. But they probably could come
25 forward and say, "To be competitively neutral,

1 you should not tax or collect regulatory
2 assessment fees on my collocation activities."

3 And I think it could be expanded to the
4 example you already gave, that perhaps telephone
5 companies -- incumbent telephone companies would
6 say, "well, we should not have to pay regulatory
7 assessment fees on pole attachment rentals that
8 we get from cable TV companies." And the list
9 could just go on and on. And maybe those are
10 legitimate questions. I just -- I'm not
11 comfortable going down that path within the
12 confines of what's in front of us today.

13 MR. HOFFMAN: Mr. Chairman, may I respond
14 to just a few of the points that have been
15 discussed?

16 CHAIRMAN JACOBS: Were you done with your
17 statement, Commissioner?

18 Go right ahead, Mr. Hoffman.

19 MR. HOFFMAN: Just very briefly. First of
20 all, the Commission -- first of all,
21 Commissioner Jaber is right that the statute and
22 the uniform rules require the Commission to
23 react and respond to this petition for
24 declaratory statement based on the facts that
25 are alleged in this petition. Is it prudent to

1 Look beyond the petition in terms of what the
2 ramifications may be in the future? No question
3 about it. But not within the framework of
4 issuing an order on this petition. This
5 petition should either get a yes or a no based
6 on the allegations that are in this petition.

7 And Ms. Brown had mentioned before lunch
8 that it would be inappropriate to do a
9 declaratory statement, but perhaps the best
10 thing, if it is appropriate, is to move to
11 rulemaking. And I'm not sure that the
12 Commission has agreed with that proposition.

13 But let me just say, many times in the
14 past, one that comes to mind is in the electric
15 industry, master metering, the Reddington Towers
16 petition for declaratory statement. The
17 Commission answers the question that is posed by
18 the petitioner and in that case decided that it
19 was appropriate because of the ramifications to
20 move to rulemaking. So these are not mutually
21 exclusive remedies by any means.

22 The Commission has no prior policy on the
23 specific question that is raised in this
24 petition, so it would not be departing from it.
25 As Commissioner Jaber said, it would not be a

1 question of revisiting. It would be a question
2 of visiting.

3 And in terms of the statute itself -- and
4 this is my last comment. In terms of the
5 statute itself, the words in the statute are
6 "gross operating revenues derived from
7 intrastate business," and you've heard a lot
8 about that. But the statute also specifically
9 says that the fees are to be related to the cost
10 of regulating such type of regulated company,
11 and those fees for ALEC collocation are zero.
12 They should be zero, because there is no work
13 done by this Commission in terms of regulatory
14 oversight of ALEC collocation agreements.

15 COMMISSIONER DEASON: What have we been
16 doing for the last two hours if not working on
17 this issue, Mr. Hoffman?

18 MS. BROWN: Thank you.

19 MR. HOFFMAN: Well, I can tell you this,
20 Commissioner Deason. As you know, because
21 you've been involved, there have been generic
22 proceedings on collocation, and they've focused
23 exclusively on ILEC obligations concerning
24 collocation.

25 COMMISSIONER PALECKI: Didn't this

1 Commission certify the telecommunications
2 facility in the first place? I mean, that was
3 Commission action right there, was it not?

4 MR. ROGERS: I would like to comment on
5 that, on your comment about Level 3 obtaining
6 certification. It's not a function of obtaining
7 certification to provide collocation
8 specifically. Level 3 provides
9 telecommunications services. They also provide
10 nonregulated services under the same corporate
11 entity.

12 COMMISSIONER PALECKI: Well, let me
13 interrupt you for one second. The statute says
14 "may be not begin the construction or operation
15 of any telecommunications facility." Before you
16 could even construct that facility, I believe
17 you had to get certification.

18 MR. HOFFMAN: Commissioner, the statute
19 with respect to ALECs says the Commission shall
20 grant a certificate to an ALEC upon a showing
21 that the applicant has sufficient technical,
22 financial, and managerial capability, period.
23 And so there are, it so happens, a number of
24 certificated ALECs in this state that are
25 placeholders. They don't have the first

1 facility out there in the state of Florida, but
2 they have certificates.

