BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010345-TP

In the Matter of

PETITION BY AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC., TCG SOUTH FLORIDA, AND MEDIAONE FLORIDA TELECOMMUNICATIONS, INC. FOR STRUCTURAL SEPARATION OF BELLSOUTH TELECOMMUNICATIONS, INC. INTO TWO DISTINCT WHOLESALE AND RETAIL CORPORATE SUBSIDIARIES.
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BEFORE:	CHAIRMAN E. LEON JACOBS, JR. COMMISSIONER J. TERRY DEASON COMMISSIONER LILA A. JABER COMMISSIONER BRAULIO L. BAEZ COMMISSIONER MICHAEL A. PALECKI
DATE:	Tuesday, July 31, 2001
TIME:	Commenced at 8:30 a.m. Concluded at 5:17 p.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Chief, Office of Hearing Reporter Services FPSC Division of Commission Clerk and Administrative Services (850) 413-6732
IN ATTENDANCE:	(As heretofore noted.)

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P R O C E E D I N G S

COMMISSIONER DEASON: We will reconvene. Commissioner Palecki has an announcement to make.

COMMISSIONER PALECKI: I just wanted to announce that we have issued an order authorizing qualified representative status for James Lamoureux. He filed a motion approximately 11 days ago asking for qualified representative status. He is an out-of-state practitioner who is a member of the Georgia Bar. And as of today we have received no objection to that motion, so we have gone ahead and issued an order authorizing Mr. Lamoureux as a qualified representative.

COMMISSIONER DEASON: Thank you.

Mr. Lackey.

MR. LACKEY: Thank you, Mr. Chairman. Again, my name is Doug Lackey. I am an attorney, and I am appearing on behalf of BellSouth Telecommunications here. As I understand the schedule we are about 50 minutes behind. The way we were going to handle this is I was going to make some additional remarks, and I know you all are anxious to hear those. But what we would like to do now is instead of hearing from me, I would like to go straight to Mr. Wilk and Mr. Danner and Pociask, let them speak, answer your questions. At the end of the time that they have taken, I will then address you for whatever is left until we arrive at 3:30.

We have, as I understand it, a half hour closing for the ALECs and the ILECs. Verizon has agreed to let me have any time that they might want out of that half hour. Anything I need to say that I didn't get in before 3:30, I will just put in that period, if that is all right with the Commission.

COMMISSIONER DEASON: That's more than all right, Mr. Lackey.

MR. LACKEY: With that, let me introduce to you Mr. Mitch Wilk and Mr. Carl Danner, who are going to talk a little bit about what happens when you really do a structural separation and its consequences on not only customers, but states.

MR. WILK: Thank you, Doug.

I am Mitch Wilk, former President and Commissioner of the California Public Utilities Commission. To my right is Doctor Carl Danner, he was my chief of staff and chief telecommunication advisor during that time. We have very brief biographical sketches in the handouts, and so rather than repeat that, we would just suggest that if you are interested in kind of a sense of our background, it's there.

In light of the current electricity crisis in California, it might strike you as a bit awkward to have some former regulators here to share their wisdom about the vagaries and risk of regulation. But I assure you that there are some very important parallels between what you are considering today and what happened in California. When we are done we are going to go back to California, but not before we recharge our batteries here and take them with us. You guys have got the electricity.

Anyway, what follows will be briefly some key messages and conclusions to set up the parallels between the structural separation issue here in Florida and the electricity crisis in California. After that I will share with you some lessons that we would like to offer for your consideration as you further consider the next steps you might want to take with respect, if any, to the structural separation issue. So with that I would like to turn it over to Carl Danner for some discussion on some of the key messages.

MR. DANNER: Thank very much, Mitch. The key, I think, to the parallel between the electricity problems and the structural separation discussion lies in two general areas. The first is the attempt by government to formulate some sort of comprehensive market vision as to where it thinks an industry is going, and then to impose that vision forcefully or forceably on the industry, and then to have something go wrong.

The second parallel, and this is, I suppose, a prediction on our part, but it is borne out from experience, lies in the difficulty government then has in trying to adjust or adapt to what has gone wrong and to rescue the situation on a timely basis, or on a basis that won't come at great disruption and cost.

This first slide of key messages and conclusions brings forth the assumptions that we believe are embedded in the structural separation proposal. Some of the other folks today have spoken to these. They address a technology choice, a guess about market structure, an assumption about business arrangements between companies in that market structure, and something to do with regulation and its effects.

The technology assumption as it says there is that the loop is a natural monopoly. You really have to believe that you are dealing with some essential facilities, something that can't be duplicated, something that won't change in order to justify the kind of disruptive and costly endeavor that is represented by structural separation.

The second point has to do with market structure. We have heard a discussion, of course, in bundling. We use that term here, as well. Really the notion here is that the right form for the industry, the right way to organize the industry is in this wholesale/retail dichotomy. That is the best way to provide phone service and, therefore, we are going to require at least initially and perhaps permanently phone service to most Floridians to be provided on that basis. So there is an assumption that that has got to be the best way to do it.

I make a reference to mandated win/lose arrangements on the third bullet point. Why do we say win/lose? I think this brings out a point that has been discussed, but not fully aired in today's presentations. It's true that in competitive businesses, including high-tech businesses, there is all kind of partnering, and wholesale/retail arrangements, and unbundling, and all kinds of business arrangements like that that take place on a routine basis. I had a car, I had a Chevy Nova that was built by a joint venture of GM and Toyota in California.

But the key to those business arrangements is that they are what we would call win/win deals. They are voluntarily entered into by the parties with the expectation that each will benefit in some fashion from those arrangements. As I think you probably know better than anyone else, the current unbundling and resale arrangements that have been promulgated under the Telecom Act in most states or even all states are not win/win arrangements. They were not voluntarily entered into. One party sees them as advantageous and one party doesn't. That's why we call them win/lose arrangements. Again, you have to presume that that is a reasonable base line business arrangement for providing service in this industry to buy this proposal.

And, finally, I have had the opportunity and privilege to speak before this Commission about two and a half years ago in the basic rate study process. I know you are familiar with the issues about basic rates and competition, but if you believe there is a problem in the competitive market in

Florida and you want to implement a drastic solution such as a break up, or a structural separation, it would seem wise to rule out other sources of what you might consider to be the problem, particularly those over which the Commission and the legislature might have some influence. And the idea that basic rates are at or well below cost I think is one that is difficult to dispute.

Next, please. We are going to suggest that not only do you have to believe these assumptions or predictions to make sense of a structural separation proposal and expect that they will come true, we are going to say there is already evidence that they are not appropriate, or they are incorrect, or they are just wrong. I will assert baldly that the loop is not a natural monopoly.

Small show and tell. You have seen this before. There are 120 million wireless phones already in operation in the United States. If the folks in the audience weren't as polite as they are, I could probably ring most of them right now and have a conversation without the use of any wires. At least any wires that the local phone company built, necessarily.

In Florida you can buy a Sprint PCS package that includes the full usage and features and long distance that a residential customer uses for an average national bill of about $55. Depending on the time of day you would use your minutes, you can buy that package for 50 to $75 right now in Florida per month if you wanted to use wireless as a substitute for basic service. It has somewhat different characteristics, but you can make and receive phone calls anywhere.

There are several other technologies, as well, which were mentioned by earlier speakers today. You can use satellites or Internet access, there is building-to-building wireless. Our building in San Francisco has been a Windstar building now for about five years. Salesmen come by quite frequently. Cable TV and cable telephony is a working technology now. It is providing service to some number of customers, although admittedly not as many as were expected at the time the Telecom Act was passed, but it does work and has been proven out. And, of course, fiber-optic is a technology you can use to reach customers directly, and I'm sure it is heavily used in the downtown business districts in Florida.

On the second point we have also heard some discussion about the trend towards integration, not away from integration. I recall about two years ago a wonderful advertising insert in the Wall Street Journal from WorldCom announcing that their network was an end-to-end network. They did not need to rely on third parties. You didn't need to find someone else to call when something went wrong. They were providing a higher level of reliability and service.

When I go to New York about once a year and listen to -- there is an investor conference that I attend where CEOs make presentations, including CLECs, trying to raise money or trying to impress Wall Street with their business plans. They talk routinely about the higher margins that they get from providing on-net service as opposed to service that includes resale or unbundled loops. They also talk about the speed of provisioning to market advantages they get from providing all on-net service using all of their own facilities. They talk about their ability to roll out new service innovations for customers more quickly and more reliably using those networks. Those are selling points to Wall Street. And obviously not all CLECs are there, and people give different presentations in different contexts. But there is an undeniable trend at least in a large part of the industry towards more integration, not towards less. This also speaks towards the one-stop shopping that many customers have expressed a preference for.

The third point comes back to what I have described as the win/lose deals. The Telecom Act starts off by describing itself as a deregulatory pro-competitive act, or it was a pro-competitive deregulatory act. Both competition and deregulation are in the title and the essence of the Telecom Act. The concept is that when we get enough competition there shouldn't be any more regulation. But it's easy to see that if your vision of competition depends on arrangements between competitors where one is advantaged and the other is disadvantaged, that you can't deregulate ever if you wish those arrangements to be perpetuated. You really have to choose one or the other. And so in that sense, we would suggest that this assumption or prediction is at least inconsistent with the notion of the Telecom Act and the type of environment we are trying to promote.

Below cost basic rates. This argument has gone on forever, and I don't think we can revisit it in its entirety or give it justice today. But one of the things that makes those -- makes residential customers in those rural places unattractive is below cost basic rates. And it doesn't matter how you break up the industry, how you slice it, what pieces you parcel it into, absent some kind of terrific technological change certainly nobody is going to be able to build a wired telephone network out to locations where they are not going to get a compensatory price for it.

Next, please.

MR. WILK: It should be, I think, clear at this point, there is certainly a fairly vibrant notion that there could be lot of cost involved in this. Notwithstanding the range of costs, even if you split the baby, which a lot of regulators have done over the time that I was involved, you come up with a pretty large number that is clearly going to have to be paid by somebody, most likely the public downstream.

But when you consider cost as a regulator, there is more than just the dollars and cents. There is also the cost of complexity, disruption, and other things. And I think, and you will hear this later on in the presentation, as well, you have to strongly ask yourself the question where is the consumer demand for this?

It's clear that involuntary and forced restructuring imposed by adverse litigation is going to be necessarily inflexible. It probably will be very incapable of adapting to the inevitable advance of technology and shifting consumer interest and demands. This is still an industry that is transitioning not just in a regulatory sense, but also in a technological sense. To me the ideal model is one which provides flexibility and actually encourages that kind of expansion and evolvement.

And it is just common sense, by the time the Commission finishes with all the orders and appeals that you will have to undergo in this process, the results are going to be locked into concrete, certainly from a practical standpoint. It is also important to recognize that people will make investments and business commitments in reliance on any regulatory structure even if it is one that happens to be adverse to them. This creates clearly a very strong constituency to preserve it even when events reveal its fallacies. That is a critically important point here.

The break-up process would obviously create its own momentum and vested interests who will fight, as we all well know, tooth and nail to protect any gain and avoid any loss. And anytime you might step in and try to modify any lines that are drawn, you can bet that they will be lined up at the door as was suggested this morning.

And despite your good intentions to the contrary, I would suggest to you, and you will see this in the California experience, revisiting this kind of massive decision once it's done will neither be easy nor straight-forward. And I would argue it may not even be possible in a real substantive sense.

The last point on this slide is also obvious. The huge costs associated with this would clearly have a diversion effect from other investments and attention in other areas of this industry within the State of Florida.

Next slide, please. This may be the most important slide from your perspective. A break-up is going to obviously invite more, not less regulatory complexity. I think it should be obvious by now that a forced break-up would surely lead to more regulation and the potential for micromanagement, something that as Carl and others have suggested, the Act, I think, explicitly intended otherwise as a central feature of its preamble.

Experience has shown that every line that we draw artificially as regulators requires the full panoply of regulatory intervention that also invites even more special interest involvement in our processes. There is nothing simple about line drawing, particularly in this business. Compulsory but unnatural corporate structures will also create incentives to do sensible things that the rules don't allow but the market demands, leading to lots of on-going detailed oversight, disputes, and intensive policing.

It is also, I think, somewhat dangerously counter-productive for an industry driven by technology and changing customer needs to have these kinds of structures locked in place, that a single vision is the only vision that this industry can evolve from. Every ebb and flow of change will shift how the placement of that line is drawn and, of course, all the associated rules that go along with it. And those rules and lines will effect competitors, as well. All competitors. Churning up even more on-going reasons for them to be involved in your processes and to bring litigation. Competition belongs outside the building, not inside it.

Just based on past experience with regulatory policy setting for this industry, is there any aspect about this Commission's regulatory processes and rules that competitors, all competitors don't try to use against one another. Of course they do. The very comprehensive nature of this particular idea is the perfect vehicle, I think, to enrich that process even more in a very negative way.

