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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 000121-TP - Investigation into the
establishment of operations support systems
permanent performance measures for incumbent
local exchange telecommunications companies.

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

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 19

DATE: Tuesday, August 14, 2001

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Tallahassee, Florida

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JERRY HALLENSTEIN, Commission Staff.
LISA HARVEY, Commission Staff.
BETH KEATING, on behalf of the Commission Staff.
SALLY SIMMONS, Commission Staff.
CARL VINSON, Commission Staff.

NOTE: Staff recommendation attached.

1 CHAIRMAN JACOBS: We'll go back on the
2 record for agenda, and we're, I believe, on Item
3 19 finally.

4 MS. HARVEY: Commissioners, this issue
5 recommends the permanent performance measures to
6 be used for purposes of ongoing evaluation of
7 operations support systems or OSS support
8 provided to the ALECs by BellSouth. In addition
9 to the permanent metrics, staff is proposing a
10 monitoring and enforcement program that is
11 designed to help ensure ALECs receive
12 nondiscriminatory access to BellSouth's OSSs.
13 The recommendation also establishes standards
14 against which the ALECs and the Commission can
15 measure performance over time to detect and
16 correct potential service level deficiencies.

17 Staff is recommending that if this
18 recommendation is approved, BellSouth should
19 have 45 days to develop the performance
20 assessment plan. The performance assessment
21 plan should encompass all the guidelines
22 approved in this recommendation, including such
23 things as the service quality measures, business
24 rules and standards for reporting, the Tier 1
25 and Tier 2 enforcement, as well as the remedy

1 plan, the calculation and statistical
2 methodology for determining whether or not
3 parity exists, and the administrative issues of
4 the plan. The performance assessment plan would
5 go into effect 90 days after final approval of
6 the plan, and it would then be reviewed every
7 six months for a two-year period to determine if
8 modifications are needed to the plan.

9 Commission staff is ready to go issue by
10 issue. However, first we have clarification by
11 Mr. Fudge.

12 MR. FUDGE: Commissioners, on page 3 of the
13 case background, staff notes that AT&T was
14 inadvertently omitted from the list of members
15 of the ALEC Coalition on whose behalf the
16 post-hearing brief was filed.

17 CHAIRMAN JACOBS: Very well.
18 Commissioners, it's your pleasure, issue by
19 issue.

20 All right. Let's begin then with Issue A.

21 COMMISSIONER JABER: I can move Issue A.

22 COMMISSIONER DEASON: Second.

23 CHAIRMAN JACOBS: It has been moved and
24 seconded. All in favor, aye.

25 COMMISSIONER DEASON: Aye.

1 COMMISSIONER JABER: Aye.

2 CHAIRMAN JACOBS: Aye. Show Issue A is
3 approved. That was easy.

4 Issue 1a.

5 COMMISSIONER JABER: I can move Issue 1a
6 and 1b if there are no questions.

7 CHAIRMAN JACOBS: I have a few.

8 COMMISSIONER JABER: Okay. On each, or
9 just --

10 CHAIRMAN JACOBS: Let me be sure here.

11 COMMISSIONER JABER: Okay.

12 CHAIRMAN JACOBS: On each.

13 COMMISSIONER JABER: Okay.

14 CHAIRMAN JACOBS: Okay. One, I just want
15 to confirm that the percent -- on page 28, the
16 percent on time response commitments for
17 contracts, business rules and telephone calls,
18 that's intended to collect the instances where
19 hot cuts are not done in a timely fashion?

20 MS. HARVEY: Could you restate that
21 question?

22 CHAIRMAN JACOBS: That the percent on time
23 response commitments for contracts, business
24 rules and telephone calls will -- was it hot
25 cuts or calls to the LSR? I'm trying to

1 remember. I think it was for hot cuts. I want
2 to make sure that this item will collect data
3 that reflects when the hot cuts are not done in
4 a timely fashion.

5 MS. HARVEY: The commitment responsiveness
6 metric percent on time response commitments is
7 not being recommended for approval.

8 CHAIRMAN JACOBS: I thought that was one
9 that was being recommended for approval.

10 Oh, I'm sorry. That was the discussion we
11 had, because I had a concern about whether or
12 not we -- you're rejecting the proposed metric
13 which would measure the percent of hot cuts not
14 working as initially provisioned. I think
15 that's how we came to that discussion. That's
16 on page -- it's in the chart on page 33.

17 MS. HARVEY: Right. It's also described on
18 page 23.

19 CHAIRMAN JACOBS: Right.

20 MS. HARVEY: Percent of hot cuts not
21 working as initially provisioned is not being
22 recommended for approval --

23 CHAIRMAN JACOBS: Right.

24 MS. HARVEY: -- because there is a metric
25 that is currently in place or recommended by

1 BellSouth that's called percent of troubles
2 within seven days of a completed service order,
3 and that metric would capture the intent of this
4 particular metric, percent of hot cuts not
5 working as initially provisioned.

6 CHAIRMAN JACOBS: And if I recall -- and
7 this goes back a ways, but if I recall the
8 discussion on this, there is a fairly intricate
9 series or sequence of events that has to happen
10 with hot cuts. And it's my understanding that
11 while this would capture the instance where it's
12 only 10 minutes or 15 or a half hour or
13 whatever, that when that becomes an issue for
14 correction is somewhat of a concern, i.e., once
15 you understand that there's some issue that's
16 occurring, how soon is it dealt with and
17 corrected?

18 MS. HARVEY: My understanding, according to
19 the testimony, is that ALECs can report a
20 trouble as soon as they discover that it's -- as
21 soon as the service order is complete, they can
22 report a trouble.

23 CHAIRMAN JACOBS: And then it goes into --
24 then that report goes where? Their report of
25 trouble doing a hot cut becomes -- what kind of

1 trail follows that?

2 MS. HARVEY: I'm not sure I understand your
3 question.

4 CHAIRMAN JACOBS: whatever the issue is
5 that caused the hot cut not to be done as
6 originally provisioned becomes a trouble report;
7 correct?

8 MS. HARVEY: It would be captured in the
9 metric. It's not a trouble metric. It is a
10 provisioning metric called the percent of
11 troubles within seven days. The fact that they
12 missed the cut-over on time would captured --

13 CHAIRMAN JACOBS: we'll measure that in
14 that --

15 MS. HARVEY: -- in the provisioning metric
16 percent of troubles within seven days.

17 CHAIRMAN JACOBS: Okay. And then --

18 MS. HARVEY: If it's a trouble on the
19 eighth day, then it becomes a maintenance and
20 repair trouble.

21 CHAIRMAN JACOBS: Okay. I got you there.
22 How then do we -- okay. So we know it wasn't
23 provisioned properly and it's within the seven
24 days. How do we know how long it took to get it
25 fixed, and what captures that? From a matter

1 that was reported here, how do we know how long
2 it takes that to get fixed?

3 MS. HARVEY: The measure, I think it's
4 coordinated customer conversions average
5 recovery time, I believe would capture that
6 information.

7 CHAIRMAN JACOBS: Okay. Very well. I'll
8 have to go read that very quickly, because I
9 forgot about that one yesterday when we talked.

10 And then the one on the software, I think
11 we talked about that, and I'm okay on that.
12 That's on 1b.

13 COMMISSIONER DEASON: I'm sorry. I have a
14 few questions on 1a.

15 I'm looking at page 20 of the
16 recommendation, item 2, percent order accuracy,
17 and there in your description, you indicate that
18 it was reported that BellSouth's existing
19 measurements are reflective of the accuracy of
20 BellSouth order completions. Apparently staff
21 believes that's not enough and that this
22 additional metric needs to be added. I need
23 further explanation as to why what currently
24 BellSouth is doing is not adequate and why we
25 need to add this.

1 MS. HARVEY: The percent of provisioning
2 troubles within 30 days of service order would
3 capture the troubles that occur, but not
4 necessarily if something was provisioned
5 improperly.

6 COMMISSIONER DEASON: Okay. So it captures
7 all problems within 30 days, both the input
8 problems as opposed --

9 MS. HARVEY: Right.

10 COMMISSIONER DEASON: And then just
11 technical problems that may occur within the
12 first 30 days.

13 MS. HARVEY: (Nodding head affirmatively.)

14 COMMISSIONER DEASON: So you're trying to
15 get what? Specific information as to whether
16 BellSouth actually reads the order correctly and
17 fulfills that order as it should?

18 MS. HARVEY: That's correct. That's
19 correct. There may not have been a problem or a
20 trouble with the order, but it may have been
21 provisioned incorrectly. And I'm not sure that
22 that's captured through the maintenance and
23 repair metrics.