3 COMMISSIONER BAEZ: Mr. Hoffman, that means
4 -- I don't think that's inconsistent with what
5 Commissioner Palecki has said. They couldn't
6 have constructed a telecommunications facility.
7 But I think -- and not to interrupt the
8 Commissioner, but my question is a little bit
9 more fundamental. If we stick to what
10 Commissioner Jaber's position is, which is to
11 stay focused on the question of the petition,
12 the question of the petition carries with it
13 some implication that collocation isn't a
14 telecommunications service. Now, I would like
15 that -- I mean, are we answering that question,
16 in essence? I would like to know. I have that
17 question.

18 COMMISSIONER JABER: That is a question,
19 but I'll tell you that the reason I made the
20 motion is that I'm looking at all of 364. For
21 me, I have to. I can't pick a statute out of
22 364 and say it applies to this ALEC. I'm
23 looking at 364, the purpose that I think the
24 changes associated with 364 were, and I'm trying
25 to answer this question.

1 But I'll tell you, Mr. Hoffman has said
2 something that -- and I think Ms. Brown was
3 going down this road anyway. What's wrong with
4 acting on this declaratory statement and
5 initiating some sort of proceeding to look at
6 this issue in a bigger forum? Ms. Brown, isn't
7 the Verizon item on appeal?

8 MS. BROWN: Yes.

9 COMMISSIONER JABER: And if what you're
10 saying is correct, this could start a whole new
11 flood of petitions and --

12 COMMISSIONER BAEZ: Call it a rash.

13 COMMISSIONER JABER: Yes, a rash. There
14 you go. Then perhaps we should go ahead and
15 establish some proceeding that would accommodate
16 that kind of input.

17 CHAIRMAN JACOBS: A RAF rash.

18 COMMISSIONER JABER: But the reason I made
19 the motion, Commissioner Baez, was because I see
20 it as a unique situation that this ALEC fits
21 into, in that they're not required to provide
22 this collocation service, number one, and number
23 two, there isn't anything that we do as a state
24 to monitor their provision of collocation
25 service. We don't look at these agreements. We

1 don't review the agreements.

2 And with respect to the company getting a
3 certificate, they have to have a certificate to
4 provide telecommunications service in Florida.
5 The issuance of the certificate to me has no
6 impact on the regulatory assessment fee issue we
7 have before us.

8 COMMISSIONER BAEZ: And I don't disagree
9 with the way that you've framed the question.
10 My concern is this. My concern is that our
11 basis or our determinations in answering that
12 question in a favorable manner to the company,
13 given their circumstances, still leaves us a
14 little wide, because we're in effect saying that
15 collocation is not a telecommunications service.

16 Now, I can argue that that's true under
17 some circumstances, and in particular, in
18 situations where, as I had mentioned before,
19 there is a pass-through relationship, that all
20 that's being provided to the equation is
21 collocation service. But, for instance, in a
22 situation where the collocation is being
23 provided part and parcel of interconnection to
24 the company's own system, then I think that
25 would militate more to the posture that the

1 ILECs are in. I mean, they're providing
2 collocation as a result of their providing
3 interconnection. And I think that for me,
4 that's an important distinction.

5 And I fear -- and my concern over the
6 question that we would have to answer under this
7 petition isn't narrow enough to capture, you
8 know, what your purposes are. That's my
9 concern, and I'm not sure that I'm comfortable
10 with agreeing with the basis for Level 3's
11 assertion that collocation is not a
12 telecommunications service under every
13 circumstance. And I --

14 MS. BROWN: Commissioner, if I may --

15 COMMISSIONER JABER: I'm confused as to why
16 we even have to reach that point. Why do we
17 have to define it?

18 COMMISSIONER BAEZ: If we can make it clear
19 that that's not what we're defining, then --

20 COMMISSIONER JABER: I don't know that we
21 can do that at the end of the day. But it was
22 not --

23 COMMISSIONER BAEZ: Well, it's clear as
24 mud.

25 COMMISSIONER JABER: It was not my intent

1 to define anything but to say that 364 does
2 provide the Commission with direction to
3 encourage competition through lesser regulatory
4 oversight. And in fact, I think the words are,
5 encourage competition through flexible
6 regulatory treatment among providers, to
7 encourage new entrants into the markets by
8 allowing a transitional period through the use
9 of lesser oversight, and to encourage all
10 providers of telecommunications services to
11 introduce new telecommunications services free
12 of regulatory impediments. And that really is
13 where I'm coming from.