And as you consider these practical consequences and implications, you also ought to note that in the final analysis any rationale used to regulate the ServeCo, the retail side of retail rates differently from any other CLEC is going to be very, very difficult and might even vanish.

Next slide, please.

COMMISSIONER PALECKI: Is that necessarily a negative effect?

MR. WILK: Well, possibly not. It depends on how would you regulate the ServeCo differently. If it meant having to obviously redo your pricing structure to eliminate cross-subsidies that today frankly the integrated utility provides a more convenient way of doing cross-subsidies and subsidized pricing, would it be a bad thing to do away with some of those cross-subsidies for some of the reasons Carl suggested earlier in terms of truly attracting competition, probably not. Because retail rates would have to be rationalized to some fashion. So to some extent it wouldn't be good. It depends upon what it is.

COMMISSIONER PALECKI: The Commission would have to continue to protect consumer interests, especially in rural areas where, you know, no one would want to serve. But I kind of agree, or I completely agree with you that there would not be a rationale for regulation in the rest of the market.

MR. WILK: I mean, you could actually develop an argument that would say that if a structural separation resulted in a complete rationalization of pricing that truly got you guys out of the business of regulating prices, and that you allowed the market to develop as the market would, and universal service doing exactly what it was intended to, which is to help those who can't afford it, or to help the high cost areas, if that were to happen I would say that probably would have some benefit, clearly.

I mean, to be honest, we tried in California back when I was a Commissioner, we did this rate rebalancing thing and we found some incredibly interesting results. Notwithstanding the crying foul of the professional consumer advocates, we found that the inner city people actually -- the ratepayers in the inner city actually benefitted from this, because we were penalizing usage while we were trying to subsidize access. And a lot of people's phone bills actually went down as a result of increasing basic rates and lowering toll calls.

I mean, I don't want to get into that, because is is subtracting from Doug Lackey's commitment to get this process moving. But there are some good things to be said for it, but there are also some dangers.

In any case, the point of this slide is that this is going to increase the pressure on you, as regulators, and the risks and consequences of what you do. There is no question that when you start splitting this thing up, that is an obvious result.

Now, to most neutral observers of this industry it seems to me that the public wants more convenience, not less, more simplicity, not less. Where is the public demand for this? I would urge you to challenge those who insist on speaking for consumers to come forward with neutrally acquired evidence that shows the public would embrace this kind of disruption and potential cost. And I'm thinking you are not going to find much. Really, sincerely, you are not going to find much.

And even if you give the proponents of this what they want in the hope it will do something for consumers at some point in time, how are they, for example, going to reduce rates that are already far below costs? Where are these consumer benefits? Is it just choice? Is choice the only result from this entire effort? And choice at what cost is what I would urge you to consider.

And obviously if you go along with this idea you are going to be at it a long time. This is not a one-shot deal. With the likelihood of little to show for it, I think that the single vision of the industry could be a dangerous gamble for a lot of reasons, not the least of which is you are going to have to enforce it every single day.

And as you consider the proposal, I would also ask you to consider exactly what California did to get itself into the position its in with the electric industry. Much of the same rationale. The idea that we have to have this market power boogeyman. No question we have got big companies involved in this. No question that incumbents have a larger share of the marketplace. That is indisputable. But what do you do with this idea that you have to somehow take preventative measures, because clearly just the break-up alone is not going to simulate competition. It's being used as an excuse, frankly, to try to, I think, gain some competitive advantage. And it is more associated by accusations of conduct as opposed to actual pro-competitive policy. Conduct you have got the power to address. That's why you are here. If there has been a conduct violation, you can go for it.

But in California much of that same perspective is what led to the electricity crisis that we have today. And I have asked Carl to go through quickly the kind of thinking and the momentum that built up to the decision and what happened in hopes that that will give you some guidance from that.

Carl.

MR. DANNER: Well, let's take the next slide, please. And we will turn from your potential headache to our genuine headache. And this slide points out that the origins of the current crisis actually lie in flawed responses to past crises. We have been at this awhile, and history is repeating itself. It just gets worse each time.

Back in 1978, what I guess I would call energy crisis number two that occurred, and that was, of course, a nationwide problem. Congress took a good idea, which was that we didn't need to have a monopoly in electricity generation, particularly with respect to new and innovative technologies, alternative forms of generation, and so on, and very efficient cogeneration.

So Congress required that utilities purchase such power from so called qualifying facilities, and they qualify under PURPA. That is what the QF means in the second bullet up there. And state commissions would set the price. This is where the California Commission adopted a market vision. And the California Commission's market vision as adopted in 1982 was that basically things were going to go to hell in a handbasket. We were going to have $100 oil, we were going to have a slow economy and high interest rates and sort of calamitous economic conditions indefinitely into the future.

They also felt that if they adopted a generous attractive price to attract competitors that they would get more cogeneration, alternative generation than otherwise. Well, that turned out to be the case. Because they set this price in 1982, the market completely changed around in 1983 to '84 for those of you who may be familiar with it. The price of oil collapsed and we had what was called the gold rush. At the conclusion of which in 1986 we had 15,000 megawatts of high-priced alternative generation under contract for 20-year periods. The first ten years of which were really the high prices.

The problem there was that this market vision the Commission adopted which looked somewhat sensible at the time not only proved untrue, but government took too long to change course once the problem was revealed. And this is a theme that we will repeat.

By 1993 on the last bullet point, large customers were tired of paying these costs and wanted something done about it. They wanted direct access to what by that time was a very attractive spot market for electricity, fueled in part by the excess capacity that had been brought on line previously. So let's go to the next side and see what happened.

The response in 1996 was that the Commission and the California legislature adopted a new market vision, and this market vision was one of cheap market power. There was going to be 2.9-cent wholesale electricity indefinitely into the future. Everybody was sure of that. They were also sure that utilities had a great deal of market power, because utilities had a lot of generation plants and they were very concerned that utilities not be able to exercise that market power to the disadvantage of consumers in the new market environment.

So we got a plan. And the essence of the plan was that utilities would be very strongly encouraged, only because they couldn't quite require it, but it amounted to the same thing, to spin-off at least 50 percent of their natural gas-fired plants, which was the marginal fuel, and a large proportion of our generation in California is natural gas. There is a rate freeze for four years for retail customers. There was the assumption that there would be a very cheap wholesale market through what was called the power exchange, the Commission created the power exchange. And for four years the utilities would get the benefit of paying off their stranded costs of past investments by the difference between this cheap wholesale price of power and the frozen retail rate. And if in four years it wasn't enough, that's too bad, the rate freeze would be over and the utilities would be out the remaining stranded costs and all consumers would then share in the benefit of this cheap market. That was the market vision and it was set in place by a very rigid set of institutions and rules that the Commission created in pursuing that market vision.

As you see in the lower half of the slide, and actually as is great coincidence articulated very well in today's Wall Street Journal in the front right-hand column, there is a terrific article about one of the dimensions of the crisis that kind of lays some of this out. Everything went sideways. Wholesale power prices starting about the third week of May last year skyrocketed and have only barely come down in the last month. Utilities were destroyed financially by the rate freeze, which the Commission actually as far as the utilities are concerned still hasn't lifted. The state decided to substitute itself for the utilities instead of rescuing their credit to buy power. PG&E has declared bankruptcy, Edison might as well. And when I wrote $20 billion down there, the only problem is keeping up. I think based on the numbers in today's paper it is probably 21 or 22 already in power purchase losses collectively by the State of California and the utilities.

Let's go to the next slide. So what does that teach us in terms of these concerns about visions. Well, obviously the first point relates to the notion of market power. Unfortunately, and to great fanfare in the press, when the utilities ended up selling off all of their fossil fuel plants with the Commission's approval and encouragement, the power from those very same plants then had to be bought back at not 2.9 cents per kilowatt hour, but 20 to 30 cents per kilowatt hour and more during the last year or so.

So, the breakup of the electric utilities to avoid market power ended up putting us right back in the teeth of market power, and market power in a fashion that really wasn't anticipated. Because we didn't really understand how these generation markets would work if kind of unfettered, and it turned out that a lot of participants had a lot more market power than was believed. It just turned out not to be the utilities. In fact, there was even a little evidence that utilities were trying to use buyer market power to fight the other way, but it didn't work.

The cheap and effective spot market, the second bullet up there in the power exchange. The Commission was so convinced that it had the right version of how to structure the wholesale market that it prohibited the utilities from buying anywhere else and even prohibited them from hedging, buying forward, writing long-term contracts with only a few minor exceptions until the very end because the spot price was the right price. The spot price was the best price. It was created by the market restructure and so that is the one at which you should buy. And that is the one that went haywire eventually to the point of actually destroying the power exchange, which has now gone bankrupt itself.

Let's go to the next slide. I spoke about the difficulty of changing course when things go wrong with your market vision that you have set in place. Unfortunately, Governor Davis has been a victim of that in spades. He gave speeches repeatedly and made public statements throughout the winter about there would be no need for a rate increase of any kind to solve this problem, even as PG&E was losing $1 million an hour on the electricity it was buying for months.

And, unfortunately, as with any financial crisis, they don't self-correct, you have to take action to correct a financial crisis. And because the response was delayed, and actually it was delayed only three or four months really from when it might have been of greater help, the consequences you see there occurred.

In fact, we even had blackouts that were exacerbated by the financial crisis due to the lack of action. Because you may or may not know, California is a summer peaking state and so our electricity system is built to handle summer loads. Yet we had extensive blackouts in the winter. Why did we have that? Well, just as the utilities were becoming insolvent and the power exchange and the independent system operator cleared power transactions on a 70-day lag, so basically if you supplied power today you could expect to be paid 70 days later, power generators took their units off line because they didn't want to generate power for delivery to utilities that they fully expected to be bankrupt by the time they would be paid. So we had blackouts at a time when our peak demands were only about two-thirds of summer levels. It was remarkable.

And then the last point there, the response unfortunately has been too little too late. The retail rates have gone up 40 percent and a large portion of that has been placed on commercial industrial customers, although larger residential users are also feeling the brunt. None of that money has so far gone to pay off the utilities debts, which they are still carrying. Most of it has been dedicated to repaying the state.

And, you know, where things go from here depends in part on a bankruptcy judge, depends on a rescue plan for Edison that is hung up in the California legislature, and depends on the future fortunes of a spot market for electricity from which the state continues to buy large amounts.

Let's go to the next slide, please. The last point here, I guess, is that unfortunately the failure of this market vision has now left us with no going back. The state has committed to over $40 billion in power purchase contracts. These go out some of them 20 years, most of them in the next ten years. And what we have discovered, unfortunately, is who is the biggest monopolist. Because in order to secure the bonds that will be floated to pay for part of the cost of this, the state has essentially outlawed direct access, so that customers will certainly not have a choice of bypassing the state's power purchases. Whether they get any other chance at the market in the next few years we're not sure. We will have to see what plays out.

But the Commission now is poised to adopt an order that basically says that the Department of Water Resources for the State of California can unilaterally decide what is a prudent price for power and require the Commission to pass that through to customers with no reasonableness review or no questions asked. And I guess there is just an irony I couldn't resist in the last point there. I think the customers who were clamoring for electricity restructuring in 1993, by 2003 they will want to go back to 1993, I'm afraid. Thank you.

MR. WILK: In case I didn't remind you when I was introducing us earlier, Carl and I left the Commission before electric restructuring, just to let you know that. See, that hindsight skill that we have just never goes away, I'm telling you.

One of the major lessons here is that this was not a backroom deal. In my twenty years in and around involving state government in California, this was one of the most open deliberative processes that I had ever seen. It involved every single interest group and more. It was a policy that was unanimously adopted by the California state legislature. There was no dissent. And you would have thought assumptions about the price of electricity would at least have fallen within kind of a rough competence level of 50 to 100 percent, but they didn't.

The lesson here is it is surprising just how hard it to is predict where markets and the industry is going. And to bring it a little bit closer to our debate today, just ask any CLEC investor or Wall Street analyst expert about CLEC-to-CLEC investments, who found that the managements of many of the CLECs couldn't execute despite their faith in that model.

The notion here is it should be obvious that big bets are obviously risky, and this structural separation idea is full of risk and the benefits seem highly speculative under some of the best of conditions. Such bets, especially ones that would clearly be almost impossible to reverse, should be treated very carefully with plenty of skepticism. I think it is also wise to recall that the notion of centralized planning and industrial policy has been by now wisely discredited.

Unfortunately, a lot of what happened in California admittedly they were on the forefront of electric restructuring, was basically the first big step. Most states have not fallen into that. But it was a highly overly centralized managed approach, as Carl has suggested. And it is easy to look at California and be critical, and to some extent we are. But no one could have dodged all of those bullets and many of the same pressures and uncertainties that stalled California's reaction to a quickly mounting crisis could operate in any context.