24 COMMISSIONER DEASON: Now, is this a metric
25 to which we are applying penalties?

1 MS. HARVEY: I do not believe so.

2 COMMISSIONER DEASON: So this is just
3 informational?

4 MS. HARVEY: Yes, sir.

5 COMMISSIONER DEASON: Okay. I have a
6 question on Item 4, which begins at the bottom
7 of page 20. Apparently there is some concern on
8 BellSouth's part about there being a situation
9 where there could be an expedited order, and
10 that with this particular metric, that it could
11 give false or inaccurate information. Could you
12 explain what that concern is?

13 MS. HARVEY: Which metric are we referring
14 to?

15 COMMISSIONER DEASON: We're looking -- I'm
16 looking at Item 4 that begins at the bottom of
17 page 20. It's entitled "Percent Completion/-
18 Attempts Without a Notice or With Less Than 24
19 Hours Notice." First of all, it may be helpful
20 if you'll just explain what that is.

21 MS. HARVEY: Okay. When BellSouth attempts
22 to complete an order and doesn't tell the ALECs
23 that they're going to provision the order by the
24 due date.

25 COMMISSIONER DEASON: No, I mean -- let's

1 back up for a moment. When an ALEC makes an
2 order, are they not given information as to the
3 anticipated time frame for the completion of
4 that order?

5 MS. HARVEY: They are given a FOC, a firm
6 order commitment, which includes a due date.

7 COMMISSIONER DEASON: Okay.

8 MS. HARVEY: And if they attempt to
9 provision the order prior to that FOC, this
10 would capture that information.

11 COMMISSIONER DEASON: Okay. Explain to me
12 why it is wrong for an order to be completed
13 before the firm order commitment.

14 MS. HARVEY: The customer may not be
15 prepared for the order to be completed yet.
16 There needs to be coordination on both sides.

17 COMMISSIONER DEASON: Let me back up. Does
18 the order specify when it is made that we want
19 this done between this window, or is it just
20 that we want this done within five days?

21 MS. HARVEY: It depends on the type of
22 order it is. If it's an xDSL order, it would be
23 a very specific window, depending on the type of
24 order. But a due date is typically given,
25 whether it be an eight-hour window or a more

1 narrow window.

2 COMMISSIONER DEASON: So when an order
3 specifies a window, it's incumbent upon
4 BellSouth to meet that window.

5 MS. HARVEY: That's correct.

6 COMMISSIONER DEASON: And this is what this
7 is supposed to measure, as to whether that
8 window is met?

9 MS. HARVEY: That's correct.

10 COMMISSIONER DEASON: So a completion of
11 the order before the window is a failure, as
12 well as a completion of the order after the
13 window is a failure. It has to be within the
14 window.

15 MS. HARVEY: If they do not notify the ALEC
16 of an early or late completion.

17 COMMISSIONER DEASON: So this is --
18 BellSouth according to this metric would be
19 required to give that notification, and if they
20 do not give the notification and they go forward
21 with an order outside of the window, it is a
22 failure.

23 MS. HARVEY: It is a failure, but a penalty
24 is not assessed to it.

25 COMMISSIONER DEASON: This is informational

1 also?

2 MS. HARVEY: Yes.

3 COMMISSIONER DEASON: Okay. I have a
4 question on Item 11 on page 24 under maintenance
5 and repair. Apparently the ALECs are taking the
6 position that if BellSouth makes an appointment
7 to repair a service and then finds it cannot
8 make that appointment, the ALEC should be given
9 notice. And apparently staff disagrees with
10 that position, and I want to know why.

11 MS. HARVEY: The information as to the
12 status of each maintenance and repair order is
13 available to the CLECs currently through the
14 TAFI system or through the ECTA --

15 COMMISSIONER DEASON: Now, is that on a
16 real-time basis?

17 MS. HARVEY: Yes.

18 COMMISSIONER DEASON: So they can know just
19 as quickly -- if there's a service technician
20 out in the field and he or she determines that
21 because of whatever reason, they cannot make
22 this -- cannot handle this trouble report, they
23 somehow enter that into the computer, and it
24 gets put into the data system, and the ALEC can
25 monitor it that way and know as quickly as the

1 BellSouth technician knows that that order is
2 not going to be completed at that time?

3 MS. HARVEY: I'm not certain as to what the
4 delay is between the time that the technician
5 knows and it gets to the computer.

6 COMMISSIONER DEASON: But you're assuming,
7 though, that that information is conveyed in
8 time that the ALEC can get that information and
9 then act upon that information to notify their
10 customer that that appointment will be missed.

11 MS. HARVEY: That's correct.

12 COMMISSIONER DEASON: I want to make an
13 observation. One of the most troubling things
14 that can happen to a customer is to be told that
15 in a certain window of time, a problem will be
16 addressed, a technician will visit the premises
17 and correct a problem, and they make
18 arrangements to be there and no one shows. This
19 happened to me, and I did not like it. It
20 happened to me very recently, in fact. Not with
21 a regulated utility. It was a private company,
22 appliance repair, but the concept is the same.

23 It seems to me that this is critical for a
24 ALEC to be able to have this information in a
25 timely manner to communicate to their customer,

1 and that if they do not have this information in
2 a timely manner, it puts them at a competitive
3 disadvantage.

4 So I guess incumbent upon your
5 recommendation is that -- or I guess inherent in
6 this recommendation is the assumption or the
7 belief that this information is accessible in a
8 real-time or near real-time basis so that the
9 ALEC, if they want to provide good service to
10 their customers, will continuously monitor the
11 BellSouth database, and when they detect that an
12 appointment is going to be missed, then they can
13 notify their customer as quickly as possible,
14 and staff is satisfied that that's going to
15 happen.

16 MS. HARVEY: I think that the ALECs have an
17 obligation to monitor the data that's available
18 to them.

19 COMMISSIONER DEASON: I have no problem
20 with that, if the data is there to be monitored.

21 MS. HARVEY: That's right. Staff's concern
22 is that if we put this metric into place,
23 another notice to the ALECs that an appointment
24 is going to be missed, the ALECs also have to
25 monitor the receipt of that notice on a

1 real-time basis, just as they would monitor the
2 TAFI database to check the status of the order.

3 COMMISSIONER DEASON: Now, how do we -- if
4 the system works that well, I have no problem
5 with the ALEC, incumbent upon them to access
6 that database and be on top of it on a real-time
7 basis. I have no problem with that. How do we
8 monitor that that information is being provided
9 to the database in a timely manner such that the
10 ALEC can act upon that data to alleviate --
11 well, not eliminate customer concerns, but at
12 least alleviate to some degree customers'
13 consternation with missed appointments? Is that
14 part of the -- is that going to be reviewed in
15 six months, or is it -- no information is going
16 to be provided in that regard?

17 MS. HARVEY: We can take that into
18 consideration in the six-month review, and we
19 can also take that as something to look at in
20 the third-party test.

21 COMMISSIONER DEASON: Commissioners, I
22 would be inclined to get some additional
23 information on that at some point.

24 CHAIRMAN JACOBS: I agree. I agree. I
25 think maybe as a side note, there seems to be a

1 growing concern over this activity even in
2 states where interLATA authority has been
3 granted. So I agree that there's a need for
4 monitoring.

5 COMMISSIONER PALECKI: I have a follow-up
6 question for staff on that. Notwithstanding
7 this particular measure, is there a separate
8 measure for failure to make the appointment?

9 MS. HARVEY: For an installation
10 appointment, there is a separate measure.

11 COMMISSIONER PALECKI: I just wanted to
12 make sure there was.

13 MS. HARVEY: Yes.

14 COMMISSIONER PALECKI: Because I know on
15 page 21 that we've decided not to utilize the
16 measure on percent of orders canceled. I just
17 wanted to make sure that there was a measure for
18 missed appointments.

19 CHAIRMAN JACOBS: So do we need to do
20 anything more than just --

21 COMMISSIONER DEASON: No. I will rely upon
22 staff's indication that this is an area where
23 they will pursue, at least within the six-month
24 review, as to whether this information is in
25 fact being communicated within the BellSouth

1 database system in a timely manner such that
2 ALECs can monitor that information and be able
3 to act upon it to address customer concerns.

4 COMMISSIONER JABER: And I would add that,
5 just to make it official, add it to the motion
6 on 1a and 1b.

7 Lisa, the information on TAFI, or at least
8 some part of the TAFI program is included in the
9 OSS test, I thought.

10 MS. HARVEY: Yes, TAFI is included.
11 Specifically what we're looking at is the time
12 frame that it takes the field technician to
13 update the TAFI system.