14 And I would add to that that it's not an
15 imposition on our part or the statute's part
16 that this ALEC provide collocation services.

17 Now, whether tomorrow we get a company that
18 requires us -- a decision requires us to define
19 whether that service is a telecommunications
20 service, I don't know. But the purpose of my
21 motion and the rationale behind it is not to
22 define what the telecommunications service is,
23 but to recognize that the State of Florida
24 hasn't done any work, regulatory work associated
25 with what this ALEC is proposing to do.

1 COMMISSIONER BAEZ: And I don't think
2 you've said anything that I disagree with. I
3 think what I'm having trouble with is, you know,
4 when you declare -- you're saying that based on
5 these circumstances, this is how we view things,
6 and this is the result that we get, and these
7 circumstances -- and maybe the company can
8 address it, but it seems to me that these
9 circumstances are stretched into an area that we
10 may not want to be associated with in terms of a
11 determination for these circumstances.

12 You know, I don't hear -- I didn't hear the
13 company making the distinction on a specific
14 basis that whatever they're providing as a
15 pass-through, I keep calling it, but where
16 they're not involved in interconnection
17 necessarily, where they're only providing pure
18 collocation services, that that's the situation
19 or the circumstances that we're looking at.
20 We're looking at all collocation services, and
21 that can offer a set of circumstances that
22 serves as the basis for another company to
23 provide those same circumstances and for us to
24 have to be consistent, and I am not -- I guess
25 that's where my discomfort is.

1 And I don't know what authority or what
2 ability we have to -- I mean, I think we've gone
3 a long way in just discussing it, which really
4 was my original intent. But I don't know to
5 what extent we can limit those circumstances now
6 in a way that I'm comfortable with.

7 CHAIRMAN JACOBS: So we can perhaps bring
8 this back around -- you had a question?

9 COMMISSIONER PALECKI: I keep going back
10 to Section 350.113, and that is the provision
11 that requires that fees shall, to the extent
12 practicable, be related to the cost of
13 regulating such type of regulated company. And
14 we have no data in front of us regarding the
15 amount of fees that we're talking about, and not
16 just with Level 3, but on a statewide basis, and
17 we have no data in front of us on what the cost
18 of regulating is. And I find it very difficult
19 to make a decision under that section of the
20 statute without some sort of data in front of
21 me.

22 COMMISSIONER DEASON: Well, let me make an
23 observation or maybe raise a question, or maybe
24 both. That particular section of the statute,
25 I've always interpreted that that was to try to

1 bring some parity or equity between the various
2 industries that we regulate, not necessarily
3 companies within an industry and that's why we
4 have different regulatory assessment fee
5 percentages.

6 I notice that apparently it's -- 15/100 of
7 1% is what is applied in this situation. And we
8 do have evidence for this company. And if we
9 look just at what's in front of us, Mr. Hoffman,
10 we're arguing about \$572. So I think the issue
11 is much broader than that. I don't think you
12 all would -- I mean, your hourly rates have
13 probably already exceeded \$572.

14 MR. HOFFMAN: But, Commissioner, we are
15 enjoying this regulation. We're enjoying it.

16 COMMISSIONER DEASON: But I thought that
17 that statute was to try to bring some equality
18 or parity to the various industries. And if
19 you'll notice, water and wastewater has a much
20 higher rate because of the fact that we expend
21 maybe not more hours, but more hours per revenue
22 generated by that industry.

23 Now, I would agree in a perfect world, a
24 cost causer would pay what he or she causes for
25 the system. And if we go down that road a long

1 distance, we may end up -- for example, when we
2 send an auditor to a company to audit their
3 books, we would send them a bill for the number
4 of hours that the auditor was there. I don't
5 think we want to get to that. I mean, what we
6 have here is a surrogate that says a percentage
7 applied to intrastate revenue is a good
8 surrogate for what that company is causing in
9 terms of costs.

10 Back in the days when we didn't have
11 competitors and we just had certificated
12 regulated companies, in the year that BellSouth
13 came in for a rate case, I'll bet you they
14 caused more costs in that year than what they
15 paid in regulatory assessment fees. But
16 hopefully they stayed out for two or three
17 years, and then the next year maybe what's
18 Verizon now, GTE would come in, and during that
19 year we processed their rate case, they didn't
20 pay their own way, but it all evened out over
21 the years.