Next slide. It should be obvious now that changing technology only makes all of this dicey, and that is what this industry is all about, telecommunications. Assuming the permanence of a monopoly loop in the face of these huge advances in wireless and other telecommunications technologies is a dangerous assumption. Especially on which to bet the entire future of Florida's telecommunication industry. It is likely there will also be some type of retail price impact at some point, especially if you want to avoid the debacle that befell California, where despite wholesale cost pressures, retail rates remained frozen. Very sticky in the upward direction even as utilities went insolvent. Mr. Pociask is going to be discussing that in just a minute.

So I guess the real question here for you is is the cure worse than the imagined disease. Preventive measures, I heard a lot about this when I was on the Commission. You have got to prevent something that could happen. The coulds in the world tend to shove you in the wrong direction. The preventive measures based upon vague assumptions and some obvious economic self-interest that plays on the traditional regulatory sensitivities we find in all regulatory agencies can quickly turn sour and messy. And, once again, where is the real world consumer in all of this.

Let me just turn to the last slide and give you two final points. Most outside experts agree that California failed because it sought to overly regulate its way to deregulation. The end game is supposed to be about competition and deregulation, that's what the Act says. But it is clear that this proposal of structural separation means permanent and highly intrusive regulatory enforcement and intervention. We also know the Act created and assumed many alternative avenues for competition and market evolution, not just one. This proposal doesn't, in my opinion anyway, measure up to the Act's visions or intentions.

The last point I would like to leave with you is just a personal one based upon my perspective as a Commissioner. All Commissioners kind of leave these jobs with certain things that they kind of remember as they go through very complicated issues. This is controversial stuff. No one has all the right answers. There is no silver bullet here. But given my experience in this, there were kind of like five tests, I wrote down five tests that I remember kind of using somewhat subtly and sometimes explicitly when I viewed controversial issues like this.

The first and foremost was is there genuine customer interest and demand in any of this. When was the last time you heard a consumer here say, "This industry isn't complex enough, I want more complexity"?

Secondly, where is the balance of cost and benefits? Are they tangible? Are they speculative?

Thirdly, what are the implications for regulatory policy in terms of complexity and cost, not just on ILECs, not just on CLECs, but everybody. There is a cost, a downstream cost that everybody gets affected by, and it could very easily be substantial.

Fourth, what is your exit strategy? What if this thing blows up? Where do you go? How do you reverse it? You can't. I don't think you can.

And lastly, the straight face test. Who really wants it and why do they want it?

So with that, thank you very much for your time. We appreciate being here.

COMMISSIONER DEASON: Thank you. Questions, Commissioners?

COMMISSIONER PALECKI: I have one question. You have discussed the fact that structural separation would result in greatly increased regulation. I'm kind of looking at structural separation as creating a CLEC to serve retail and a wholesale company that would have price regulation, and a rule that all retail customers would be treated -- all of their customers, who would be the retail CLECs, would be treated equally. Is there any further regulation than that that I'm not looking at?

MR. WILK: Everything you just described has a line that is drawn. Every line has rules. Every line has conduct on both sides of it, and a few footprints right on top of it. The vision of where it will end and the reality of where it is likely to end could be very different things. But to me I think that everything you just described is hard to argue with. But the bottom line is that there is lots of regulation involved in that.

I mean, when you see the amount of involvement from the industry in the little decisions that you do here, can you imagine what is going to be downstream? As you create that model, which we hope we have at least given you some thoughts about why we don't think the model is going to result where you say it is going to result, but just getting there is going to involve an incredible amount of regulatory decision-making and enforcement.

And every time that model doesn't quite achieve the benefits promised to those who wanted it in the first place, they will be back saying we have got to redraw it. The line isn't in the right place.

COMMISSIONER PALECKI: One of the things that as a Commissioner I am concerned about is complying with both state and federal initiatives that are telling us that we need to make local competition happen. What alternative can you suggest to structural separation? I know we have heard from Verizon and we have heard about their Pennsylvania compromise. Is that something that you would advocate? Or, if not, what other options do you have that you might suggest?

MR. WILK: I will suggest one thing, and I also want to let Carl jump in here, too. I don't think that you can necessarily make competition happen. I think that is a fundamental -- I think that's an inaccurate premise. I think that you can encourage it to happen, you can't force it to happen.

If there was anything -- I think the problem we have today is a problem of frustrated expectations. And, frankly, I think the industry is as much at fault at that as anybody else that came and was involved in the enactment of the Telecommunications Act in 1996. There was a lot of expectation that all of this stuff was going to happen.

And I think we need to kind of step back and recognize that in the final analysis I don't think we can force competition to happen, we have to invite it. That's why Congress very specifically did not say that it was an effective competition test. There wasn't a market share test. They said it has got to be open.

If I had one word of advice to the Commission, and this is not a easy one, I will tell you again we have been through it in California. It's not easy, but it can be done. The best way to invite competition is to reform your pricing. Probably the most anticompetitive thing you can do is to have prices that are far below cost. Because there isn't a competitor out there that is going to come in and say, I'm going to win that customer by even losing more money, because they won't. Unfortunately, the realities of basic economics is that pricing has to -- I mean, there needs to be some kind of a profit motive to be involved in a market.

Carl.

MR. DANNER: Just two other thoughts. You have heard reference earlier today to the 271 approvals and the impetus they seem to have given to competition. I'm kind of surprised at how large the effect has been. But, you know, you want to see a controlled experiment, there are some states that have 271 approval and some states that don't and apparently it makes a big difference in the market. I know that is probably a subject of other dockets, but generally speaking.

The last point is more subtle. Competition needs to be better measured. You know, when people say -- I mean, the nationwide share of CLECs now is about ten percent, their share of lines or revenues or whatever, you know, roughly speaking. But the number of people, or the number of businesses, or the proportion of revenues that actually have choices about what to buy is much larger, because not every person who has a choice makes that particular choice. So when people measure the extent of competition and refer just to a market share number, that is slightly misleading.

That is like saying your family doesn't have a choice in cars because you don't buy an import. Well, you could have bought an import, or you could have bought a non-GM car, or whatever your preference is, but you didn't, so you have competitive choice. Now, I don't know how high that drives the numbers and how far you can get with that, but I will say that if you are going to talk about competition and how well you have done with competition and measure competition, you have got to get a sense of how big the market is, not just what one player's share is. And the market, the competitive market is as large as those customers who have a choice, even if they don't exercise it.

COMMISSIONER DEASON: Thank you.

MR. WILK: Thank you very much.

MR. LACKEY: Mr. Chairman, pursuant to my earlier comments, Mr. Pociask will speak next and I will take whatever time is left.

COMMISSIONER DEASON: Very well.

MR. POCIASK: I would like to thank the Commission. My name is Steve Pociask, I am President of Telenomic Research, it's an economic consulting firm located in the Washington, D.C. area. I have worked on telecommunications issues for over 20 years, worked on long distance competition, local competition, I have testified for Congress on broadband issues.

My first structural separation paper for telephone industry was in 1998 in regard to the LCI proposal. And a lot of my studies deal with the consumer welfare aspect of policies. I measure the cost and benefits of those. And today what I'm going to talk about is a quantification of the cost and benefits. First, look at what structural separation will bring to Florida. I have conducted a study and it is here today that discusses what structural separation will do to the Florida operations of BellSouth, and I'm here on behalf of them.

Before I begin, there is something I want to talk about. I have heard a lot about petitions across the U.S. for structural separation, it appears to be somewhat systematic. What I haven't heard in the last two days has been empirical evidence that has really said that there is a problem here. So for a second I just want to stop before I begin and just give some evidence about what is going on in the telecom industry from what we see.

For example, if we look at the latest Bureau of Labor statistics figures for the telecommunications services, excluding radio telephony, which is cellular and wireless, in the last year -- the latest month, by the way, was May, 2000 -- we have a record number of employees over the last decade, 965,000 employees. The percent change from the previous year was 34,700 jobs. This is not a depressed industry. And if you go back over time and you look at the growth in this sector, this is primarily the local and long distance sector, this does not include wireless, that would be much greater. We have seen since the Telecom Act at least 30,000 jobs being created each year. Prior to the Telecom Act --

COMMISSIONER DEASON: I wonder how many of those are lawyers?

MR. POCIASK: That's a good point. I will have to look at that. But prior to the Telecom Act, however, we have had negative growth. So, you know, if we look at it in terms of the macro view, there doesn't really appear to be problem here. But let's look at the CLEC line growth and what we see there, too, is that CLEC line growth is growing at pretty healthy clips at 2 and 3 digits.

For example, today the FCC -- well, the FCC released a report a short while ago that looked at data through December 2000, and demonstrated that 35 percent of CLECs reach their customers by their own facilities, and that is growing at 102 percent. And when we look at how local competition is developing versus how it developed in the long distance industry, we are seeing that if you start them at the same point in time, that it's growing at almost twice the rate that market share is changing hands.

If we look at the number of CLECs that are filing with the FCC, there are twice the number of CLECs than there are IXCs filing with the FCC. Now, some of that may be anecdotal, but it offers empirical evidence that the picture isn't as bad as we hear. And so with that I want to leave you with that thought and then proceed to discuss my study.

What my study shows, it looks at -- it structurally separates the BellSouth company into what LCI had referred to as a NetCo, which is the wholesale or LoopCo company into a ServeCo, which is the retail entity. Similar to some other studies that I have done on the subject in '98 and as recent as a couple of months ago for Michigan, the results indicate that structural separation creates an imbalance in the wholesale and retail entities. From our last speakers we heard a little bit about what happens when there is an imbalance between wholesale and retail. And, in fact, as I go through the study and I will show the implications are strong that structural separation is unworkable.

What happens is it leads to a NetCo, the wholesale company, that is not financially viable. And the result of that is that there is a disincentive to invest in the network, so there is a risk of lower service quality. And the alternative to saving NetCo, if you assume what it sells essentially are wholesale services, it has to raise those wholesale services. If you raise wholesale services, then you are raising them for the ALECs, who may, in fact, pass that along to retail customers. So how does that advance competition as the proponents of structural separation would suggest?

But the bottom line, and what I'm going to demonstrate today with the evidence from the study is that structural separation is not good for consumers. I don't want to spend too much time on exactly how it was done. There are some -- it's quite an extensive model. But just to give you an overview, I go through a complete structural separation so we have a separation of management, expenses, capital. I assume that services provided to the end user will be supplied through ServeCo. Wholesale services are provided through NetCo. And if there was any reason to put them one place or the other, I always erred on the side of NetCo. Give the earnings to NetCo, so I would consider this while I say a best case, what I mean by that, this is an optimistic view for structural separation. If it doesn't work, it's not going to work here.

What we do here is I'm assuming that ServeCo is going to use UNE services to supply all the retail, you know, to meet all the customer needs for retail. And it is going to be buying them at the same rates that the other ALECs are buying them today. So, if you look at the services I pass along through the end user services to ServeCo and then NetCo you see will supply things such as transport, the UNE, the resale that it is currently providing CLECs today. Special access I assume to stay with them, so they provide services to ISPs and cellular providers. I made an assumption that NetCo will receive the full benefit of operator services, directory, inside wiring. It's probably the case that they won't get the full benefit of that, but let's err on the side of NetCo here.

When you get to the expense side, I used the Commission's estimate of avoided and unavoided costs to split up the expenses between the companies. And as you see, ServeCo will also have to pay for the UNEs. And when we get down to the plant and equipment side we will also see that the network essentially stays with NetCo, and that is the central office, switching and transmission, cable and wireless facilities which already account for 88 percent of the company.

Now we can play with how we want the others to go. And what I did is I put the terminal equipment over into ServeCo. I assumed most of the tools go with NetCo, because after all that is where the garages and the outside plant folks who would use that are. And then things such as furniture, buildings, land, PCs, I just split it evenly. Now, we could contend that more of that plant should go with NetCo since they have more offices, more facilities, maybe they should have gotten more of the furniture or they should have gotten more of the land. Maybe they should have got some of the terminal. But if I move more plant there all I'm going to do is saddle them with the need to bring in higher return. But anyway, this is one view and I call it the best scenario.

I would like to just move ahead and just show some results. Before I do that, though, I want to talk a little bit about the additional costs for structural separation. We have heard people talk about it, and I would like to touch on that just a bit. What my model is going to do, first, it's going to assume that there is no cost for structural separation, which we know isn't the case. We know from Pennsylvania that the question was not whether or not there would be costs, but how much those costs would be. So we know they are going to be positive. But nonetheless, my first scenario will be that there is no costs. And then what I will do is I will show some other alternative to show what will happen as costs go up, so we get a sense of the sensitivity of this.