14 COMMISSIONER JABER: Okay.

15 COMMISSIONER BAEZ: Ms. Harvey, as part of
16 the six-month review, is there also a
17 consideration -- I mean, I know you're looking
18 at things that need to be included. Is it
19 generally what should be included as parts of
20 penalties or to have penalties attach when you
21 review the measures?

22 MS. HARVEY: The six-month review.
23 Everything would be open on the six-month
24 review.

25 COMMISSIONER BAEZ: Okay. Thank you.

1 CHAIRMAN JACOBS: Any other questions?

2 COMMISSIONER DEASON: Not on 1a I do not.

3 CHAIRMAN JACOBS: There was one that I
4 would like to go back to on page 21, Item 5.
5 There were a couple of measures where the
6 request was to include canceled orders in
7 measuring customer conversions, and I think it's
8 P-6 and P-6A, and our recommendation was not to
9 look at canceled orders. And there's a concern
10 that's raised here, and you conclude that it's
11 not a grave concern. And the concern is that
12 there's a lot of activity where ALECs are
13 requested to modify their orders, cancel or
14 supplement them, and that those orders don't
15 then track in the normal way. And by concluding
16 that that's not a vital concern, am I to take it
17 that that activity is not occurring, or that if
18 it is occurring, it has been measured in another
19 way? Because kind of what the analysis says is
20 that there's not really a legitimate reason for
21 this kind of activity to occur.

22 MS. HARVEY: There would be legitimate
23 reasons for canceling orders.

24 CHAIRMAN JACOBS: Okay.

25 MS. HARVEY: My question is, is this metric

1 vital enough. How many metrics are enough?

2 CHAIRMAN JACOBS: Right.

3 MS. HARVEY: Is this metric vital enough
4 that it's prohibiting ALECs from being able to
5 do business.

6 CHAIRMAN JACOBS: And I quite frankly can
7 agree with your analysis on adding this metric,
8 but the added concern came in when I saw back on
9 these other two metrics that we said that
10 canceled orders also were not going to be
11 measured, and that's P-6 and P-6A, coordinated
12 customer conversion interval and coordinated
13 customer conversions hot cut timeliness percent.

14 MS. HARVEY: Cancellations are excluded
15 from the calculation of those measures, because
16 you don't have anything to measure because the
17 order was canceled.

18 CHAIRMAN JACOBS: Right. Now, if there is
19 then activity occurring such as described by the
20 ALECs where the order was actually a new order,
21 and actually the old order was canceled at the
22 request of the ILEC, and the new order is in
23 actuality a supplemental order, but that new
24 supplemental order, what I take by the
25 testimony, falls outside this timeliness

1 measure. Is that correct?

2 MS. HARVEY: That's not correct. The new
3 measure would be measured.

4 CHAIRMAN JACOBS: So that supplemental
5 order then would measure.

6 MS. HARVEY: Yes.

7 CHAIRMAN JACOBS: And would it measure from
8 the time the order was supplemented or from the
9 initial order?

10 MS. HARVEY: Supplemented.

11 CHAIRMAN JACOBS: I think that's the
12 essence of the concern, is that you want to
13 measure it from the time of the initial request.
14 Is that possible? How do we do that? Or is it
15 reasonable to do that? Let me ask that first,
16 because --

17 MS. HARVEY: I think it depends on the
18 reason for the cancellation or the request for
19 the supplement, was it a Bellsouth-caused
20 request, or did they request it based on
21 something that was inaccurate in the order.

22 CHAIRMAN JACOBS: I think your analysis is
23 reasonable for this at the moment, but I think
24 that's an area also. I would like to see what
25 that activity is and what are the bases of those

1 cancellations, if the cancellations are indeed
2 occurring.

3 COMMISSIONER PALECKI: Would it make sense
4 to distinguish between orders canceled and
5 orders supplemented? I know that staff believes
6 that there are justifiable reasons for
7 requesting supplements that can often assist the
8 ALECs. Shouldn't these be two different
9 categories?

10 MS. HARVEY: I guess it depends on what
11 you're trying to measure. If the point is to
12 determine how many times an order has been
13 canceled and that ends the activity, that would
14 be fine. But if it's canceled and then a
15 revised or supplemented order is issued, then
16 perhaps they need to stay together.

17 COMMISSIONER PALECKI: Thank you.

18 CHAIRMAN JACOBS: Okay. If that's all the
19 questions on 1a, we can go to -- now, do we vote
20 out all of 1 at once, or do we vote on sections?
21 How do we do that?

22 COMMISSIONER JABER: Since we modified 1a,
23 we should probably take that one separately.

24 CHAIRMAN JACOBS: Okay.

25 COMMISSIONER JABER: And the modification

1 was to review in six months the availability of
2 information on TAFI and to include it -- to the
3 degree it's not included in OSS, to include it.
4 Right, Commissioner Deason? That was the
5 addition?

6 COMMISSIONER DEASON: I believe that's
7 correct, and staff is in agreement that that can
8 be done.

9 CHAIRMAN JACOBS: So that's the motion.
10 And now do we need to -- I expressed the idea of
11 looking at those cancellation activities as
12 well. would that be included in that as well?

13 MS. KEATING: We can certainly make that
14 clear in the order.

15 CHAIRMAN JACOBS: Okay.

16 COMMISSIONER JABER: Okay. So there's a
17 motion on --

18 COMMISSIONER PALECKI: Second.

19 CHAIRMAN JACOBS: Second. All in favor,
20 aye.

21 COMMISSIONER JABER: Aye.

22 COMMISSIONER PALECKI: Aye.

23 COMMISSIONER DEASON: Aye.

24 COMMISSIONER BAEZ: Aye.

25 CHAIRMAN JACOBS: Show it approved.

1 Item 1b.

2 COMMISSIONER JABER: Are there questions on
3 1b? I can move it.

4 COMMISSIONER DEASON: I have some
5 questions.

6 CHAIRMAN JACOBS: Go ahead.

7 COMMISSIONER DEASON: First of all, staff,
8 I just want to understand what we're doing here,
9 and the information that's in front of us, how
10 we're to read it. Business rules, your
11 recommendation is actually contained within
12 Attachment 3; is that correct?

13 MS. HARVEY: Actually, it's 3, 4, and 5.

14 COMMISSIONER DEASON: Well, I'm kind --

15 MS. HARVEY: Commissioners, we're --

16 COMMISSIONER DEASON: -- of breaking down
17 between business rules and disaggregation, and I
18 need to understand -- I guess then I need to
19 understand how the different --

20 MS. HARVEY: Three is the business rules.

21 COMMISSIONER DEASON: Okay. I'm clear on
22 that. Three is the business rules.

23 MS. HARVEY: Okay. Four is --

24 COMMISSIONER DEASON: Four is BellSouth's
25 -- basically BellSouth's disaggregation; is that

1 correct?

2 MS. HARVEY: It's the general level of
3 disaggregation for each metric.

4 CHAIRMAN JACOBS: Okay. And then -- that's
5 basically for recommendation purposes.

6 MS. HARVEY: That's correct.

7 COMMISSIONER DEASON: And Attachment 5 is
8 basically your recommendation on disaggregation;
9 correct?

10 MS. HARVEY: On disaggregation as well as
11 the analogs and benchmarks.

12 COMMISSIONER DEASON: So 5 basically puts
13 everything together in one place. Is that
14 correct or not?

15 MS. HARVEY: It doesn't include the
16 business rule changes.

17 COMMISSIONER DEASON: Except for the
18 business rules.

19 MS. HARVEY: Yes.

20 COMMISSIONER DEASON: All right. Explain
21 to me how business rules are incorporated into
22 determining compliance and whether there are
23 penalties.

24 MS. HARVEY: Could you ask that question
25 again?

1 COMMISSIONER DEASON: Explain to me
2 generally how the business rules which you
3 describe within Attachment 3, how those business
4 rules are then utilized in determining
5 compliance and whether there should be
6 penalties.

7 MS. HARVEY: This particular recommendation
8 in 1b is not associated with penalties. These
9 are --

10 COMMISSIONER DEASON: I wanted to clarify
11 that.

12 MS. HARVEY: Okay. 1b are the business
13 rules, the disaggregation, and the standards for
14 reporting purposes only.

15 COMMISSIONER DEASON: Okay.

16 MS. HARVEY: Each metric has a calculation
17 associated with it, exclusions associated with
18 it, as well as how it is to be reported in terms
19 of the disaggregation and other pieces of the
20 report.

21 COMMISSIONER DEASON: Now, once we get a --
22 just assuming for a moment that the Commission
23 approves your business rules as shown in
24 Attachment 3 and that is implemented, how do we
25 -- what do we do with that information once it's

1 filed, or is this just information? Is it just
2 informational, or -- you just indicated to me
3 that there's no impact upon the potential for
4 noncompliance and penalties either under Tier 1
5 or Tier 2. What's the purpose of this?