22 And I would submit that the bottom line of
23 all of this is that we're still going to recover
24 the costs of our operations, and if we change
25 the base for one company, it's going to be made

1 up by another company, so it's taking from one
2 and giving to another. And maybe that's the
3 right thing to do. I'm not saying that it's
4 not. But it's a much broader question, I think,
5 than what's in front of us today.

6 MR. HOFFMAN: Commissioner, just very
7 briefly, I think that the passage you're looking
8 at in Chapter 350 and that Commissioner Palecki
9 cited is a general statement of the Legislature
10 that applies across the board to every industry
11 regulated by the Commission, and if you apply
12 that -- and there's sort of, I think, an
13 agreement amongst everyone here that the general
14 purpose of these regulatory assessment fees are
15 to pay for the costs of regulation. And I think
16 that there's also consensus that when you're
17 talking about the cost of regulation of Level
18 3's collocation arrangements, that cost is
19 zero. So you get to where I think you think we
20 should get when you calculate a regulatory
21 assessment fee by Level 3 by taking the piece
22 that has no regulatory cost associated with it
23 and excluding it.

24 CHAIRMAN JACOBS: Commissioner Deason
25 raises an interesting point, because ultimately,

1 if we do this in a vacuum or we do this in a
2 piecemeal fashion, we're reconfiguring a formula
3 that we don't know how it will work out, and we
4 may wind up where your primary certificated RAF
5 may cause you some impact that you aren't asking
6 for today if you get this relatively minor
7 impact. So that's something that needs to be
8 given some thought and perhaps further
9 discussion before we embark on that journey.

10 Were there other thoughts or discussions,
11 Commissioners?

12 MR. HOFFMAN: Mr. Chairman, I would just
13 say that, again, focusing in on that criteria in
14 section 350.113(3) that applies across the board
15 to all industries, that the Commission does not
16 even need to reach what appears to be the more
17 difficult issue of whether collocation is a
18 telecommunications service, but for purposes of
19 this petition, can focus on that sentence, where
20 there is agreement that there is no cost of
21 regulation associated with Level 3's collocation
22 arrangements.

23 MS. BROWN: Commissioners, I would just
24 like to remind everyone that that's not the
25 standard. The standard in the regulatory

1 assessment fee is the cost of regulation of the
2 telecommunications company.

3 COMMISSIONER DEASON: It's not a per
4 service thing. It's revenue for a company. If
5 a company is certificated to do business in
6 Florida, they're regulated, and we have -- as a
7 surrogate of the cost they impose, we just say
8 we're going to impose a percentage to your
9 intrastate business revenue.

10 MS. BROWN: Yes, Commissioner, I agree with
11 that assessment.

12 COMMISSIONER JABER: How are we able to
13 determine for this company what's interstate and
14 what's intrastate? How do you make that
15 calculation for the basis of assessing the
16 regulatory assessment fee?

17 MS. VANDIVER: In a lot of companies they
18 have very good records, and they keep track of
19 that themselves. I don't believe Level 3 keeps
20 track of it except on a gross basis. A lot of
21 companies do it that way. And as long as they
22 can provide us with a reasonable allocation
23 methodology and show us how they came up with
24 it, we'll allow that. But they have to have an
25 allocation methodology --

1 COMMISSIONER JABER: So it's an honor
2 system. You're going to take their word for it.

3 MS. VANDIVER: No. We'll usually look at
4 their reasoning for it. Usually they have to
5 have a reason for it. They can show us based on
6 some sort of history of what other companies do
7 or something else. And in some sense it's an
8 honor system that it applies to that particular
9 system. But we're seeing more and more
10 companies keeping specific intrastate records.

11 MS. BROWN: And that's for their intrastate
12 business and interstate business, not the
13 interstate business of another customer of
14 theirs.

15 COMMISSIONER JABER: So going down the
16 road, it could go down the other way too, which
17 is, if you disagree with their numbers, we're
18 going to send auditors, and we're going to look
19 at their records, aren't we? We might be in a
20 position of doing that with all of the ALECs
21 that provide different, unique services to
22 penetrate the telecommunications market.