Structural separation will lead to diseconomies of scale and scope. Some of the presenters have stated this much. There will be a loss of benefits from vertical integration, loss of joint services. The ability to spread overhead joint and common costs over multiple products will be reduced. We see today that wireless companies, they offer both wholesale and retail services. We see that AT&T and other long distance providers offer wholesale and long distance services, and they do that because consumers benefit when you put more services on that infrastructure. And so the structural separation in effect takes away the ability of the firm to be able to take advantage of the economies of scope.

What we see here is just an example that there will be a duplication of services. Additional systems that might result. There is going to be more transactions, and more transactions will mean more labor, more investment as a result of structural separation. In short what we have is more inputs to produce the same level of output. That by definition means that total factor productivity for the firm will decline.

Now let's go on with the results. What the study indicates is if you look at the scenario with no additional costs, there is such an imbalance between NetCo and ServeCo. Net-co does not get enough revenue from those UNEs to hold itself as a viable firm. So, in effect, we see that --

COMMISSIONER DEASON: Excuse me for a moment. What UNE rates are you assuming?

MR. POCIASK: I am assuming the Florida Commission's rates.

COMMISSIONER DEASON: And the retail operation, they would be paying those same rates that the CLECs are obligated to pay now?

MR. POCIASK: Absolutely. So what we see here, it's about a 2.3 percent return on plant in what I call the optimistic view or the best case. What is interesting here is if you try to reach a balance between wholesale and retail so you raise the UNE prices to the point where you try to find that balance. So by raising the UNE prices, in effect, you are increasing the expenses of ServeCo. And so you try to find that balance. You would have to increase UNE rates by 45 percent to reach a 10.24 percent return. I just picked 10.24 so it would be in line with the UNE docket.

Now, if we impose what I have labeled as the minimal case, this is the case that is in line with what AT&T presented in the Pennsylvania hearings. I referred to it as minimal. And what I did is I superimposed those costs as a percent of operating expense onto the BellSouth company just to illustrate what the reaction would be. And as you can see, as you increase the costs for structural separation, obviously the earnings of the plant falls. The extensive view is the one billion or $800 million number that was also introduced in Pennsylvania by Verizon. But this sort of illustrates what is at risk here. That extensive view would require UNE rates to increase by 63 percent for NetCo to reach a 10.24 return.

COMMISSIONER DEASON: I'm sorry, could you say that again, please.

MR. POCIASK: Because --

COMMISSIONER DEASON: Just what you said, just say it again.

MR. POCIASK: Under what is labelled extensive, that view, the UNE rates of NetCo would have to increase by 63 percent in order for ServeCo to reach a 10.24 rate of return.

COMMISSIONER DEASON: Okay.

MR. POCIASK: And at that point because both ServeCo and NetCo have additional costs, those firms will never be in balance again. So just wrapping up here, and then I have some other issues I wanted to address.

COMMISSIONER PALECKI: I would like to ask you another question. Could you return to the previous slide?

MR. POCIASK: Yes.

COMMISSIONER PALECKI: If you take the earnings that are being made by BellSouth today as a result of serving CLECs, what would it look like on this chart? Today without a structural separation, just as the company is operating in its present mode.

MR. POCIASK: I have to speculate a little bit on that. Now, if you assume that ServeCo will look much like a CLEC, that they have the same, like, unavoidable costs or those costs that NetCo avoided, for example.

COMMISSIONER PALECKI: Yes.

MR. POCIASK: If you look at that, I think you would be pretty close to the no additional cost view. And, you know, again, you know, so what it shows is that the UNE rates are not paying enough to NetCo.

COMMISSIONER PALECKI: But that would be based upon 100 percent of the load. I'm asking where would we stand on this chart today with the present service of CLECs by BellSouth, what return on investment would we be looking at right now?

MR. POCIASK: I'm not quite sure, but I would believe that if 100 percent of the load -- to use your term -- produces a 2.3 return, then I would imagine that serving a smaller portion of CLECs would be more costly in that sense. I'm not quite sure what the costs would be because that is not something that came directly from my analysis.

COMMISSIONER PALECKI: Thank you.

MR. POCIASK: Sorry. So just in review of the findings, first. As I have stated, NetCo finds itself in financial turmoil. That position discourages investment. Who would invest in a company that has virtually no return? Where are the retained earns of the company to plow back in the business? So the result is if you do nothing, if we structurally separate the Commission will have to deal with a situation of deteriorating service quality or they will be forced to raise wholesale rates.

But if you raise wholesale rates, then the ALECs that rely on those UNE prices will be forced to pay higher prices, as well. And what my study shows is that even with no additional costs, a structural separation because of the wholesale price increase necessary to balance the wholesale and retail networks here, it will result in about an 11 percent increase for ALECs. If you include the costs of structural separation as the extensive view, what we see here is that the UNE prices would have to go up 63 percent as I mentioned. That results in an increase to the ALECs that would flow through at about 27 percent, or $5.42 for a customer paying, say, a $20 bill.

COMMISSIONER JABER: Mr. --

MR. POCIASK: Pociask.

COMMISSIONER JABER: -- Pociask, let me ask you to step back for just a minute and talk to me about your observations from an economic standpoint. Your first statement, leaves the NetCo unprofitable, discourages investment, those were precisely the arguments that were made against the Telecommunications Act. Certainly in conjunction with resale offerings and collocation services, for example, that those kinds of tools would not incent the Bell companies to continue with investment and the system, the overall system would be jeopardized, right? Those were some of the arguments made.

Now, what I have observed just the last few years is the reaction from the ALEC industry has been to find other niches or additional innovation, additional technologies. And the result has been reinvesting or certainly changing the investment and looking at things like DSL. And BellSouth in particular this year has experienced record earnings in DSL. I'm wondering what from your experience you would envision happening if a wholesale ILEC company was established through structural separation, what that wholesale company would be inclined to do. I don't think they would close their doors and fold. I think, based on my experience, they would find a new investment, and that investment might be other technologies.

Can you comment on that?

MR. POCIASK: Right. Well, first, when you structurally separate them, you are already preventing them from doing some of the things they could have done.

COMMISSIONER JABER: Like what?

MR. POCIASK: A retail service.

COMMISSIONER JABER: You said earlier there isn't any empirical data. I need that. I need for you to --

MR. POCIASK: Well, if they are going to be structurally separated into a wholesale service, then what you have done is you have prevented them from becoming a retail service. So there is already some services they can't provide. So what they can do essentially is expand and try to innovate as you have suggested in the area of wholesale services, for example. I would suggest that if those opportunities are present, and I believe they are, they would be just as present before structural separation as after. So structural separation doesn't help innovation. And it may, in fact, deter it because you have already limited the possibility for the firm to move into retail services.

COMMISSIONER JABER: Okay. Then let me ask you a similar question. Then how do we incent the ILECs to change their philosophy as it relates to the ALEC customers and recognize that those are customers, too? If structural separation isn't the way, isn't the way to do it, and the performance measurements are not going to be quote, unquote, adequate, then how do I incent these companies to consider all customers regardless of whether it is an end user or an ALEC?

MR. POCIASK: I believe that the current process is working. I think what we need to do is we need to put certain measurements in place to make sure that they work. And I also believe that there need to be certain safeguards in place to do such. I am a believer that -- I am a believer that the process works. I think it needs more time. These things don't happen overnight. And as I --

COMMISSIONER JABER: Would you be an advocate for a code of conduct, then?

MR. POCIASK: Well, my understanding is that such a code of conduct exists in some companies today. I don't know exactly what that would entail. But I wouldn't -- I would think that some sort of recognition that -- I mean, the company should have incentives to provide those services upstream as well as downstream. And if, in fact -- you know, if, for example, there were a rationalization of prices on the retail side, I mean, we have in Florida the highest residential flat rate of $10.81. And with that sort of price it is very difficult to incent other firms to enter that market.

So part of what we are seeing today in terms of whether or not the market is developing quick enough is partly responsible because of the prices. But I don't think consumers are complaining about that. The firm has to be set up in a manner so that -- and I believe many are today already where they have their own wholesale, they have like an access carrier group that they have handled -- AT&T, Sprint, and MCI are the biggest customers of the company anyway, and so they handle those customers as they would -- and the salespeople are incented with bonuses based on that. And I think these firms probably have that.

And so there is an incentive to provide those services upstream and downstream in an equal fashion. What makes that work is that the prices are correct. And what structural separation does here is it exposes a subsidy between the wholesale and retail networks.

COMMISSIONER JABER: So then as it relates to Page 6, your numbers assume that the wholesale company that remains is only a loop company, then. It doesn't assume that the wholesale company has made any other investments.

MR. POCIASK: Absolutely right, yes. This is a static change. I didn't assume any change in demand, I just said if we had to do the year 2000 over again what would it look like.

COMMISSIONER JABER: Okay.

COMMISSIONER PALECKI: Mr. Pociask, did you hear the testimony yesterday of Rodney Page?

MR. POCIASK: No.

COMMISSIONER PALECKI: He testified that it was the sincere desire of his CLEC to become a distribution channel for BellSouth's products. And he envisioned his company as partnering with BellSouth, working with them to both companies' mutual benefits. And he further discussed how that has not happened. And I come to the inescapable conclusion that the reason it hasn't happened is because BellSouth might make a dollar or two a month off of, let's say, a residential customer by providing services to a CLEC. They will make the entire amount of that customer's bill, $20-plus a month by providing service to the customer directly.

So how can you say that a company like BellSouth would be motivated to partner up with CLECs, their competitors, when there is so much more money to be made by serving the retail customers directly?

MR. POCIASK: Well, I'm just stating that if the prices were correct that you should be able to find a point where you could serve someone -- that you would be indifferent about serving upstream or downstream if the prices were correct. But what we are seeing is that the UNE prices may be low, so in that sense what you want to do is just continue to enforce, you know, the rules of the Commission and make sure that we have safeguards in place, measurements in place that, in fact, there is no discrimination between the retail and wholesale. I mean, you know, what I am reporting to you today is the findings of a study which suggests that structural separation goes way too far in terms of trying to correct what appears to be a problem that I believe the Commission can work with the current process.

Now, there may be some other incentives here that it is worth exploring in terms of, well, if after all what I'm saying here is the ILEC is not better off because we see that NetCo suffers, and we see that, you know, those ALECs, therefore, who buy from NetCo are worse off, as well, and consumers are worse off, as well, then the question we should ask is then who benefits and why does anyone want structural separation? If you have a minute I can discuss that.

COMMISSIONER PALECKI: Well, I'm more interested in hearing what you had previously mentioned, and that is incentives or motivation to make it more attractive for an RBHC to work in a cooperative way with the CLECs. I think maybe that is not your exact language, but you had just touched on that there could be other incentives, and that is what I would like to hear about. What are those other incentives?

MR. POCIASK: Again, I will touch on that, but you need to know that -- again, what I am reporting here is something from a study, and I don't have any evidence that BellSouth has done anything incorrect. So, you know, what I am -- but it sounds like what you are saying is that there is a problem and some folks may have suggested that here today, but I have seen no evidence of it.

You know, I would think that the current testing that we go through with the 271 process is an important step in making sure that BellSouth can handle the complexity and the volume of calls and that they have flow-through of the process so that they can serve both retail and wholesale at an efficiently and pretty much on par with one another. That's one thing. And there should be measurements then in place that carry on to suggest that, in fact, is happening. And then what is the problem with -- what is the next problem? If that works --

COMMISSIONER PALECKI: Well, I guess the problem I have is if an RBHCs sees equal profit from serving a wholesale customer or a retail customer, basically the monies that are coming into BellSouth are identical under either option, where is the profit available to the CLEC? It almost seems as if it eliminates that margin.

MR. POCIASK: I think what we are seeing here, if you look at ServeCo, when we assume no structural separation in that scenario, what happened was those revenues were going to ServeCo. So, in effect, there is no reason to believe at today's UNEs that the CLEC shouldn't be profitable. I mean, after all CLEC line growth in the U.S. is increasing at nearly 100 percent year over year. So I'm not sure that there is a problem.

COMMISSIONER PALECKI: Thank you.

COMMISSIONER DEASON: Could you refer back to Page 5 of your handout.

MR. POCIASK: Okay.

COMMISSIONER DEASON: I have a few questions about this, and I don't mean to oversimplify it, but to me it reaches certain conclusions, and I'm going to want to talk to you about those and tell me if I'm wrong, okay. First of all, let me -- I assume that right now BellSouth as a total company is earning much higher than 2.3 percent on its net plant. That's a reasonable assumption to make.

MR. POCIASK: Right. And the model of what I set up it was running at -- I believe it was about 15 percent.

COMMISSIONER DEASON: So, if we divide the company, and the NetCo is only going to be -- under the no additional cost scenario, for purposes of this question. If the NetCo would be earning 2.3 percent, then the ServeCo is going to be earning much higher than the number that you utilized. What was the number you used for the total company? What rate of return for the total company, 10?