6 MS. HARVEY: BellSouth proposed a set of
7 business rules for purposes of this docket.
8 Attachment 3 are changes to those business
9 rules, changes to the exclusions, changes to the
10 definitions.

11 CHAIRMAN JACOBS: These are essentially the
12 ground rules upon which you will calculate it.

13 MS. HARVEY: Every measure is calculated.
14 They determine how each measure is calculated,
15 what's excluded, what's included, when the clock
16 starts on time intervals, and when it stops on
17 time intervals. So, yes, it has an impact on
18 the ultimate result.

19 COMMISSIONER DEASON: So it does have an
20 impact on --

21 MS. HARVEY: On the data that is reported.

22 COMMISSIONER DEASON: Okay. And when you
23 say data reported, information is provided
24 consistent with the business rules, and there is
25 a determination made as to whether a rule was

1 complied with or not; is that correct? For
2 example, a business rule, you know, you have an
3 95% standard, and if they don't meet it, well,
4 then that gets reported as noncompliance.

5 MS. HARVEY: Yes.

6 COMMISSIONER DEASON: Maybe I'm
7 oversimplifying this, and maybe that's what
8 staff needs to do, simplify this so that we can
9 understand the big picture which you're trying
10 to accomplish here. You've got to realize,
11 you've worked with this probably more than eight
12 hours a day, probably more than 40 hours a week,
13 and you've been doing it for probably a year,
14 and there's a lot of things that you probably
15 assume that we really don't know. So help us
16 out here a little bit. Okay? I'm not being
17 critical. I'm just -- I'm looking for some
18 help.

19 MS. SIMMONS: Commissioner Deason, I may
20 be able to help.

21 COMMISSIONER DEASON: Okay.

22 MS. SIMMONS: I'm going to try to put this
23 in perspective a little bit. I mean, Issue 1
24 deals with the reporting level. Issue 2 deals
25 with the enforcement level, so what you see in

1 Issue 2 is some subset of what is in Issue 1.
2 And then for what is in Issue 2, the enforcement
3 measures, that is --

4 COMMISSIONER DEASON: Okay. You've already
5 confused me. I didn't even know that we were
6 even on Issue 2 yet. We're on Issue 1a and 1b.

7 MS. SIMMONS: Right, but you have -- you
8 mentioned remedy, so I was trying to draw a
9 connection here.

10 COMMISSIONER DEASON: All right.

11 MS. SIMMONS: There is a reporting level,
12 which is Issue 1. That represents all the data
13 that would be available to us. Issue 2 looks at
14 a subset of that information and says certain
15 metrics we want to look at for enforcement
16 purposes.

17 COMMISSIONER DEASON: Okay. And that's the
18 basis of my question. I've got a whole myriad
19 of detailed questions on everything within that
20 attachment. If it's just information that's to
21 be reported, I don't care. That's fine with me.
22 But if it has ramifications for compliance and
23 penalties, we've got to go through every one of
24 these. And that's what I'm trying -- it's that
25 simple of a question.

1 CHAIRMAN JACOBS: If I can give an analogy,
2 Commissioner, we have quality of service rules
3 for telephone companies or anybody else, and
4 answer time requirements. These provisions here
5 are essentially the ground rules for how you
6 calculate -- and I put that analogy -- the
7 answer time requirement for a telephone
8 company. So to the extent that a business rule
9 has been set up as to when a call begins and
10 when it ends, the interval that's there, that's
11 what these business rules are going to deal
12 with. So I suspect we're probably at the point
13 of having to answer some of your questions.

14 COMMISSIONER DEASON: Well, that's fine,
15 because that was my suspicion, but staff
16 indicated that business rules don't have any
17 impacts -- or at least the initial answer was
18 that they didn't have any impacts on penalties
19 and noncompliance. But staff agrees that these
20 business rules that we set up here are going to
21 have a direct impact upon whether there's a
22 determination of compliance or noncompliance and
23 potential penalties.

24 MS. HARVEY: Yes, that is how each measure
25 will be calculated.

1 COMMISSIONER DEASON: Okay. Well, we --

2 MS. SIMMONS: I agree.

3 COMMISSIONER DEASON: Okay. Fine. That
4 was all the question was.

5 COMMISSIONER JABER: Lisa, I was going to
6 correct you with respect to -- and maybe
7 "impact" is the wrong choice of words. I've
8 always thought of business rules as being the
9 foundation upon which the data is collected,
10 that it, as Commissioner Jacobs says,
11 establishes the point you start and the point
12 you finish. So it's not that they impact the
13 penalty; right? It provides the foundation for
14 the collection of data and how the measurements
15 are performed.

16 MS. HARVEY: And calculated; that's
17 correct.

18 COMMISSIONER JABER: So it's not that it
19 has an effect on the amount of penalty or what
20 gets measured.

21 MS. HARVEY: That's correct.

22 COMMISSIONER JABER: It makes -- business
23 rules give everyone notice on how it is we are
24 going to measure performance to make sure that
25 everyone is on the right page.

1 MS. HARVEY: That's correct.

2 COMMISSIONER DEASON: Well, it's not only
3 measuring performance, but you're setting a
4 standard, are you not?

5 MS. HARVEY: Not through the business rule.

6 COMMISSIONER DEASON: All right. Explain
7 to me why a standard is not being set.

8 MS. HARVEY: Well, in the recommendation we
9 laid out a difference between business rules,
10 the standards, and the levels of disaggregation.
11 There's three legs to the stool. And the
12 business rules as we're using them in this case
13 refer to the definitions, the exclusions, and
14 the calculation lumped together. And then you
15 also have the disaggregation, and you also have
16 the analogs and benchmarks. But the business
17 rules are how each metric is calculated, when it
18 starts and when -- when the start time is and
19 when the stop time ends, which, in effect, can
20 affect the results that are reported that are
21 used to judge whether or not parity exists.

22 COMMISSIONER DEASON: Okay. Fair enough.

23 Mr. Chairman, I'm ready to go through
24 this.

25 COMMISSIONER BAEZ: I just have one

1 question. The application of the business
2 rules, is there any back-checking on whether the
3 business rules have actually been applied
4 properly during the course of the calculations?

5 MR. VINSON: That would be addressed in the
6 annual audits. That would be verified there.

7 COMMISSIONER BAEZ: Okay. Thank you.

8 CHAIRMAN JACOBS: You may proceed with your
9 questions, Commissioner.

10 COMMISSIONER DEASON: Okay. Commissioners,
11 I warn you that this may be tedious and
12 time-consuming, but we're dealing with a
13 254-page or whatever it is recommendation, and
14 if we're going -- I have difficulty when there's
15 something listed as a staff recommendation, and
16 if we vote on it, I interpret it that that means
17 that we're saying that we're in total agreement
18 with the recommendation, and that's what we want
19 implemented. And before I can cast that vote,
20 I've got to understand it.

21 COMMISSIONER JABER: No. This is helpful,
22 Commissioner Deason. This is very helpful.

23 COMMISSIONER DEASON: Well, we'll begin at
24 the very beginning then, OSS-1, average response
25 time and response interval, preordering.

1 MS. HARVEY: Are you on Attachment 3?

2 COMMISSIONER DEASON: I'm in Attachment 3
3 on page 51.

4 The very first item there, staff indicates
5 that they agree with this. And I admit that it
6 appears on the surface that it make sense. But
7 apparently if you agree with one side as opposed
8 to the other side, the other side has a reason
9 as to why it should be something different. I
10 need to know what was BellSouth's position that
11 was different from what you agree with and why
12 are you recommending against BellSouth's
13 position and for the ALEC position. Or is this
14 a situation that is a nonissue and the parties
15 basically agree? I don't have that information
16 either.

17 I guess part of the problem I'm grappling
18 with is trying to determine what are significant
19 issues and what really doesn't make that much
20 difference. It would really be helpful to
21 understand if we could get an analysis of really
22 what are the important policy issues you want us
23 to determine. Or do we need to go down here
24 item by item every one of these business rules?
25 And if that's required for us to get this item

1 disposed of, that's fine. we'll do it.

2 But this is just a good example of one --
3 it doesn't appear to me that this measurement is
4 going to make a whole lot of difference in the
5 grand scheme of things. But it's an issue, and
6 you're making a recommendation, and you want us
7 to cast a vote. And before I can cast a vote,
8 I've got to understand why you're recommending
9 what you're recommending, what the two positions
10 are, and why one side advocates one and one the
11 other and why you decided to recommend one side
12 or the other, and I don't have that information.
13 And if you did, maybe the recommendation would
14 be 600 pages. But before I can cast my vote,
15 I've got to understand, and the only thing I
16 know to do is start at the beginning.