23 MS. VANDIVER: We're already --

24 MS. BROWN: It would increase the cost of
25 regulation.

1 COMMISSIONER JABER: And it would be
2 self-imposed to some degree, wouldn't it?

3 MS. BROWN: I'm not sure I understand.

4 COMMISSIONER JABER: Well, if we start
5 collecting regulatory assessment fees for
6 revenues associated with new services, new
7 arrangements between telecommunications
8 companies, and they submit to us what their
9 guesstimate for the revenues is, and staff
10 disagrees with any of those amounts, you might
11 be in an awkward position of having to send
12 auditors to look at their books and records to
13 verify that information; right? And that
14 increases the costs. That's an increased cost
15 to the agency.

16 MS. VANDIVER: Right. We're already
17 periodically -- we're already doing a sample
18 every year of all the regulatory assessment fee
19 returns, and so we're auditing all the large
20 companies on a periodic basis, as well as a
21 sample of the small.

22 COMMISSIONER JABER: You do a random
23 sample for the small ALECs?

24 MS. VANDIVER: Of all the telecommunication
25 companies.

1 COMMISSIONER JABER: Oh, okay. It's random?

2 MS. VANDIVER: Random. Except -- yes,
3 right. We do the very large IXCs and ILECs, all
4 of those every three years, but we're doing a
5 random sample of everybody else.

6 COMMISSIONER PALECKI: Let me ask staff, if
7 the statutory scheme is that new entrants should
8 be subject to lesser regulation, and very
9 clearly it is, why is the regulatory assessment
10 fee the same for new entrants as well as for the
11 existing companies?

12 MS. BROWN: Well, I think it's because of
13 the statute that directs us -- directs the way
14 we impose regulatory assessment fees. If the
15 statute -- the regulatory assessment fee statute
16 said "and impose lesser regulatory assessment
17 fees on certain telecommunications companies,"
18 then we would do that. ; But it --

19 COMMISSIONER PALECKI: Let me tell you what
20 my difficulty is. I see a statute that says
21 that we should lighten up on our regulation, and
22 I think if we're going the lighten up on our
23 regulation, we should probably charge less. At
24 the same time, I see very clear language in
25 364.336 that says that each licensed

1 telecommunications company shall base its
2 regulatory assessment fee on its gross operating
3 revenues derived from intrastate business. And
4 to me, renting out a portion of your facility,
5 whether it's for a grocery store or to collocate
6 another telecom company, is part of gross
7 operating revenues derived from intrastate
8 business. It doesn't appear that the statutes
9 give us very much discretion there.

10 MS. BROWN: I agree with you, Commissioner.
11 And I would also point out that the beginning of
12 364.336 is, notwithstanding any provisions of
13 the law to the contrary, each telecommunications
14 company must pay the fees based on that.

15 COMMISSIONER PALECKI: But I have a hard
16 time when another statute, another section tells
17 us to lighten up on regulation, that at the same
18 time we can't lighten up on the costs we impose
19 on those new entrants as well.

20 MR. HOFFMAN: Commissioner Palecki --

21 MS. BROWN: That is -- to me, that is a big
22 policy, rulemaking issue. And if you want to go
23 down that road where you consider the costs, as
24 you were saying before, you don't have numbers
25 before you to be able to make that kind of

1 determination today. That's the kind of thing
2 really I think the APA requires that we do in a
3 rulemaking as well, because it has such direct
4 effect on all participants and substantially
5 affected companies. And as Commissioner Deason
6 was saying, incumbent companies might want to
7 participate in that and put their perspective
8 and point of view. I don't think there's
9 anything to preclude you from rulemaking on
10 that, but I wouldn't make that kind of decision
11 in this declaratory statement petition. I would
12 deny it first and then --

13 COMMISSIONER DEASON: I've got a solution
14 to this whole problem. We just don't collect
15 regulatory assessment fees, and when somebody
16 files something in front of us, we just tabulate
17 all the hours we spend on it. If there's an
18 arbitration, we calculate all the hours, and we
19 split the bill between the two parties that
20 brought it to us, and maybe that would be an
21 incentive for them to settle their disputes and
22 not bring them in front of us. I'm being
23 facetious. I'm not --

24 COMMISSIONER PALECKI: What if we just
25 charged admission to the agenda conference?

1 COMMISSIONER JABER: You know, Commissioner
2 Deason, don't some state commissions get
3 compensated for their --

4 CHAIRMAN JACOBS: That got a howl from the
5 back.

6 COMMISSIONER JABER: Commissioner Deason,
7 I think some state commissions are compensated
8 directly by the companies for the attorneys they
9 have to hire, I think in Louisiana. So you
10 might think you're being facetious, but it ain't
11 a bad idea.