MR. POCIASK: Oh, the total company? 15.

COMMISSIONER DEASON: 15. So, the ServeCo is going to be earning well in excess of 15. I don't know what it would be.

MR. POCIASK: Right.

COMMISSIONER DEASON: So by splitting BellSouth we have unleashed a competitor which on day one is earning much higher than 15 percent, how much higher I don't know. If I were a CLEC, I'm not so sure that I would want that as a competitor. What is your reaction? Because it appears to me, if you are earning that high of a return, you can -- the ServeCo could try to keep those margins or they could lower their prices which makes it even more difficult for the CLECs to continue to get line growth.

MR. POCIASK: That's a good point. I didn't think about that.

COMMISSIONER DEASON: You would agree with that, then?

MR. POCIASK: I think that there would be a risk. That what you have done is you have made one entity poorer and you have made the other one rich.

COMMISSIONER DEASON: Okay. Now, let's go back to the poor entity, the NetCo. I would think that 2.3 percent return on net plant is not sustainable in the long-term, correct?

MR. POCIASK: Right.

COMMISSIONER DEASON: It's probably lower than their cost of capital. So either NetCo is doomed to fail or else it's going to have to increase its revenue. And if its revenue is only from wholesale sources, that means that UNE prices are going to have to go up, is that correct?

MR. POCIASK: That is correct.

COMMISSIONER DEASON: Now the question. Assume that NetCo meets the definitions of a regulated entity, and we have had testimony as to whether it would or would not and we really don't know the answer. If it is a regulated entity and it still has the requirement under the Telecommunications Act to provide its access to its assets at TELRIC, would it have the ability to increase it's revenue or would it have to continue the charge the same rates as it does now?

MR. POCIASK: Which entity?

COMMISSIONER DEASON: Net-co.

MR. POCIASK: Net-co.

COMMISSIONER DEASON: Because under the Telecommunications Act it has to provide access to its assets at TELRIC, and that's what generates the 2.3 percent return, correct?

MR. POCIASK: Right. Well, what this does is this forces you to have to recover more than incremental costs, I believe.

COMMISSIONER DEASON: So there would have to be a change in the Telecommunications Act of '96, would there not?

MR. POCIASK: Right. Or you would have to markup the TELRIC prices. You would have to --

COMMISSIONER DEASON: Well, do we, does the Florida Public Service Commission have the ability to charge something higher than TELRIC for UNE, or is that mandated by the Telecommunications Act?

MR. POCIASK: I think commissions do markup the TELRIC to recover some joint and common costs.

COMMISSIONER DEASON: Okay. All right. Any more questions, Commissioners? Thank you.

Mr. Lackey, we have been successful in asking just enough questions where you have no time left.

MR. POCIASK: I was just going to make one point if I may.

COMMISSIONER DEASON: Sure.

MR. LACKEY: He is going to take the rest of my time.

MR. POCIASK: You know, the one point is that if everyone is worse off, who is better off. And I just want to make a point that facilities competitors, such as the petitioner, may actually be better off because what they have done is they have taken their competitor and raised the costs of the competitor, raised the prices for the ALECs that use the competitor's network, and deteriorated the service quality of that network. And that makes the facilities-based competitor better off. And that is another point just to think about here. Is that the petitioner, themselves, somebody does benefit from this. So what we talk about what might be in the public's interest may actually be in the self-interest of a few. Thank you.

COMMISSIONER DEASON: Thank you. I didn't mean to cut you off. For some reason I assumed that you had finished, but I do realize that you had one last page.

MR. LACKEY: Mr. Chairman, consistent with my earlier remarks, I will just save the rest of what I have to say until my closing.

COMMISSIONER DEASON: Very well. We will take a recess until 4:00 o'clock.

(Recess.)

COMMISSIONER DEASON: Staff, I believe we are at the phase now where we are going to have basically what constitutes as thirty-minute closing argument or summary from each side, is that correct?

MS. LOGUE: Yes, Commissioner, that is correct. There will be closing remarks by both the ALEC side and the ILEC side. Each side has graciously chosen their representatives, and the ALEC side represented by Mr. Lamoureux and Mr. Gillan will go first.

COMMISSIONER DEASON: Very well. You may proceed and you are now on the clock.

MR. LAMOUREUX: I will speak very briefly on the jurisdictional issue and then Mr. Gillan will speak on the rest of the issues. First, I want to return to some core principles. Where we are procedurally in this docket is a motion to dismiss, that is what BellSouth has filed procedurally in the docket, that is where we are in terms of the next action that has to occur by the Commission.

I want to return to some core principles about what we should be talking about on a motion to dismiss. The first one is on a motion to dismiss you must accept the factual allegation as set forth in the petition as true and construe allegations against the movant on the motion to dismiss. That is the legal standard for deciding a motion to dismiss.

Second, I want to remind everyone although this may be obvious, the primary legal issue that we are at right now is whether you are powerless to continue this investigation. There has been a lot of discussion the last couple of days about the merits of structural separation. But in terms of the legal issue, that is not -- those facts are not dispositive of what you need to do to decide the motion. The motion is purely a question of your authority as to whether you can continue this investigation or whether you have to stop it right now and hear no more facts.

And, in fact, all the discussion that you have had -- or heard, rather, in the last two days are good reasons why you should continue this investigation. There is merit in the discussion that happened the last two days. Those are all valid issues, valid concerns that need to be heard by this Commission. And that's why the Commission should decide it has jurisdiction and should continue this investigation and should continue to explore all of the issues that it has heard some preliminary discussions about in these last two days.

In terms of your authority, I think we have all agreed there is no dispute that you have implied authority to act consistent with the intent of the legislature as set forth in the statutes. There was a little bit of discussion about express authority, but I think it's clear that in terms of implied authority, there is no dispute, you have authority that can be implied from the statutes.

As long as the investigation that we are requesting in the petition is consistent with the intent of the legislature as set forth in the statute there should be no doubt that you have jurisdiction to continue the investigation into structural separation. That is the only decision that you need to make is whether the request to investigate structural separation is consistent with the intent set forth in the statute. As long as it is, you should conclude that you have the power, the authority, and the jurisdiction to continue this investigation.

The slide I call 1, 2, 3. Mr. Meros in his opening presentation presented to you a syllogism, and that is how I think of how this argument needs to come down. It is a very simple syllogism.

First, you have the broad authority to regulate in the public interest. That is very clearly set forth in the statutes.

Second, competition is in the local interest, or is in the public interest, rather. That is also very clearly set forth in the statutes. It is the intent of the legislature.

More specifically, you have the specific authority and the obligation to regulate to promote local competition. That is the intent of the legislature.

Fourth, structural separation is designed to promote local competition. That is a fact set forth in the petition, it is a fact that you must accept as true for purposes of the motion to dismiss. Those four facts lead to the conclusion you have jurisdiction to investigate structural separation. It is very clean, very simple syllogism. It is very hard to put those facts together in any other way than to conclude that you have jurisdiction to continue with this investigation.

There was discussion yesterday about your jurisdiction to do something less than structural separation, which I think is very telling as to your jurisdiction to implement structural separation itself. There is no dispute among any of the parties that you have jurisdiction to do something less than structural separation, including functional separation. Everyone agreed to that. BellSouth agreed to it in particular.

There is no reason or rational basis to distinguish between that lesser authority and the authority to implement structural separation. If there is some sort of spectrum, and we all agree that at some point in that spectrum, at some point less than structural separation you have jurisdiction, there has never been a single argument set forth as to the jurisdictional argument itself as to why you would have jurisdiction at this line, but not jurisdiction at this next line. There is no analysis in terms of a jurisdictional argument why your jurisdiction is any different for those different remedies.

And consider the effect, if you decide that you have no jurisdiction under the very broad grant of authority that you have under telecom statutes. Other statutes, frankly, are less broad in terms of your authority. If you conclude that you have no authority under very broad telecom statutes both in telecom and nontelecom, it will be very difficult in future cases to conclude that you have jurisdiction to implement remedies. And, in fact, I think you can anticipate many more jurisdictional arguments as to exactly what the scope of your authority is in terms of regulating telecom and nontelecom industries.

I want to conclude with your words. These were the decision that you made in what we call the FCCA proceeding. The Commission said, "Put simply, processes designed to further open the local market to competition are entirely consistent with the purposes and procedures of the Act. If the Commission finds that the requested relief proceedings is designed to achieve that goal and do not undermine the procedures prescribed by the Act, then the relief is well within the legal authority of the Commission."

That paragraph could just as easily be used to describe what we have asked for in this petition as it was to describe the particular remedies and the particular proceedings requested in that petition. There is no rational legal means to distinguish on a jurisdictional basis what was requested there and what is requested here. And I think under your own words, under the law that is set forth you should conclude that you have the jurisdiction, you should continue with the investigation into structural separation, and you should conduct further proceedings to hear more evidence of the type that was heard both yesterday and today, and to flesh out all of these discussions that have been going on. Thank you.

MR. GILLAN: Good afternoon. And I think we will be well within our time limit. You all have been incredibly patient. I want to start, and I have tried to thin this out to just hit the high points of what other people were saying to you. First, I do want to go back to the point Jim was making. It seems to me we have to keep going back to where are we in this proceeding. This has been a great education, educational workshop. But where we would like to be, where I think we need to be is the opportunity to then propose to you through evidentiary hearings more detailed proposals so that then you can select among them functional separation called divestiture. Other proposals do nothing. But it seems to me quite clear that the types of things you have heard today all tend to demonstrate that you should look into this in the detail that only an evidentiary process would afford.

Before I get into some of the substance, maybe this is just a pet peeve, but one of the themes that people came back to you with was this idea is being rejected right and left, why would you want to act on it. And one of the examples of it was Illinois' rejection of structural separation. I happen to have been very involved in the rewrite of the Illinois Public Utility Act. And I don't know what happened in those other states. But it seems to me quite a stretch to say that Illinois rejected this when they really didn't even consider it.

There was in the Illinois Public Utility Act this provision which gave, as I read it, the Illinois Commission authority to impose a structural separation. There was a Senator that proposed a revision that would have mandated it. And it was clear that we could either fight forever on that or just rely on this. And from the ALEC perspective, or the CLEC perspective, pretty early on we came to the conclusion that this was all we needed and that we should spend our political capital in other areas of that bill.

And that bill, quite frankly, in my mind is the most competitive bill in the country and includes a provision which could clearly, it seemed to me, be used for structural separation. So I don't know whether the other states are at the same level of exaggeration. That one seems to me to be an exaggeration.

A lot of what has been discussed with you, I think, seemed to me to boil to don't worry about access to the existing network because there are other technologies. And we want people to invest in wireless, we want people to invest in cable. Don't look at this existing network issue. And the structural separation proposal is clearly designed to help make that existing network open to competition.

Fundamentally, that existing network that the incumbents have today is a by-product of 100 years of cumulative investment. Now, I'm not saying that the facilities are that old. But the time it took to acquire all of those rights-of-way, to develop those customer relationships, to put in those switches, to put in that transmission, to develop that ubiquitous network that sits out there was effectively 100 years.

And there is two competing visions here. One vision is that that sort of inherited by-product under the Telecom Act is supposed to be put out there now for everybody to be able to use the existing network as sort of their baseline and then from this point forward begin making other investments to over time duplicate, or augment, or change that network. But that is going to be another 100-year process.

The other vision is no, this existing network is supposed to be here for the incumbent and if you want to compete with the incumbent, go build your own. Well, those presenters that present that competing vision, they're right. Structural separation isn't really needed if you want to pursue a policy that says go build your own, and that you can't compete for anyone else.

If on the other hand you want that existing network to be available to everyone so that they can then begin the process of introducing new technologies and augmenting with investment, then it has to be made open to people.

My view, if you are at all concerned with getting competition to average residential and business, and I have to keep coming back and say business, because the problem here is for any kind of analog customer that uses conventional phone services today, there just is no practical way to give them service today without having access to this network. It needs to be open. And there are a lot of reasons. First, the whole thing about innovation. The role of facilities in service innovation is greatly overstated in that most of what the network does is a very generic activity. I give you dial tone, I take your digits, I route your call. The things that make products look different to consumers are which calls are considered local, which calls are considered long distance, how much do I pay, what kind of features do I get with it, what is included in the package, what is included in the bundle? When

I pick up the phone, do I get a dial tone or do I get a voice that says menu? And then I can use voice-activated commands to then effect all of those other decisions. You know, I can do all of those kind of innovations on the existing network as a new entrant buying access to that network and bringing out all of those kinds of innovations.

So a lot of the innovations you are going to see aren't going to be tied to people replacing this switch with another switch that is exactly like it, it's going to be people bringing creative new ways of taking advantage of those investments and how they price it and portray it to the customer.