17 So why is staff recommending that this
18 particular measurement be made the way that
19 you're recommending? And if it's not important,
20 tell me, and I'll just pass right through it.
21 You're the ones that know whether these
22 particular business rules, what's important. It
23 must be important, or else I assume you would
24 not have put it out as a separate recommendation
25 for us to vote on. And if you need some time to

1 go through that, I'm willing to give it to you.
2 But that's the problem that I face.

3 COMMISSIONER JABER: You've brought Walter
4 out, Commissioner.

5 COMMISSIONER DEASON: I'm sorry?

6 COMMISSIONER JABER: You've brought Walter
7 out.

8 COMMISSIONER DEASON: I knew I was going to
9 get Walter up here.

10 MR. D'HAESELEER: Could we have staff about
11 10 or 15 minutes to see where we are and if we
12 can accommodate you? You know, we need to talk
13 and make sure we're all on the same page. Could
14 we do that?

15 CHAIRMAN JACOBS: If it will be useful, why
16 don't we break then for 15 minutes. We'll be
17 back at 2:00.

18 (Off the record briefly.)

19 CHAIRMAN JACOBS: We discussed it, and we
20 think what we would like to do is go ahead and
21 convene internal affairs. It does not seem to
22 be a long agenda item, list of items over there.
23 I know there are parties that are still waiting
24 for that. So we're going to convene internal
25 affairs and complete that and then come back on

1 the record to complete this item.

2 (Recess from 12:45 to 3:05 p.m.)

3 CHAIRMAN JACOBS: Okay. We're back on the
4 record. Staff, where do we go from here?

5 COMMISSIONER DEASON: Let me say one thing
6 quickly. I do not have questions on every one
7 of the items in Attachment 3, so I didn't want
8 to give anybody a heart attack; but I do have
9 numerous questions. But if staff has a way to
10 facilitate the discussion, I'm certainly open to
11 alternatives.

12 MS. HARVEY: Okay. What I wanted to do is
13 explain how we got Attachment 3 and what it is.

14 In the Bellsouth testimony, they filed a
15 service quality measurement plan that included
16 the specific business rules, standards, and
17 disaggregation that they proposed for their 71
18 metrics. The ALECs filed their testimony, which
19 were the comments on those specific business
20 rules, standards, and disaggregation, and that
21 is what is reflected in the middle column of
22 Attachment 3. So that middle column is the ALEC
23 proposed changes to the document filed by
24 Bellsouth, which we are also recommending that
25 we approve with the exception of the changes

1 that are reflected in the third column. Okay?

2 COMMISSIONER DEASON: Now, not all your
3 recommendations are changes, though.

4 MS. HARVEY: That's correct.

5 COMMISSIONER DEASON: And that's I guess
6 what I want to highlight on, where you're
7 recommending changes and why there needs to be a
8 change.

9 MS. HARVEY: Okay. Many of the things that
10 are listed in this attachment are clarifications
11 of the fact that there was a miscommunication or
12 else time lag between the ALEC testimony and the
13 BellSouth testimony, and that the ALECs did not
14 exclude changes that BellSouth had already made
15 in their proposed SQM plan. And so when we went
16 through this attachment, we identified those
17 areas that we felt BellSouth has already covered
18 and taken care of, and we don't need to talk
19 about those today.

20 COMMISSIONER DEASON: No. It's not an
21 issue.

22 MS. HARVEY: Only the changes.

23 COMMISSIONER DEASON: I want to highlight
24 on what are issues --

25 MS. HARVEY: Okay.

1 COMMISSIONER DEASON: -- if I could, what
2 are the significant issues, but I don't know how
3 to distinguish what's significant and what's
4 insignificant.

5 MS. HARVEY: We can do that by only
6 addressing the ones that are in the penalty
7 plan, and we can further --

8 COMMISSIONER DEASON: What's going to be
9 reported for information, while it's important,
10 the fact remains that even though we call these
11 permanent performance measures, the fact is,
12 this is going to be looked at again in six
13 months.

14 MS. HARVEY: Exactly.

15 COMMISSIONER DEASON: So if there's
16 information being provided, that doesn't cause
17 me a great deal of concern. But if there are
18 going to be findings of noncompliance and the
19 potential for penalties during this first six
20 months, I think that's important, and that's
21 what I need to understand so that we make the
22 correct decision.

23 MS. HARVEY: Okay. Okay.

24 COMMISSIONER DEASON: Do you have a problem
25 with that?

1 MS. HARVEY: No.

2 COMMISSIONER DEASON: Okay.

3 MS. HARVEY: No. Many of the changes that
4 are listed in Attachment 3 are very detailed
5 changes to a specific calculation, and what I
6 would like to do is just to give you an overview
7 for each one of the Tier 1 and 2 metrics. Or if
8 you prefer, I can just tell you what in my
9 opinion are the hot buttons, the hot topics.

10 COMMISSIONER DEASON: Well, let's start
11 with the hot buttons.

12 First of all, let me say this. And I see
13 there are a number of parties that are still out
14 there with us. I appreciate you being with us.
15 And I'm speaking as one Commissioner. I have no
16 idea what the sentiment of fellow Commissioners
17 are. But I think this recommendation, staff has
18 done an outstanding job dealing with the myriad
19 of issues and what has been put in front of
20 them. So if I say anything that -- I guess I've
21 experienced a little bit of frustration myself
22 trying to go through this recommendation and
23 digest it. That is not in any way a criticism
24 toward staff. I think you've done an
25 outstanding job.

1 If there is any criticism, I think it's on
2 the parties, with all due respect, that you have
3 subjected our staff and this Commission with so
4 many nuances and matters that in all reality, in
5 my humble opinion, should be decided between
6 yourselves as professional telecommunications
7 companies, that the amount of intricacy that is
8 involved in this recommendation should never
9 have reached the Commission. What you should
10 bring to us are what you consider to be major
11 policy issues that you cannot work out between
12 yourselves that you want this Commission to
13 decide and give you guidance. And you may not
14 like the decision, but at least then with that
15 guidance you can go back and work through all
16 this myriad of details and not bring this to the
17 Commission.

18 If this is deregulation, we are regulating
19 ten times as much now as we have ever regulated
20 in the past. This is the closest thing to
21 micromanagement I have ever seen. And that's me
22 venting some frustration, and you can take it
23 for what it's worth. But I still have a smile
24 on my face, and we're still friends. But take
25 it for what it's worth.

1 But my concern is, this is the tip of the
2 iceberg. And once we get into penalty phases,
3 if you all can't agree on an answer time,
4 whether it's six seconds or eight seconds or 12
5 seconds, when penalties start coming out or the
6 ALECs think there should be penalties and
7 they're not determined to be, we are going to be
8 inundated, inundated with parties filing
9 complaints with the Commission that, "Yes, the
10 standard is 95%, but they've reached 94.9%,
11 Commission, and we need a penalty." And
12 Bellsouth is going to say, "No, we've reached
13 95.1% and there's no penalty." And we're going
14 to see that over and over and over again. We
15 won't be able to get any work done.

16 Now, that's me venting my frustrations, and
17 let's go forward with our work.

18 CHAIRMAN JACOBS: You may want to have a
19 conversation with the Attorney General of New
20 York. I think they're experiencing some of the
21 same frustrations right now as well.

22 COMMISSIONER DEASON: Okay.

23 MS. HARVEY: Commissioners, Bellsouth's
24 rebuttal to the testimony that was filed by the
25 ALECs where they requested the changes was that

1 these changes were based on an older version of
2 the SQM plan, and that their general -- they did
3 not address each item specifically, so I may
4 have a hard time telling you exactly what their
5 position was in response to the proposed change.
6 I can tell you what their original position is.
7 But their statement in their testimony was that
8 to the extent that these comments are relevant,
9 that they believe the proposal that they made in
10 their SQM plan and was clear, concise, and
11 appropriate.

12 That being said, the first page and a half
13 are the preordering metrics. All six of these
14 metrics are included in the Tier 1 and/or
15 Tier 2, or I should just call it the enforcement
16 plan. Some of the key issues in the preordering
17 metrics that we are suggesting changes to
18 include the issue of the date/time stamp and
19 where the clock actually starts when an order is
20 sent over. And we're --

21 COMMISSIONER DEASON: Let me ask you this
22 question. Why couldn't the parties agree on
23 something as simple as this, when you start the
24 clock? I mean, is this a big policy issue?