12 COMMISSIONER DEASON: Well, statutorily,
13 we've got to do what our statute says, and I
14 think staff is recommending we do that according
15 to their interpretation of the statute, and
16 there are different interpretations.

17 CHAIRMAN JACOBS: Well, we had a motion.
18 But before that, Mr. Hoffman, you had a point.

19 MR. HOFFMAN: I had one comment I wanted to
20 make, Mr. Chairman, and I think Mr. Rogers has
21 some conclusory comments.

22 Only in response to Commissioner Palecki's
23 issue, I would just point out that the language
24 in the regulatory assessment fee statutes in
25 Chapter 350 was passed in 1980. The language in

1 the regulatory assessment fee statute in Chapter
2 364 was passed in 1990. And the more
3 comprehensive and expansive language that
4 Commissioner Jaber has been reciting throughout
5 this item where the Legislature decided to open
6 up the local markets was passed in 1995. And I
7 think it would be an appropriate exercise of
8 statutory interpretation to interpret these
9 regulatory assessment fee statutes mindful of
10 the more recent acts of the Legislature to open
11 up the market --

12 COMMISSIONER DEASON: Mr. Hoffman, though,
13 wouldn't it be just as reasonable to assume that
14 if the Legislature wanted us to change the way
15 that we collect regulatory assessment fees
16 depending upon the type company that falls
17 within that industry, they would have rewritten
18 that section of the statute as well?

19 MR. HOFFMAN: That is also -- I don't know
20 if it's more reasonable or less reasonable,
21 Commissioner, but it's certainly an argument
22 that one could make.

23 MR. ROGERS: I simply wanted to say that it
24 strikes me that we've made it more complicated
25 than it needs to be, that at its very basic

1 level, the regulatory assessment fee needs to be
2 associated with the costs of regulating
3 services. And to the extent that a service is
4 not regulated, there should be no fee associated
5 with it. And that's really the critical
6 consideration when you're talking about the
7 hotdog stand vendor on the sidewalk. If you're
8 talking about a subsidiary or a regulated
9 company having a hotdog stand, that should not
10 be assessed, because that is not a regulated
11 service. And that is really the critical
12 situation. And there's really no getting around
13 it, in my estimation. You cannot make a
14 decision without looking at the nature of the
15 service.

16 COMMISSIONER PALECKI: Well, let me --

17 MR. ROGERS: As much as you would like to.

18 COMMISSIONER PALECKI: Let me ask you a
19 question about that argument. I don't see
20 anywhere in section 364.366 the language you're
21 referring to regarding regulated services. I
22 keep seeing "gross operating revenues derived
23 from intrastate business." And renting out a
24 portion of your plant seems to me to be gross
25 operating revenues derived from intrastate

1 business.

2 MR. ROGERS: But I would -- I guess I would
3 focus more on the telecommunications company
4 language, which presumes that the
5 telecommunications company offers
6 telecommunications services. Telecommunications
7 services has a very finite legal definition that
8 has been set out, and those are the only things
9 that should be assessed. To the extent a
10 certificated carrier is offering unregulated
11 services, it is not acting as a
12 telecommunications company. And so the term
13 "telecommunications" is critical and I think is
14 the determinative factor.

15 COMMISSIONER PALECKI: Thank you.

16 COMMISSIONER BAEZ: Staff, I'm sorry. Are
17 there any unregulated services, any example at
18 all that are not included in the regulatory
19 assessment fee calculation?

20 MR. ROGERS: Internet.

21 COMMISSIONER BAEZ: Not necessarily Level
22 3, but anybody else in this room.

23 MS. BROWN: Yes.

24 COMMISSIONER BAEZ: was that a yes?

25 MS. BULECZA-BANKS: Could you please repeat

1 that for me?

2 COMMISSIONER BAEZ: Are there -- I keep
3 seeing, you know, arguments on both sides of
4 this, and one of the tacks that the staff and
5 even some of the Commissioners have expressed
6 is, you know, it's to the company, all right,
7 and the statute says -- is a very general -- it
8 states that in a very general sense. It says
9 intrastate business. It doesn't say intrastate
10 telecommunications business. And I'm just
11 curious if the staff knows of any instances in
12 which an intrastate business performed by a
13 regulated company is not included in the
14 calculation of RAFs.