Second, sequence of investment is critical in this industry. We have seen a lot of people come in and think that the way you become a phone company is first you go into debt up to your eyeballs and then try and figure out how do I do customer care, how do I do marketing, how I do build a customer base, how do I price my services. Being a telephone company is a whole bunch of different skills. Some of them require that at some point that you make an investment in a switch or some other piece of equipment, but developing all of that skill set to be an effective telephone company, it doesn't mean you start at the put-a-switch-in-the-ground stage. There are other ways to get to become a successful company.

The one that always sticks in my mind is in the long distance example. In about '85 or '86 I acquired at about the same time two different clients. One was a company called WilTel, they are up in Oklahoma. I don't know if any of you remember them, but they had a bunch of empty pipelines because they were a gas company, and they came across with a great idea that, gee, if we pull fiber through those empty pipelines it will be protected and its kind of a cheap way to get my network deployed and it takes advantage of this asset that is truly sunk cost and sitting idle in the ground. And so they became a network company.

About the same time this guy was running a motel in Jackson, Mississippi, and a group of investors said, "Hey, we want you to come help us with this reseller and see if you can turn it around and be profitable."

Now, over a period of time Wiltel became more and more and more technologically sufficient and proficient building a network. They would be -- in the words of all of those people that were here in front of me, they would be a good competitor because they made a network investment first.

This other guy went out and learned how to be the cheapest provider known to man. Cheap. I mean, I could tell you stories about this guy. Anyway, what he learned, though, was he learned how do I market, how do I support the customer, how do I do all the other things to be a telephone company at a level of overhead that barely keeps my employees dressed.

Now, at the end of the day he ends up acquiring Wiltel about seven years later, because it turned out -- we shouldn't be here judging, but which the market judged -- was that the skills that he was acquiring and the sequence he was acquiring them in was a more rational entry strategy than the guy who built the network. At the end they get married and they make a great company. And they ultimately grow to buy MCI and you know them today as WorldCom. And that guy is Bernie Ebbers, who used to be a lot wealthier than he is today. But nevertheless, I mean, he is like a success story. But he did it trying a different sequence. You can't prejudge it, I can't prejudge it.

Finally, don't ever underestimate the importance of gaining customers. I mean, this may be an oh-duh point, but if you want to have new facilities built, you have got to have competitors. And if you want competitors, they better have customers. That is the gap here in this industry right now is nobody is getting customers rapidly enough to develop revenues so they can get scale to make investment. They start at the other end. Go into debt then look for your customers. It wasn't successful.

Now, what is my other main point, I think you have to understand that by and large the new investment that is going go into this network isn't going to be to replicate the analog phone network, it's going to be to bring new digital services to people. But you also have to be prepared that that evolution of the marketplace from analog to digital is going to take a long time.

Now, these numbers are slightly old because they are from the end of '99, but they give you some idea of how dominant the analog market still is. Verizon has about -- then had will 63 million net lines, 92 percent of which were analog lines. BellSouth, 24,000,000, 96 percent were analog. Yes, new entrants are finding ways to figure out ways to bring digital services to that customer segment, and that will continue to occur. But the reality is this base better become competitive. Because if this base doesn't become competitive that monopoly reservoir of customers is going to be used against those new entrants, and the only way people have found to use to serve this customer group, which is still the largest group of customers out there, is access to the existing network.

Which brings me to my rebuttal of -- I forget the gentleman's name who gave you the -- Mr. Malone. Mr. Malone's story where he called those CLECs and said, look, they are not serving consumers. Well, first, I can tell you right now, he didn't need to call those CLECs, he could have called me and I would have pointed out to him that those CLECs offer digital services, and because they offer digital services they only offer service to large business customers. And the reason they only do that isn't because of the rates those customers pay, but people who buy digital base services, T-1 capacity and above understand that when they sign up with a service provider there is going to be manual provisioning of the service involved and they are going to sign a long-term contract, and those market conditions make it worthwhile for a carrier to go through all the types of handcrafting you have to do to serve a customer.

The mass market, okay, the mass market of residential and small business users, they want to buy service on a month-to-month basis by and large. And you can't have very high costs to initiate service to the customer if they are only going to give you 30, 40, $50 a month. In order to serve that market you need to use an entry strategy that gives you electronic provisioning. I mean, the keys are it has to be an electronic provisioning systems so transactions costs are low, it has to be available everywhere because when you attack that market the way you make money is you serve a lot of people who individually aren't worth a lot, and you have to be able to give broad geographic, you have to be able to advertise in a newspaper or do some marketing system that is mass market oriented.

Now, I have known since the middle of '95 that none of these buy-a-loop, connect-to-your-switch strategies are going to do that for you. And since the end of '95 we have been putting together as an industry the effort to try and get access to network element combinations that would meet those basic criteria to serve these mass market customers.

When I hear Mr. Malone tell me that CLECs won't serve consumers, I almost go apoplectic because I have spent the better part of last six years doing everything I could to convince people to give us this entry strategy so we can go serve precisely these customers. And later this week I will fly to Washington, D.C. once again to continue the battle to make sure that these ILECs make that available so people can go into that marketplace. There is no question that is what is needed, there is no question that it works.

When Verizon was told to go split itself up in Pennsylvania, they had to say, well, how do you intend to serve these customers? And they weren't fools. They said, oh, well, gee, if I have to serve the mass market, I'm going to use UNE-P. Well, if it's the only thing that works and it does work, then why are they trying to get rid of it? I mean, that is the kind of wholesale incentive problem that I'm dealing with every day. This should be their most successful product. It would be their most successful product. If that is their most successful wholesale product, shouldn't they be offering it instead of trying to take it way?

The point of -- to Mr. Malone, all he had to do was look to see what carriers use UNE-P, call them and more than half of them would offer residential service, because that is a mass market strategy. Some of them said don't worry about it, CLECs are growing rapidly. Well, they're right they are growing rapidly. The law of small numbers is still in effect. Math is math. If you have a little bit and you add some, you get large percentage increases.

Every time somebody tells you that this market is healthy because look at the growth rate, you have got to remember on a small base large percentages will always kick out. Most of the growth that they all bragged about is through the same entry strategy they are trying to get rid of. It's mostly UNE-P. The 2 million lines in New York, I will bet you 1.8 million of them are UNE-P.

This is not about 271. First of all, Verizon isn't subject to 271 in Florida and while they weren't included in the petition my sincere hope is they will soon be. The claimed correlation that they will tell you, do 271 and you will see competition, the reality is there were two states that were the first to introduce UNE-P. They didn't make UNE-P available until very close to when they were going to get the 271 approval and that explains the growth. I don't think if you went back and looked at Oklahoma and Kansas where there are other problems in the market, that you are going to see any significant post-entry change in market share, because those other problems are what are controlling.

In fact, 217 approval does not mean that all of these problems have been solved and you can go away. Whatever you do with 271, think of it as a wait point in this process, not an end point. These problems that we are trying to get you to address aren't going to go away and it's important for you to view this structural issue separate from 271. It would help 271, but there is no reason to believe that it -- you certainly shouldn't believe it is here to delay it.

The final presenter in his argument that NetCo is not viable, I find that his presentation almost more than anyones indicates why you need to have an investigation, an evidentiary process. I have done a similar analysis, it isn't identical, but the results that I was looking at were totally different than what he had. Why are they different? I don't know. I can't tell looking at the numbers that he disclosed to you.

I do find it kind of interesting that today and yesterday and tomorrow this same issue is being investigated in Alabama in an evidentiary hearing. And that study was filed here where there is no cross examination, but was not filed there where there is. Does that mean anything? I don't know. But I know that this was the first I have seen of it and the only way for us to get behind those numbers -- because the issues it raises are certainly relevant to you, but now we have to find out the facts.

Even if it is true, though, there are some things to consider. It seems to indicate that there are costs that

BellSouth has on its books that are no longer economic, that they represent old plant that is not relevant in a forward-looking environment. If there were actual facilities competition these would be costs that would be unrecoverable because other entrants cost structure wouldn't include them and the market wouldn't support BellSouth being able to price to recover them. The viability, however, whether or not NetCo is economically viable is a forward-looking cost question in the sense that whether people put money into NetCo and make new investment in NetCo is a question of whether net-co's prices cover the cost of these technologies that they will be investing in and provide them an adequate return.

And so if his analysis is accurate, and there is no way to tell, and as I indicated, I know that an analysis that I have done that addresses a similar but not identical question yielded the exact opposite result. It still doesn't tell you that there is a problem. Because the only problem that it would identify is that maybe there are some costs that they incurred in the past for whatever set of reasons, it may not even be related to telephone service, that aren't finding their way into a forward-looking cost study.

The bottom line is that it seems this workshop has been a very good first step. There is a lot of ideas and a lot of issues that have been identified. But developing a fuller understanding requires that we take the next step and have an investigation. And we are finished. Thank you for your patience.

COMMISSIONER DEASON: Thank you for not using all of your time.

MR. GILLAN: I intend to resell it.

MS. LOGUE: Commissioners, the next presenter on behalf of the ILEC side will be Mr. Lackey of BellSouth.

MR. LACKEY: It would be interesting to see what price he is will willing to resell me that time, won't it?

COMMISSIONER JABER: Commissioner Deason, I know I was late getting back from the break. I had asked Verizon a question. Did I miss the answer to that? It was related to penalties and how they were reported on the annual report.

COMMISSIONER DEASON: That was not discussed. Maybe Mr. Lackey will find the answer to that question or Ms. Caswell can answer the question.

MR. LACKEY: I was going to say --

MS. CASWELL: (Inaudible.)

COMMISSIONER DEASON: Can you get to a microphone, please.

MS. CASWELL: I think the question was whether the penalties are reflected -- any service penalties in the states are reflected in our annual report. And the answer to that, I believe, is no.

COMMISSIONER JABER: None at all. The fines, the regulatory fines and the penalties are not reported in Verizon's annual report to the stockholders?

MS. CASWELL: I didn't think so. But we have somebody here who may know better. This is Mark Mathis. They are not separately identified. They are reflected in the numbers, but they are not broken out as a line item so that you would be able to identify them as service penalties.

COMMISSIONER JABER: Thank you.

MR. LACKEY: Thank you, Mr. Chairman. Before I start with my prepared remarks I need to address a couple of issues that just came up so I don't forget them. The question about what happened in Illinois was not raised by BellSouth, it was raised by your staff. It's my understanding that the Illinois statute that was cited relates to the separation of retail services, not retail and wholesale services, but you might want to ask them to look at that. Because as I said, it was in their slides that that issue was raised.

COMMISSIONER JABER: Mr. Lackey, I can't hear you over the rain. Could you speak up?

MR. LACKEY: Well, I will speak up, then. It's one of the things Mr. Melson did for me. A few years ago he told me to speak more softly and I would be effective, and I have gotten carried away with it. Really, I should pay him for it.

The other issue I wanted to talk about was Alabama. You know, Mr. Gillan made that remark about why wasn't this study in Alabama. Well, you know, what happened in Alabama was they filed a motion to structurally separate us, we filed a motion to dismiss. The hearing officer told them to file their evidence, bring it on, let's see what you have got. They filed Mr. Gillan's testimony, some economist from Auburn, and Tom Allen with three or four anecdotal pieces of evidence that showed it. That's all they filed. They didn't file all of these folks we have been hearing about for the last two days.

And, indeed, my recollection is they may have moved to dismiss their motion because it was moot, their motion for structural separation. I think the hearing officer said they would take it up in the 271. So that's why that testimony wasn't there.

Now, to go back to my prepared remarks. I'm going to make sure I try to speak a little more clearly today than I did yesterday. From all the things that were attributed to me yesterday and today, I must have been mumbling. Because I know I didn't say some of the things that have been attributed to me. I guess we will have to look at the record and see. But I do want to address a couple of their points because I think they are important.

We know we put you all on the spot with that motion to dismiss. But remember what they did, they filed a petition asking to break up BellSouth. That's what they filed the petition to do. This amendment to clarify, you know, this whatever they are talking about wasn't filed until after the notice of this workshop was issued.

Now, in all candor the FCCA filed their tag-along motion that said we agree with AT&T, and you ought to conduct an investigation, so I suppose we could stretch that. But in terms of AT&T, when we filed our motion they had asked for the company to be broken up.

As for the standard, there is no express authority. I can talk softly now, can't I? You have got implied authority to do things. I didn't say that. And there was the suggestion yesterday that I missed ten years of cases. I didn't miss any cases. I understand that you have implied authority, you have exclusive jurisdiction, you have broad authority. I understand all of that. But what I said yesterday was that you don't have general authority over utilities. You have the authority that the legislature gives you directly and by necessary implication. I don't think we have got a disagreement about that.