25 MS. HARVEY: I can't answer that.

1 COMMISSIONER DEASON: I'm just -- I mean,
2 tell me.

3 MS. HARVEY: On this particular issue, it
4 is a matter of seconds that are important in
5 terms of making or breaking the standard here,
6 and so in this particular case, it's important
7 that the clock be started when it leaves the
8 ALEC hands and goes into the BellSouth hand and
9 BellSouth has possession of it.

10 COMMISSIONER DEASON: Okay.

11 MS. HARVEY: And there was concern about --
12 for this particular issue that the clock started
13 several seconds beyond what's called the
14 BellSouth gateway. Okay? We're recommending
15 that it be backed up to the gateway.

16 COMMISSIONER DEASON: Okay. Now, what do
17 you mean by backed up to the gateway? You're
18 talking about a mechanized access system when
19 that order is communicated that -- what triggers
20 the starting point?

21 MS. HARVEY: When an order is -- when they
22 push the send button, when an ALEC pushes the
23 send button.

24 COMMISSIONER DEASON: Okay. When an ALEC
25 pushes the send button. All right. Now, how is

1 that time recorded?

2 MS. HARVEY: Through the date/time stamp of
3 the BellSouth gateway.

4 COMMISSIONER DEASON: Okay. When they
5 receive that via a computer connection, there is
6 a recording within the BellSouth system that
7 says this was received at 9:56 a.m. on such and
8 such a date. Do we get to the seconds or just
9 minutes?

10 MS. HARVEY: Seconds.

11 COMMISSIONER DEASON: Okay. So it's down
12 to 9:56.55 seconds. All right. And that should
13 be the trigger point. And what does BellSouth
14 say?

15 COMMISSIONER JABER: Jerry, you look like
16 you're dying to say something. Do you have
17 anything to add?

18 MR. HALLENSTEIN: No.

19 COMMISSIONER JABER: Okay. I saw you jump
20 at the microphone.

21 MS. HARVEY: The business rules specify
22 that the clock starts when the client
23 applications, which is LENS or TAG or EDI,
24 submits a request.

25 COMMISSIONER DEASON: Okay. What's the

1 difference?

2 MS. HARVEY: BellSouth doesn't have the
3 capability of measuring when the client's
4 application -- when they submit the request
5 until it gets to the BellSouth gateway. It's
6 got to be in the possession of BellSouth before
7 they can be responsible for starting the clock.
8 A client application, an ALEC application may
9 have some up-front edit routines that cause some
10 kind of delay in the order being processed or in
11 the preordering being processed. BellSouth
12 shouldn't be responsible for that time where the
13 order or preorder is still on the ALEC side.
14 The clock should start when they get possession
15 of it.

16 COMMISSIONER DEASON: Okay. And is
17 BellSouth saying the clock should not start when
18 they get possession?

19 MS. HARVEY: The current business rule says
20 it's not clear. It says when they submit an
21 order, and "submit an order" is nebulous.

22 COMMISSIONER DEASON: So this is really not
23 an issue. We're clarifying what --

24 MS. HARVEY: That's correct.

25 COMMISSIONER DEASON: The way we're

1 interpreting their SQM, because their SQM is not
2 specific enough.

3 MS. HARVEY: That's correct.

4 COMMISSIONER DEASON: Okay. That's fine.
5 why didn't you just say that?

6 MS. HARVEY: Okay.

7 CHAIRMAN JACOBS: But the problem is
8 nonetheless important, that that lack of clarity
9 has a real potential of allowing unnecessary
10 delay in the processing of the order. That's
11 the real policy issue, is how to remove as much
12 ambiguity and uncertainty so as to eliminate any
13 unnecessary delay in processing the order.

14 MS. HARVEY: That's correct. And I believe
15 on a going-forward basis, that's really the
16 purpose of the six-month review, is to be able
17 to identify where the ambiguities are and to be
18 able to further clarify or define them on an
19 ongoing basis. Okay?

20 CHAIRMAN JACOBS: Thank you.

21 MS. HARVEY: Skipping down to OSS-2, the
22 first definitional problem again is a
23 clarification, simply a clarification item.

24 COMMISSIONER DEASON: Excuse me. Before
25 you get to that, the last item on OSS-1 in the

1 ALEC column, it says the ALEC suggests parity
2 with retail, and then staff is recommending
3 parity plus two seconds.

4 MS. HARVEY: That's correct.

5 COMMISSIONER DEASON: Now, is that what
6 BellSouth requested, or are we doing something
7 in between? What's the --

8 MS. HARVEY: BellSouth requested parity
9 plus four seconds. And this is a metric that is
10 currently being evaluated by KPMG as a part of
11 the special timing study as part of the OSS test
12 to determine whether that number, two, four,
13 eight, six, whatever it should be. They would
14 recommend to us the appropriate number, the
15 addition of the --

16 COMMISSIONER DEASON: So for the six months
17 until we take another review, we're going to use
18 parity plus two?

19 MS. HARVEY: That's correct.

20 COMMISSIONER DEASON: And staff just feels
21 like that's a reasonable compromise?

22 MS. HARVEY: That's what we are using in
23 the interim metrics for the purpose of OSS
24 testing currently.

25 COMMISSIONER DEASON: So this is still the

1 same status quo until we get some information
2 that would indicate a change one direction or
3 the other?

4 MS. HARVEY: Right. Staff does not believe
5 that parity with retail is appropriate because
6 of the time that it takes to get through the
7 BellSouth gateway, that that accounts for some
8 small amount of time. It could be two seconds,
9 it could be four seconds, or it could be six
10 seconds. But staff does not believe that parity
11 with retail by itself would be appropriate.

12 COMMISSIONER DEASON: Okay. Thank you.

13 COMMISSIONER JABER: That reminded me of --
14 with respect to making sure every decision is
15 tied to the record, legally we can pick
16 something in the middle or rely on the interim
17 measures? If the range that we have is what the
18 ALECs recommend and what BellSouth recommends,
19 is it appropriate for us -- legally, is it
20 supported for us to do parity plus two seconds?

21 MR. FUDGE: Yes, Commissioner. We can pick
22 anything within that range. There's an old coal
23 inventory case that says that we can pick
24 anything within the range that the parties have
25 submitted.

1 COMMISSIONER DEASON: Was that a Gulf Power
2 case, by the way?

3 MR. FUDGE: Excuse me, Commissioner?

4 COMMISSIONER DEASON: Was that a Gulf Power
5 case?

6 MR. FUDGE: I think so.

7 COMMISSIONER JABER: Am I remembering
8 incorrectly that that case was overturned? Was
9 there something, Noreen, related to that case,
10 another case that came out that said the range
11 has to be -- whatever you pick from the range
12 has to be tied back to the record?

13 MS. DAVIS: I don't recall it being
14 overturned, but in this record there's
15 sufficient latitude to support staff's
16 recommendation.

17 COMMISSIONER JABER: Thank you.

18 COMMISSIONER DEASON: Okay. Moving right
19 along.

20 MS. HARVEY: OSS-2?

21 COMMISSIONER DEASON: Yes.

22 MS. HARVEY: Commissioner, let me ask a
23 procedural question. Do you want to cover
24 disaggregation and standards on this document or
25 -- it's again repeated in Attachment 5. We can

1 do it --

2 COMMISSIONER DEASON: Whatever is most
3 expeditious.

4 MS. HARVEY: Well, that would be to do it
5 in Attachment 5.

6 COMMISSIONER DEASON: All right. That's
7 fine. I'll probably need to refer back from
8 time to time to Attachment 3 because that's
9 where I have all my notes, but --

10 MS. HARVEY: Okay. Just some other
11 clarification issues that I think I would like
12 to make you aware of. On OSS-2, the second
13 paragraph or sentence in the third column, the
14 business rules --

15 COMMISSIONER DEASON: What page are you on
16 in the recommendation?

17 MS. HARVEY: I'm sorry. I'm on page 51.

18 COMMISSIONER DEASON: Okay. This is still
19 Attachment 3 on page 51?

20 MS. HARVEY: Yes, yes.

21 COMMISSIONER DEASON: Okay.

22 MS. HARVEY: We're on OSS-2, interface
23 availability. Again, this is a clarification to
24 the BellSouth business rules we are requesting
25 be made. BellSouth has a list of five

1 statements that they use to define what an
2 outage is, and as the ALECs stated, BellSouth's
3 tortured and unsubstantiated business rules
4 place severe limitations on what is considered
5 an outage. Staff would agree with that. And
6 just as an example, one of the statements reads
7 that when 40% of the function of the client
8 normally performed, or 40% of functionality that
9 is normally provided to an application system is
10 unavailable, that constitutes an outage.