15 MS. BULECZA-BANKS: If you're talking
16 generically about regulated utilities, it is --
17 I mean, there are entities where they may sell
18 or lease water heaters or appliances or do some
19 other business on the side.

20 COMMISSIONER BAEZ: These are separate
21 entities, separate corporate subsidiaries or --

22 MS. BULECZA-BANKS: They have it set up
23 both ways. They have some that were actually
24 part of the actual --

25 COMMISSIONER BAEZ: Regulated --

1 MS. BULECZA-BANKS: -- entity, and it would
2 be below the line. Those revenues and expenses
3 associated with that would be below the line.

4 COMMISSIONER BAEZ: So there's a practice
5 --

6 MS. BROWN: I'm not familiar with any of
7 that in telecommunications, though, that I can
8 think of.

9 COMMISSIONER BAEZ: Well, even though we're
10 in the telecommunications -- you know, this may
11 be a declaratory statement, but I can't get off
12 the notion that this goes a little bit farther
13 than that.

14 COMMISSIONER JABER: See, Commissioner
15 Baez, if we ask the company that question, they
16 might be afraid to tell us, because we'll assess
17 regulatory assessment fees.

18 COMMISSIONER BAEZ: Well, you know, it
19 cuts both ways.

20 MR. ROGERS: Well, I would -- I think I
21 wanted to respond initially to your question
22 that, you know, we've sort of assumed that
23 collocation is associated with
24 telecommunications services, and it really is
25 not to a large extent. And to the extent that

1 they are data center providers who are providing
2 only Internet related services, that is the
3 reason in part that they are not regulated
4 entities.

5 Level 3 does offer certain regulated
6 telecommunications services, but their
7 collocation services are associated much more
8 heavily with unregulated services. And so to
9 the -- I just want to make that clarification,
10 that there has been, it seems to me, some sense
11 that you want to say that collocation is
12 directly related to and go down that slippery
13 slope, related to telecommunications services.
14 That is not in fact the case. It's more
15 directly related to Internet services,
16 interstate services, and the provision by other
17 carriers, so it's not even Level 3 providing the
18 telecom services.

19 COMMISSIONER BAEZ: And I think you
20 reminded me of something that struck me as part
21 of -- I don't know if it was in the petition. I
22 don't remember, but that you can't distinguish
23 one from the other. And I think for my purposes
24 and certainly the trouble that I'm having with
25 this, that's a very meaningful fact, because I'm

1 not interested -- I guess I wouldn't be
2 interested in casting a net over all of it. I
3 believe that there are distinctions that can be
4 made, and you just raised a very good one. And
5 I think that that may be the case with some
6 other companies.

7 And what I hear Ms. Banks saying is that,
8 you know the Commission does have at least a
9 history, if not a practice of -- that there are
10 examples, whether they be in the
11 telecommunications industry or others, where
12 intrastate business and operating revenues from
13 intrastate business are not included for RAF
14 purposes. And so again, I mean, to me, that
15 says that there is some leeway as to how to
16 interpret the language in the statute, because
17 the presumptions or the assumptions that the
18 company is making don't seem all that
19 unreasonable. There are some things that they
20 may be involved with that don't constitute
21 telecommunications service, and really, that's
22 the reason that we regulate them. If they
23 weren't providing telecommunications service, we
24 would have no business with them, or they would
25 have no business with us, rather.

1 But again, that goes back to my original
2 concern, which is that, you know, saying that
3 collocation is not a telecommunications service
4 absent some clear distinction that we're making,
5 I'm just not comfortable with. And I hate to
6 say it, because I've been battling with this
7 even as we've been sitting up here, but I don't
8 know that I can support answering the question
9 that the company has posed in this case in the
10 affirmative because there isn't that much of a
11 -- because there isn't that deep a distinction.

12 MR. ROGERS: But a broader -- maybe the
13 Commission is more comfortable saying that
14 ALEC collocation is not a regulated service, and
15 thus --

16 COMMISSIONER BAEZ: That's not the question
17 you asked us, though, is it?

18 MR. ROGERS: Well, I think it is in -- I
19 think it is. We've stated that regulatory
20 assessment fees should not be imposed on
21 collocation because it is not a regulated
22 service.