What the disagreement is about is whether the general assembly intended to give you the authority by necessary implication to break us up. And all I said yesterday was in order to believe that you have got to look at those definitions I put up there, you have got to believe that the legislature, not the general assembly, the legislature intended for you to cure that anticompetitive behavior by deregulating us.

Because if you make us a separate company and we can only sell to retail companies, I'm telling you under that definition I am deregulated. That's what it says. I mean, it couldn't be much clearer.

Now, is there less relief you can give? I think I tried to address that yesterday when Commissioner Jaber asked me the question. Clearly you have got the right to prevent anticompetitive behavior. If my LCSC group, which is the group that handles the CLECs and the ALECs was taking information that came in from the ALECs about customers they were getting and were shipping them over to this retail organization, I think you can prevent that. I think you have got the authority to do that. The law prevents us from discriminating, the law requires us to provide parity, there are CPNI rules, clearly I think you would have the authority to prevent that.

What I was trying to say yesterday, and I hope I made it clear, is that while I agree you have some implied authority to do that, there is a limit somewhere. And I don't know where the limit is, but it's not implied in this proceeding, because they asked, they asked, they asked for us to be broken up.

Now, maybe we are at the point now where they are going maybe we just need to have an investigation, maybe I can get out of this by asking for an investigation and you won't dismiss it. I could be wrong about this, but I would be willing to bet money, if it weren't illegal, that within a day or two after you issued that order saying we are not going to dismiss based on BellSouth's pleading, we are going to conduct a proceeding to see what we ought to do, you are going to get a petition asking for the 271 case to be postponed. How can we take up the 271 case when we don't know what we ought to do to keep these people from discriminating against the ALECs. That's what this is all about. That's what this is about.

I mean, it's kind of curious they said in their slide they are not connected, it doesn't mean a thing. Well, you know, we had the performance measurements here. I think maybe all of you, I can't remember whether it was a full Commission or a panel, and we went through this, and we went through it, and we went through it. And, you know, nobody said, that I can recall, that if you adopt my performance measurements, they are still not going to be adequate. I mean, we had a big argument about whether there ought to be 300,000 of them or 1,200 of them. But the point is nobody stood up and said let's just cancel this hearing, it isn't going to do any good anyway.

What about the third-party testing? I'm sorry, I need to get some water, if you will excuse me for a minute. I can keep talking. What about the third-party testing. We have had third-party testing going on now for, what, a year. It's hard to tell how much KPMG has been paid to look at our interfaces to see whether they work or not. And we are just going to toss all of that away, I guess. It's not going to do any good, you have got to have structural separation. It just doesn't make any sense. It's a last ditch desperate -- I hope its desperate, I hope it's not fruitful -- effort to untrack the 271 case and to deprive for how long, two years, three years, how much longer are you going to keep us out of the long distance business in Florida? And that's what the result is going to be if you are not careful with this.

Now, let me turn to some of the issues that I wanted to talk about, because the truth of the matter is I know that if you all decide to do this, I'm not going to be able to stop you. I mean, there is nowhere I can go to stop you. If you decide to open this docket and go forward with this, we are just stuck with it as a practical matter.

What are you going to get out of it if you do it? Well, the allegation is that is there is no competition in Florida and it's all BellSouth's fault. Well, I looked at some information. In Pensacola, the ALECs have got 25 to 30 percent of the business market. In Jacksonville they have got 20 to 25 percent. In Miami they have got 15 to 20 percent. In St. Johns they have got 25 to 30 percent of the business market. Now, where did I get that from? You all know, it came from your report from December to the legislature. Clearly these ALECs when they have wanted to have been able to make an entry into the market, the business market.

There is some residential competition. Actually there was one exchange that it was up to 10 to 15 percent if I recall correctly. I don't think it was one of ours, but, you know, there was that one. There were some that were in the 5 to 10 percent range, there were some that were in the less than 5 percent range. There is some residential competition, but it's not the same as the business competition.

And why is that, is that our fault? Well, you know, Mr. Page was up here and Mr. Page said his business plan was to serve business customers. The IDS fellow got up here and he said his plan was to serve business customers. Mr. Gillan was just talking about 30 of the CLECs that are ALECs that -- I guess it was Mr. Malone had up on the board, said they are providing digital service. I mean, these people aren't trying to provide service to local residential customers. Nobody said they were.

And they had this fellow Mr. Johnson here, and I hope he shows up somewhere where I can cross-examine him. I don't exactly know what consumer he is representing or whose voice he is, but if I ever get a chance I'm going to ask him where the majority of his funding comes from. Because I think we are going to find that he is not quite a consumer. If you go to your computer tonight and type in structural separation.com, wwwstructuralseparation.com, and punch the button, Mr. Johnson is going to show up.

Now, why aren't they serving residential customers?

Well, in rate group one in this state, Southern Bell's rate for a 1-FR for the whole enchilada is $7.41 cents in Cedar Keys, that is a rate group one exchange. The loop rate for Zone 3, and I assume Cedar Keys is in Zone 3, is $30.75. Now, if the guy in Cedar Keys can buy telephone service from us for $7.41, and the loop, the piece of wire that serves him costs on average $30, there isn't going to be any competition for that guy's service. I mean, Congress couldn't have intended that, your legislature couldn't have intended that. I mean, there is not going to be competition for that guy's business until that $7.41 rate goes up to where it ought to be. Competition means that you are competing for customers who are paying more than the cost of the service. You don't compete for customers who are getting their service at less than cost.

What about the business customers there. You know, the business rate in that same exchange is, I think, $20.11. The rate that business pays is lower than the cost of the loop. How can you compete for that? All right. What about Rate Group 12. $10.81, that is Rate Group 12. The loop in Zone 1 is $11.74, the port is $1.34. 13.08 is what a loop and a port costs you in Rate Group 12. We sell the service for $10.81. Now, the customer gets the SLC charge and he gets all the other things that go along with it, but that is the basic rate.

Now, the business customers charge, I think, $30. I may have the number wrong. So let's assume that you are an

ALEC and you are in Rate Group 12, and you are going to buy a loop and a port and you are going to sell to somebody. Let me think, am I going to sell to the residential customer who is paying $10.81 for his service, or am I going it try to sell to the business customer who is paying $30? I can answer that one and I'm a lawyer. The answer is -- it's like what Willie Sutton said about, you know, when asked why he robbed banks. That's where the money is. That's where they are going to go, it's where the money is.

And that's what your statistics that you gave the legislature says. Really, it was interesting. I had not seen it before. The map up there that had a little pink things on it and all of that stuff, that's where those exchanges are where your report show that the ALECs are making the most in-roads. That's where the competition is.

The point I'm making is it is not us that is blocking competition in Florida. It's not BellSouth. It's pricing. Historical pricing. Social pricing for a very good reason that contributes to it. It is the fact that they can't make money off of it that contributes to it.

Now, what about the fact that all of these ALECs are going out of business? Well, I didn't think we were quite responsible for the financial market crash, but maybe we are. I think there is a different explanation. Let me give you one.

Think about the Jacksonville exchange. There is about 50,000 business lines in the Jacksonville exchange. There are 18 CLECs in the Jacksonville exchange according to your report that you gave the legislature. If they got a quarter of those lines and they spread it out evenly over the 18 ALECs, they would each have 700 lines. If they got half the market they would have 1,400 lines, unless I have done the math wrong. I mean, the point of the matter is that you can't dump 23 CLECs in Miami and 18 LECs in Jacksonville and be surprised when they don't all do well.

What about their stock prices crashing? I've got a lot of friends over at AT&T -- I've got a lot of acquaintances over at AT&T. And you know, their stock price has really taken a beating. It has gone from whatever whether it is to whatever it is, and it's down 65 percent. And when you heard that story yesterday, I mean, I assume everybody in the room thought, oh, my God, it's BellSouth's fault. You know, I think Mr. Armstrong's purchase of everything under the sun and acquiring so much debt that they can't carry it might have a little bit to do with the stock price falling.

It's like Lucent, the other one. Did you know that Lucent had a PE ratio of over 200 percent. I mean, 200, not 200 percent. Over 200. I think it was 218. Their price was 218 times their earnings. BellSouth's PE ratio was 19. And so everybody is surprised when Lucent takes a bath? I think the S&P 500 was 23. You know, I'm sorry, we are not responsible for the collapse of the financial markets.

All right. So, let's suppose you conclude that I'm wrong, I'm not going to be a deregulated company if you do this. You're going to do it. Now I need to tell you why even if you can do it you still shouldn't do it.

First of all, it's going to take time. It's going to take time. I mean, you all know what your schedule is, you know how this works. It's going to take time. They have been at it for three years up in Pennsylvania and they are not done yet. I think the fellow said yesterday there were seven more proceedings to go. So what is the world going to look like when we are done with this proceeding? I don't know. Now, maybe I have fallen into George's trap of asking you not to start the journey because you can't finish it, but the point of the matter is why start the journey if there is no point in it, if you are not going anywhere.

What's it going to cost? Who knows. When the first Pennsylvania case went up to the court, the record was 10,000 pages long. That was the first time it went up. It's hard to tell what it was at the end and what the cost of it was. Heck, what do you think the cost of these last two days were? I mean, it's hard to imagine how much money we have spent here, and this was just to try to convince you to not start or to start. How much is it going to cost your staff and you all in time for no purpose.

COMMISSIONER DEASON: We may need to increase your regulatory assessment fee. I'm kidding, Mr. Lackey.

MR. LACKEY: Well, I've got to tell you, I'm sitting here thinking I would like to be vice-president and general counsel wholesale. But I can't let that enter into my argument, I'm sorry, particularly since it's being recorded. The question then is, okay, let's just suppose you go through all of this, what have you got when you're done? Well, I can tell you, you are not going like it and let me tell you why. Do you remember when Mr. Pociask -- I think I called him Posiak -- was here, and one of the questions he was asked was, well, you know -- I think it was you, Commissioner Deason -- you said, well, we are sort of restricted by TELRIC pricing, we can't raise these prices.

If you create a wholesale company, if you split me up and you make me a wholesale company and I can't sell to anybody but retail companies, TELRIC pricing is gone. It is history. Let me tell you why. It's not the law that requires TELRIC pricing, it's the FCC. And they have gotten away with it to this point because the companies have been combined and the courts have said, well, you know, you have got this retail money, you have got the wholesale money, all in all you are covering everything.

If you split me into a wholesale company so that I've got nothing but wholesale revenues and expenses, there isn't going to be any concealing what is going on. There is not going to be any concealing that I have spent $10 million for a switch, and folks won't let me put but $8 million in the price because somebody says, well, you know, two and a half years out from now I think the price is going to fall five percent or however TELRIC pricing is done.

When you get to that point, I'm going to be able to earn a return on my entire investment. Now, there is no such thing as a sure thing. Maybe somebody can beat me on that, but if that is not confiscation, I don't know what is.

Now, how about the other questions. Who is the carrier of last resort? Okay, you have got the wholesale company that is out that laying the wires, you have got 62 ALECs. Who is the carrier of last resort, who has got that responsibility? Who picks up the little old lady in Cedar Keys or the little old guy in Cedar Keys who has got one telephone, no features, no nothing, you know, he is 20 miles from the central office and storms come through all the time. Who is your carrier of last resort? I mean, is it fair to make our retail operation the carrier of last resort?

That was the thing I liked about Mr. Gillan's example that first day, you know, when he had the holding company, then he had wholesale and he had legacy retail and then he had the other retail company out here. I can tell you who would end up on those legacy retail companies. The little old guy in tennis shoes down in Cedar Keys. Because anybody who added a service, changed a service, added a line, moved across the street, did anything is going somewhere else. The only people we would get are the folks nobody wants that aren't profitable. I mean, that's just common sense. I mean, there is no other way to see that.

Now, Commission Palecki, you raised concerns with two or three people that I thought were really good, and I'm not sure you got a good answer. And that was how can a company who has as its competitor and its customer the same company be expected to treat them fairly? How can you expect our employees to treat the ALEC fairly when they are competing with our retail company?

Now, I'm not sure that I can give you a satisfactory answer to that. I can tell you that our ALECs are handled through what we call our LCSCs, and you really ought to go see one of them if you haven't. I think there are like 600 representatives in each one. They are devoted to taking care of the ALECs whose orders come in. I will point out to you that in the AT&T arbitration, as you all remember, 88 percent of orders were flowing through electronically, weren't being handled by human beings. Now, I want to tell you some large part of those were resale orders, but 88 percent of the orders are flowing through without being touched. The ones that are being touched are being touched by people that are dedicated to working for the ALECs. These people aren't doing ALEC work one day and then doing CLEC work -- I'm sorry, doing ILEC work here. They are dedicated to that. We have two centers, we have just opened a third to work for them.