11 COMMISSIONER DEASON: That's according to
12 BellSouth's definition?

13 MS. HARVEY: According to BellSouth. And,
14 you know, where does 40% come from, and how do
15 you discern what 40% of the function of -- the
16 function of the clients normally performed or
17 functionality is very unclear, and so we would
18 like clarification on that.

19 COMMISSIONER DEASON: Okay. But then I
20 read your recommendation, and it's three lines,
21 and it says the business rules should be revised
22 to reduce limitations on what is considered an
23 outage. We're just going to rely on BellSouth
24 to take that recommendation, or do you have
25 specific language which you recommend be

1 utilized?

2 MS. HARVEY: Commissioner, that's the
3 purpose of having Bellsouth come back to us in
4 45 days with a performance assessment plan that
5 includes the service quality measurement plan.
6 They will actually be responsible for revising
7 the service quality measurement plan, which has
8 the business rules in it, to reflect the changes
9 that are in Attachment 3, and we would determine
10 whether or not they made those changes.

11 COMMISSIONER DEASON: They will work with
12 you on that, or -- see, this is a good example
13 of what I think maybe this process should be,
14 is that the intricacies of the language and the
15 details should be worked out really between the
16 parties. And if they can't do it, then I guess
17 you all may need to mediate it or whatever.

18 If we're going to rely on Bellsouth to make
19 a filing, which I understand is the
20 recommendation, to be consistent with the
21 decisions here -- if all we're saying is that
22 the language, as vague as it is now, as it
23 currently exists, and it needs to be revised to
24 provide some clarity and leave it to you all to
25 work it out, I'm happy.

1 MS. HARVEY: Okay.

2 COMMISSIONER DEASON: But if you're
3 expecting this Commission to tell them what the
4 language is, I don't have any language in front
5 of me that accomplishes that. I'm trying to
6 understand what we're doing here.

7 MS. HARVEY: We're asking them to come back
8 with language that addresses the intent of the
9 recommendation in Attachment 3, because we don't
10 have the exact language.

11 COMMISSIONER DEASON: Okay. Now, are we
12 going to get a complaint from the ALECs saying
13 the language is still vague, or the language
14 doesn't go far enough, or it went too far, and
15 then is that going to be back in front of us to
16 litigate, or should we decide the issue now and
17 move forward? Do you see what I'm saying? It's
18 like this thing is never-ending.

19 MS. HARVEY: That's the way I feel.

20 COMMISSIONER DEASON: Are we just going to
21 rely on BellSouth to try to get as much clarity
22 in there consistent with the direction that we
23 give them, and then hopefully that flies?

24 MS. HARVEY: Yes, yes.

25 COMMISSIONER DEASON: Okay. I'm trying to

1 understand what we're trying to accomplish here.

2 And hopefully, during this process that
3 we're working through this, Commissioners -- the
4 parties are out there and they're listening.
5 Hopefully they'll get a flavor for some of the
6 frustration we're going through. And this is
7 probably just as frustrating and agonizing for
8 them as it is for us to go through this, and
9 maybe they'll have some thoughts as to how to
10 improve this process.

11 CHAIRMAN JACOBS: Sounds like a great idea.

12 MS. HARVEY: I would like to jump down to
13 page 52, PO-1, loop makeup response time --

14 COMMISSIONER DEASON: Okay. Before we get
15 there, let me ask you, just above there on
16 OSS-4, it's indicated that there's no change
17 proposed by the ALECs. However, staff is
18 recommending that Bellsouth should not schedule
19 normal maintenance during certain hours. So are
20 we talking it upon ourselves to make this change
21 even though it was not requested by the ALECs,
22 and if so, is this information in the record
23 that we need that's the reason for making this
24 change? Or is it a change?

25 MS. HARVEY: I think that's a bleed-over

1 from OSS-3.

2 COMMISSIONER DEASON: So it's really not a
3 separate item for OSS-4.

4 MS. HARVEY: Right. In OSS-3, the second
5 paragraph, we said that BellSouth should post
6 its own scheduled hours of OSS availability.

7 COMMISSIONER DEASON: Okay. So that line,
8 it's just confusing.

9 MS. HARVEY: Yes, it is.

10 COMMISSIONER DEASON: We should take our
11 own advice and make things more clear. Okay. I
12 apologize for that one. I just misread it.

13 MS. HARVEY: Okay. PO-1, loop makeup
14 response time, this is one where the ALECs are
15 asking that loops be disaggregated and reported
16 by loop type. And staff disagrees with that
17 level of disaggregation at this point. I
18 believe it's something that we could go back and
19 look at in the six-month review cycle. However,
20 because this is a relatively new metric, I
21 believe that we should not disaggregate by loops
22 at this time.

23 COMMISSIONER DEASON: Okay. PO-2.

24 MS. HARVEY: PO-2, staff is shortening the
25 standard that was proposed by BellSouth.

1 Bellsouth proposed 90% in five minutes. And,
2 Commissioner, this is an electronic response to
3 an inquiry for loop makeup information. If you
4 were at your computer and you sent an inquiry,
5 waiting five minutes I think would not be
6 appropriate for a response, so staff believes
7 that the time interval on that should be
8 shortened to one minute.

9 COMMISSIONER DEASON: Now, this is the
10 standard that is going to be incorporated in
11 Georgia after six months; is that right?

12 MS. HARVEY: That's correct. And I believe
13 that that six months actually takes effect in
14 August, this month.

15 COMMISSIONER DEASON: Okay. Now, let me
16 ask you this. If that's the Georgia standard
17 and Bellsouth is going to have to comply with
18 that in Georgia, why don't they just propose to
19 do that in Florida and be done with this issue?
20 why is it an issue in Florida?

21 MS. HARVEY: I can't answer that.

22 COMMISSIONER DEASON: You can't speak for
23 them.

24 MS. HARVEY: I can't answer that question.

25 COMMISSIONER DEASON: All right. Fine.

1 MS. HARVEY: Okay. Move down to the
2 ordering metrics. 0-1, the first issue, is just
3 a clarification that is needed in terms of what
4 is meant by an aggregator.

5 COMMISSIONER JABER: May I take you back
6 for a minute? Had we -- I thought at some point
7 we talked about how if another state in the
8 BellSouth region had addressed an issue and we
9 agreed with it, that we would incorporate it in
10 some sort of a streamlined fashion. Is that
11 something we can still --

12 MS. HARVEY: Are you referring -- you may
13 be referring to the OSS test.

14 COMMISSIONER JABER: It wouldn't apply? We
15 couldn't do it in performance measurements? I
16 mean, would that cut our process a little bit?
17 And not necessarily for today, but in the
18 six-month review.

19 MS. KEATING: It's something that I think
20 we could look into. I don't know that it would
21 shorten this process at this point, but maybe on
22 a going-forward basis it might make the
23 six-month reviews shorter.

24 MS. HARVEY: That's a very good point,
25 because it's --

1 COMMISSIONER JABER: Before the six-month
2 review process is completed, could you all do a
3 separate analysis of, for example, the Georgia
4 and Louisiana models and say to BellSouth in
5 some sort of facilitated or mediated meeting
6 that at the bare minimum, you should offer this,
7 can you offer this? Might that expedite our
8 process?

9 MS. HARVEY: We can certainly do that. I
10 think that's a good idea.

11 COMMISSIONER DEASON: Under ordering, O-1,
12 this is just another situation where the SQM is
13 unclear, and staff is wanting the rule to be
14 clarified, and this will be part of the plan
15 that is filed within 45 days?

16 MS. HARVEY: That's correct.

17 COMMISSIONER DEASON: Okay. We can move
18 on. Explain the difference between with and
19 without manual fallout as it pertains to OS-3,
20 4, and 5. I'm sorry, O-3, 4, and 5.

21 MS. HARVEY: Okay. Flow-through is a very
22 significant issue, and it is -- when an order is
23 sent through the system, does it proceed through
24 the system all the way electronically so that
25 there is no manual intervention necessary. That

1 would be the ideal situation.

2 COMMISSIONER DEASON: And when it doesn't,
3 that's a fallout; correct?

4 MS. HARVEY: Exactly. And there are things
5 that are planned fallouts. In other words,
6 Bellsouth knows these items can be submitted
7 electronically, but they get to a certain point,
8 and they would fall out for manual handling in
9 one of the ordering centers so that --

10 COMMISSIONER DEASON: For example, if it
11 was some type of a complex order?

12 MS. HARVEY: That's correct.

13 COMMISSIONER DEASON: So the system itself,
14 even though maybe the order had been submitted
15 correctly, it would just by design fall out.

16 MS. HARVEY: Exactly.

17 COMMISSIONER DEASON: Okay.

18 MS. HARVEY: So that Bellsouth's reps can
19 check facilities or add additional information
20 to the order that may be needed to be added to
21 the order.