23 MR. D'HAESELER: Commissioners, I'm told
24 that with at least one large ILEC, nonregulated
25 intrastate revenues are counted. They're not

1 excluded. say, for example, like inside wire,
2 yellow page advertising.

3 COMMISSIONER JABER: That's an ILEC.

4 That's --

5 MR. D'HAESEELER: Pardon me?

6 COMMISSIONER BAEZ: That's an ILEC.

7 MR. D'HAESEELER: An ILEC; right.

8 MR. ROGERS: which is the Verizon
9 declaratory statement instance. I mean, that's
10 exactly the fact scenario in that case, which we
11 think is instructive and should be applied here.
12 That same rationale really should be followed by
13 this Commission in this declaratory statement as
14 well.

15 COMMISSIONER DEASON: I'm sorry. walter,
16 I'm sorry. You said that they are included or
17 are not included for regulatory assessment fee
18 purposes?

19 MR. D'HAESEELER: They are included.

20 COMMISSIONER DEASON: Are included.

21 MR. ROGERS: They are included, because
22 they are required to be provided. Because they
23 are required to be provided, they are a
24 regulated service.

25 MS. BROWN: No, Commissioner --

1 MR. ROGERS: Yellow pages is the example
2 that --

3 MS. BROWN: It wasn't just yellow pages.

4 MR. D'HAESELER: The other one was inside
5 wire, and if they offered CP. And I'm sure
6 there are other examples.

7 COMMISSIONER DEASON: My guess is that if
8 they provided -- as an example, years and years
9 ago -- and I'm showing my age now. Gulf Power
10 was in the appliance business. I think it was
11 below the line. I doubt that we collected a
12 regulatory assessment fee. But in retrospect,
13 we probably should have, because in every rate
14 case we spent hours and auditors' time going in
15 and making sure there was not a subsidy from the
16 general body of ratepayers subsidizing their
17 appliance sales business, and we had to allocate
18 the square footage that they utilized in their
19 buildings for it. And they were imposing a cost
20 that probably should have been recovered.

21 So, I mean, there may be exceptions both
22 ways.

23 CHAIRMAN JACOBS: So let's figure out how
24 to bring this in for a landing. I wish it were
25 that easy.

1 We did have a motion. We did not have a
2 second for that motion.

3 COMMISSIONER JABER: We took a break.

4 CHAIRMAN JACOBS: Yes, we did.

5 Is there a second?

6 Very well. Do we have an alternative
7 motion?

8 COMMISSIONER DEASON: I made one motion,
9 and it did not get a second. I don't know if I
10 can make it again or not. I don't know what the
11 procedure is, parliamentary procedure, but --

12 CHAIRMAN JACOBS: I think you can restate a
13 motion.

14 COMMISSIONER DEASON: I can try to float
15 the motion again?

16 CHAIRMAN JACOBS: Yes.

17 COMMISSIONER DEASON: Or maybe somebody
18 else should make a motion.

19 COMMISSIONER PALECKI: I can make the
20 motion.

21 I keep hearing the question posed by the
22 company as to whether this is regulatory charge
23 or a regulatory function, and I want to ask
24 myself that question, but the statute is pretty
25 specific, and the statute uses the term "gross

1 operating revenues derived from intrastate
2 business." I view this dollar amount as being
3 gross operating revenues derived from intrastate
4 business. Based upon the language of the
5 statute, I would move the staff's
6 recommendation.

7 COMMISSIONER DEASON: Second.

8 CHAIRMAN JACOBS: It has been moved and
9 seconded. All in favor, aye.

10 COMMISSIONER BAEZ: Aye.

11 COMMISSIONER DEASON: Aye.

12 COMMISSIONER PALECKI: Aye.

13 CHAIRMAN JACOBS: Aye. Opposed?

14 COMMISSIONER JABER: For the reasons stated
15 earlier, I dissent.

16 CHAIRMAN JACOBS: Very well. Show that it
17 passes on a four-one vote.

18 MR. HOFFMAN: Thank you, Commissioners.

19 CHAIRMAN JACOBS: Thank you.

20 COMMISSIONER DEASON: Mr. Hoffman, we'll be
21 sending you a bill.

22 (Conclusion of consideration of Item 4.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 77 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 26th day of July, 2001.

Mary Allen Neel

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