Now, your question is, I don't care, they are still a BellSouth employee, how do you know they don't discriminate against that customer because they have got their retail people over here. Well, I've got a question about that. Let's suppose that you decide to have a divestiture. That you have got the authority and you can pull it off and you split us up completely. Well, what happened when AT&T was divested was all current shareholders got shares of stock in all of the other companies. And presumably if you split us up and there is public ownership of the retail company that is what is going to happen again. I mean, I own stock in the company. I hope if you split the company up I'm going to get some stock in the retail company.

Now, those same employees you are worried about right now are going have that stock in their 401K plans, they are going have that stock in their pension plans, they are going to have stock options, they are going to own that stock. They are going to have the same financial interest. If it exists at all they are going to have the same financial interest after the fact. At least in their own retail company doing well because that's what part of their investment is in. They want their wholesale company to do well obviously, but they are going to want their retail company to do well, as well.

So, I mean, if that is the logic, if that is the concern, and I'm not trying to suggest that even if you break it up people are going to do bad things, because I don't think they do intentionally. I'm just saying it is no solution. The problem is still there. Because I'm pretty sure that you all can't fix the pension funds and the 401Ks even if you could split us up.

Now, let me reiterate a little bit of what Mr. Whelan said today, and I thought he made a good presentation, I really did. I guess it's hard to believe, but we do have internal codes. We do sign personal responsibility books every year. As a supervisor, I have to make sure my subordinates read that book and sign it and then I have to sign it saying that they read it and I have gone over it with them. Now, it's just a piece of paper, but, you know, a law is just a piece of paper. I'm not going to try to tell you that things don't happen. They do.

Interestingly enough, one of the worst problems I've got right now, and you all are going to hear about it probably in the 271 case, is some guy we hired from one of the ALECs eight months ago. Well, we train these people, we have courses they are required to go to. I'm required to go to. Nothing is perfect, but we have taken steps because the law requires us to do this. And to suggest we are not is to suggest that we will willingly violate the law.

Now, do bad things happens? Sure. How many cases of slamming have you all had? I'll bet you AT&T would swear up and down that it is their corporate policy not to have any slamming, or MCI not to have any corporate slamming. Now, have you ever seen either one those for a corporate slamming issue? How about these ALECs? I guess they would tell you they wouldn't engage in slamming, either. But I think you have probably got a few cases going on. I mean, things like that happen. You cannot legislate against everything.

And putting us and putting our ratepayers through what this is talking about, what we have been talking about for those kinds of preventative things just can't possibly tip the scale in favor of doing it. I can't believe it.

Again, you have got processes underway. We have got these performance measurements. Why did we go through all of that if it's not going to work? You have got the third-party testing. Why did we do that if it's not going to work? Now, you can't make these ALECs go compete. Even if the systems work perfectly and even if we provide them with parity, you can't make them go sell service to a guy who is paying $7.41 for his service. I don't care what you say, you can't do it.

And, you know, to the extent that you have been told to encourage competition there has got to be a layer of reasonableness on that. You cannot go out and have competition where people are paying rates that are too low and have been paying rates that are too low for 60 and 70 years. It won't work. We have got to have competition in the area where people are paying more than cost, and that's what you have got when you look at your own facts and figures.

And, you know, Mr. Gillan said, oh, people talk about growth rates, and, you know, that's -- the FCC says that there is more than a million lines that ALECs are providing to Floridians at the end of last year. More than a million lines. And they said that about 40 to 45 percent of them came into being last year. Okay. Now, maybe a million isn't a big number, okay, but the fact that that million was 600,000, or whatever it was the year before -- okay, I'm getting ready to quit. I asked him to give me a five, three, and a one warning.

The fact that it has grown sort of ought to make you question some of the things you are hearing about these ALECs. Sure, there are some of them going out of business. There is a good reason why they are going out of business. The rest of them, some of them anyway are clearly competing and making it happen.

Like I said, I know we have put you in a spot. I would like to apologize for it, but I can't. You know, they wanted to break my company up. It's not right, you don't have the authority to do it. If you try to do a halfway measure here, you are going to make it worse because you are going to -- well, maybe you won't make it worse, maybe you will do a halfway measure and when they come and say hold up 271, you will go, no, huh-uh. You said you weren't going to do that. Remember that slide, we are not going to hold it up. And then it will be okay. But that's not what I'm guessing is going to happen.

Please let it pass. Even if you have some lesser authority, there is no obligation under the Florida law or your rules for you to open a proceeding just because somebody asked you to if it doesn't have any merit on its face.

That's all I have to say. Did I raise any questions with anybody or is everybody too tired and want to go home? I do.

COMMISSIONER DEASON: Thank you, Mr. Lackey.

COMMISSIONER PALECKI: Thank you.

MR. LACKEY: Thank you, sir. I appreciate it.

COMMISSIONER DEASON: Staff.

MR. FUDGE: Yes, Commissioners. The next action in this docket is for staff to file a rec September 20th for the October 2nd agenda on AT&T's motion to clarify and amend its petition and on BellSouth's motion to dismiss that petition.

COMMISSIONER DEASON: That is to be filed on September the 20th for the October 2nd agenda, correct?

MR. FUDGE: Yes, Commissioner.

COMMISSIONER DEASON: That recommendation is going to address the motion to dismiss?

MR. FUDGE: Yes, sir, and the motion to clarify and amend the original petition.

COMMISSIONER DEASON: Okay. At what point does staff envision that the question of jurisdiction or authority will come before the Commission?

MR. FUDGE: That question was raised in the motion to dismiss, so it will be addressed in this recommendation. Although there have been new arguments that have been raised over the last two days, those arguments were not raised in the original motion and, therefore, will not be discussed in staff's recommendation.

COMMISSIONER DEASON: So that basically is the essence for the motion to dismiss so it will be discussed? I mean, it will be before the Commission?

MR. FUDGE: Yes, sir.

COMMISSIONER JABER: I have a concern as I beat Commissioner Baez here on the leg with the chair. Mr. Fudge, I thought when we went to agenda and decided on the workshop it was in recognition that the motion to dismiss limited our review. And I guess what concerned me is only your latter statement that some of the arguments raised here will not be addressed. And certainly staff on its own could ask the Commission whether on its own motion it wanted to address something, and those arguments could be addressed in a separate issue like that.

Here is my concern. We agreed on a workshop recognizing that the motion to dismiss was limiting. I would hate to have to go through this exercise only for staff not to include all of the arguments we heard in the recommendation. So my only request is you all figure out a way to address those arguments in the recommendation somehow some way.

MR. FUDGE: Yes, Commissioner. If you would like a general recommendation on the jurisdiction to hear the petition at all, then staff requests that the parties file post-workshop comments to incorporate all the arguments that were made here today.

COMMISSIONER JABER: You have the transcript. Let me make sure my recollection is accurate. Do you recall that, Commissioners? I guess I envisioned that you would use the transcript and make sure that we think about all of the issues related to structural separation that we need to at this point.

MR. FUDGE: Yes, Commissioner. The only sticking point is that yesterday the question was raised whether if we deregulated the wholesale, whether that would still be a regulated entity. And I think Chairman Jacobs asked Judge Hatchett to file a paper on whether they would still be regulated or not. And so I guess they would at least have -- the parties would have the opportunity to at least address that sole issue.

COMMISSIONER DEASON: I recall that, and I think there was an indication that only five days were needed to do that.

MR. FUDGE: Yes, Commissioner.

COMMISSIONER DEASON: Okay. I can't speak for the Chairman. I guess he did request it, and I suppose he does expect it to be filed.

COMMISSIONER BAEZ: Is that something that is going to get covered in the rec? I guess that is really the question.

MR. FUDGE: Yes, Commissioner, under the general issue of the Commission's jurisdiction to hear the petition.

COMMISSIONER PALECKI: And I would also expect that all of the parties if they wanted to address that issue would also have the ability within five days to file a brief or whatever response to the question.

COMMISSIONER DEASON: To that limited issue.

COMMISSIONER PALECKI: Yes.

COMMISSIONER DEASON: Does staff have anything else at this point?

MR. FUDGE: No, sir. Would that be just the sole issue on the Commission's jurisdiction under 364, or the later arguments that Mr. Lackey raised yesterday about -- or this morning about 251 and 252? Sorry, Mr. Lackey, I attributed something else to you. Somebody else that raised the issue of whether the wholesale would be an ILEC under 251 or 252.

COMMISSIONER JABER: My expectation, just speaking for myself, is that staff counsel would cover all of the legal issues that we have heard the last couple of days and the motions to dismiss. I don't want to have gone through this exercise of the workshop, Jason, and not have this material covered in the recommendation. That's my only point. So I don't know what the appropriate vehicle is to do that. I think maybe an issue that addresses some of the things that we have heard might be the way to go, I don't know.

COMMISSIONER DEASON: Well, why don't we do this, why don't we just clarify at this point that all the parties have five days to file some type of a brief, or memorandum of law, or whatever concerning the jurisdictional status of a separated entity under both state and federal law. Would that capture it, Ms. Keating?

MS. KEATING: That would be wonderful, Commissioner. That would be helpful. I think we could, like you were suggesting, Commissioner Jaber, work from transcripts in view of the fact that you could hear arguments from the parties at agenda. But from staff's perspective of actually getting it together, it would be helpful to have something written.

COMMISSIONER DEASON: Did you run down here, Ms. Keating?

MS. KEATING: Yes, sir, I'm afraid I did. And I am sorely out of shape. It's way too far from my office.

COMMISSIONER BAEZ: We will have to get her a phone.

COMMISSIONER PALECKI: You made good time.

COMMISSIONER JABER: I'm sorry, Beth.

COMMISSIONER BAEZ: You could have dialed in, Beth.

COMMISSIONER DEASON: I thought you were excited about something.

COMMISSIONER JABER: Commissioner Baez shares your pain, because he is going to have a bruise on his knee tomorrow.

MS. KEATING: But, yes, I think if parties could write something a little more structured, it would be helpful. But we could also work from transcripts, as well.

COMMISSIONER DEASON: And when I said five days, I assume that is five business days that we would be looking for something to be filed one week from today.

MS. KEATING: That would be great.

COMMISSIONER BAEZ: And are we clear on the additional legal issues that are here? I mean, I have only heard one mentioned, and if that is the only one we are addressing, that's fine, but --

COMMISSIONER DEASON: Well, that's the only one that I recall.

MS. KEATING: I think the one that Mr. Fudge mentioned was the only really new aspect, I think.

COMMISSIONER DEASON: Before we conclude, then, let me -- I will ask Mr. Lackey and whomever else, Mr. Lamoureux, if there are any other pending legal issues for which a Commissioner asked a question which needs to be addressed?

MR. LACKEY: Mr. Lamoureux is one of my acquaintances at AT&T. The only issue that I know of that there was any ruckus about was the issue I raised about trying to ascertain the intent of the legislature, and I said look at the definitions. If you do what you are talking about, we will be deregulated. Surely the legislature didn't intend you to do that. There is evidence of their intent. I think that is the only one.

MR. LAMOUREUX: Well, more specifically it was the question of under the definition of telecommunications companies, or carriers, I forget which one it is under Section 364, whether the new network company or wholesale company would or would not fall within that definition and, therefore, would or would not end up being outside the jurisdiction of the Commission if this were to go forward.

MR. LACKEY: And I raised that point --

COMMISSIONER DEASON: Yes, you raised that yesterday. And I think someone today raised the question, there was a federal definition in the federal act that was similar, is the same basic issue, but it was as it applied to federal definitions. So while we are addressing the issue you might as well address it both at a federal level and a state level.

MR. LACKEY: Since Ms. White is not here, I'm going to assign it to her and she can do both. That will be fine.

COMMISSIONER DEASON: So I think we are clear on that. Okay. And it is to be filed one week from today.

MS. KEATING: That will be great. We will be looking forward to it.

COMMISSIONER DEASON: And, Commissioner Jaber, you raised a question. Is staff clear on what your expectation is as to the scope of the recommendation?

COMMISSIONER JABER: I think so. Beth, help me out. Remember at agenda we said the motion to dismiss was limiting and we recognized that, and we wanted to look at several things. As a matter of law is it appropriate and then as a matter of policy is it appropriate. To me that is almost a separate issue, and that is an opportunity for you all to include the rest of this discussion in a separate issue. And how you craft that issue is up to you, but it may be helpful to go back to the transcript from that initial agenda.

MS. KEATING: I think we can definitely come up with something to address everything. Plus when you are addressing jurisdiction, that is a pretty broad issue anyway.

COMMISSIONER JABER: Yes.

COMMISSIONER DEASON: Okay. Well, just let me take this opportunity then to thank all of the parties for your participation. While the last two days have been intense, it certainly has been educational. And I think that it has provided a framework for us to make further consideration. And with that, this workshop is concluded. Thank you all.

(The workshop concluded at 5:17 p.m.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 13th day of August, 2001.

JANE FAUROT, RPR
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FPSC Division of Commission Clerk and
Administrative Services
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