22 Then there's also unplanned fallout, which
23 would be when the ALEC submits an order and that
24 order is incorrect for some reason and it falls
25 out because it doesn't meet the syntax rules or

1 they have a -- which would be having an alpha
2 character in a numeric field or something like
3 that, or perhaps they could be ordering a
4 product that needed an ancillary product to go
5 with it, and that other product was not
6 ordered, so it may be sent back because --

7 COMMISSIONER DEASON: That would be a
8 failure upon the entity submitting the order.

9 MS. HARVEY: That's correct.

10 COMMISSIONER DEASON: And how does
11 BellSouth -- what standard applies to that, if
12 any? I mean, that's not BellSouth's fault;
13 correct? They're not held accountable for that.

14 MS. HARVEY: That's correct.

15 Staff would like the flow-through port to
16 reflect what flows through without fallout
17 versus that which has a fallout in it so we can
18 see the distinction.

19 COMMISSIONER DEASON: Okay. Now, is this
20 informational, or is this a standard that's
21 being set that is going to have the impact of
22 potential --

23 MS. HARVEY: It's informational.

24 COMMISSIONER DEASON: Informational?

25 MS. HARVEY: Informational.

1 COMMISSIONER DEASON: Okay. Now, what
2 about the -- at the bottom of that category,
3 there's an indication from staff that you have
4 different benchmarks for total flow-through, and
5 you have a percentage for residence, business,
6 UNE, and LNP.

7 MS. HARVEY: Right. These standards
8 reflect what BellSouth proposed. The ALECs were
9 proposing a strict 98% benchmark, and I didn't
10 see any justification for that 98%, just 98%
11 flow-through.

12 COMMISSIONER DEASON: Okay.

13 MS. HARVEY: Residential orders are easy
14 orders. They should flow through. UNE orders
15 are more complex, and I think there should be
16 more allowance for fallout on the more complex
17 orders.

18 COMMISSIONER DEASON: Okay.

19 CHAIRMAN JACOBS: I don't know if this is
20 the proper point to address this. I want to
21 have some discussion about the decision not to
22 make flow-through a Tier 1 or a Tier 2.

23 MS. HARVEY: Flow-through is a Tier 2
24 metric.

25 CHAIRMAN JACOBS: I'm sorry. Make that a

1 Tier 1 instead of a Tier 2. I'm sorry. That's
2 what I -- we can do that later.

3 MS. HARVEY: Okay. We'll do that in 2b.

4 Commissioners, if you don't have any
5 questions, I would like to skip over 0-7 and 0-8
6 and go to 0-9.

7 COMMISSIONER DEASON: I have a question on
8 0-8 at the top of page 54. Here again we have
9 benchmarks being set for partially mechanized,
10 and I just need to know how staff determined
11 those benchmarks as being appropriate.

12 MS. HARVEY: BellSouth recommended 85%
13 within 10 hours in six months. Taking into
14 consideration the amount of time that it's going
15 to take to get this recommendation into effect,
16 we went with that particular time frame.
17 However, we increased the percentage from 85 to
18 95, because we agreed with the ALEC position
19 that 85% was basically too low for the number of
20 orders to be rejected from a customer impacting
21 standpoint. I think that generally the
22 percentages need to be in the 90 to 95% range.

23 COMMISSIONER DEASON: What was the -- what
24 did we do for interim purposes? Do we have any
25 experience as to whether -- what's being

1 accomplished?

2 MS. HARVEY: I can't answer that question
3 right now. I have the information, but I don't
4 have the standard with me right now.

5 COMMISSIONER DEASON: Well, did BellSouth
6 make any argument as to why 85% is appropriate
7 and a higher standard is inappropriate?

8 MS. HARVEY: No, sir, nothing specific.

9 COMMISSIONER DEASON: So this was raised by
10 the ALECs, but it really wasn't responded to by
11 BellSouth?

12 MS. HARVEY: That's correct.

13 COMMISSIONER DEASON: Okay.

14 MS. HARVEY: The next item is 0-9, firm
15 order confirmation timeliness. And the majority
16 of the things that are specified in this
17 particular metric are clarifications that are
18 needed for purposes of the date/time stamp
19 issue. However, I would like to point out the
20 fourth item in the last column that says that
21 staff agrees that BellSouth should be required
22 to do an electronic facilities check to ensure
23 that due dates delivered in FOCs can be relied
24 on.

25 COMMISSIONER DEASON: This is going to be

1 part of the six-month review? How is this going
2 to be incorporated, or is this just something
3 that you want BellSouth to incorporate in the
4 45-day proposal?

5 MS. HARVEY: This is something that we
6 would like to see BellSouth incorporate in the
7 45-day proposal, requiring them to do an
8 electronic facilities check before they give a
9 due date.

10 COMMISSIONER DEASON: Okay. Now, what
11 about the standards you're recommending at the
12 bottom of page 54? How did you determine
13 those? Is this a compromise position?

14 MS. HARVEY: Yes, it is. BellSouth -- for
15 partially mechanized orders, BellSouth proposed
16 85% within 10 hours in six months. And again,
17 the same argument that I used before in terms of
18 the amount --

19 COMMISSIONER DEASON: Did they accept a 95%
20 standard after six months?

21 MS. HARVEY: No, it's 85%.

22 COMMISSIONER DEASON: Okay. What's the
23 six-month trigger? Is there a six-month trigger
24 here, or --

25 MS. HARVEY: It would be 10 -- for

1 partially mechanized it would be 10 hours in six
2 months at the percentage of 85%. And staff
3 believes that it should be 95% within 10 hours.

4 COMMISSIONER DEASON: And your opinion is
5 just based upon your informed judgment?

6 MS. HARVEY: That's correct. It's based
7 upon the fact that I think that 85% is low when
8 you talk about 15% of the customers or 15% of
9 your orders are not going to be receiving FOCs
10 in a timely manner.

11 COMMISSIONER JABER: And legally,
12 Ms. Keating, that's all supported by the record,
13 so this is okay?

14 MS. KEATING: Yes, Commissioner, I believe
15 -- the informed judgment is based on an analysis
16 of the testimony that was presented.

17 CHAIRMAN JACOBS: Is there any testimony
18 about what this standard is in Georgia?

19 MS. HARVEY: I didn't --

20 CHAIRMAN JACOBS: Is there any testimony
21 about what this standard is in Georgia?

22 MS. HARVEY: It's part of the record. I do
23 not have it with me at this time. My guess is
24 that it would be very similar to what BellSouth
25 proposed, which was the 85% in 18 hours in three

1 months and 85% in 10 hours in six months.

2 COMMISSIONER JABER: Dr. Bane, this is the
3 kind of thing I reference to you from time to
4 time about staff testimony. This is an
5 example. It's not that necessarily there isn't
6 enough record evidence to support this, but if
7 we know what's happening in other states and
8 staff's role is to fill the record, just to make
9 it absolutely clear, these are the kinds of
10 benefits we get from staff testimony.

11 MS. HARVEY: Commissioner, the standards in
12 the other states were a part of this record.

13 COMMISSIONER JABER: The official notice,
14 taking orders, official notice of --

15 MS. HARVEY: Yes. Okay.

16 COMMISSIONER DEASON: In reference to O-14
17 and O-15, the standards that are there, what
18 you're recommending is consistent with what you
19 recommended in O-9? Are those totally related,
20 or are they different?

21 MS. HARVEY: O-15 is similar to O-9, yes.

22 COMMISSIONER DEASON: Same basis for your
23 recommendation?

24 MS. HARVEY: Yes, that's correct.

25 COMMISSIONER DEASON: Okay. I'm okay to

1 move over to provisioning if you are.

2 MS. HARVEY: Okay. Great. Okay. On P-1,
3 mean held order interval and distribution
4 intervals, we're asking for some -- for
5 BellSouth to capture orders that are held past
6 due within the period, not just those that are
7 open at the close of the period.

8 COMMISSIONER DEASON: And this is a
9 reporting requirement only?

10 MS. HARVEY: It would be a change to the
11 reporting requirement. Typically, if an order
12 is held but resolved within the month, it is not
13 included in this metric. And staff believes the
14 fact that the order was held, regardless of the
15 fact that it didn't run over to another month --

16 COMMISSIONER DEASON: In other words, if it
17 should have been by the 25th, but it was
18 accomplished by the 28th, then it wouldn't be
19 reported as --

20 MS. HARVEY: It would not be reported as
21 a --

22 COMMISSIONER DEASON: And you want that
23 information reported.

24 MS. HARVEY: And staff believes that that
25 should be captured as a held order.

1 COMMISSIONER DEASON: Okay.

2 MS. HARVEY: Okay.

3 COMMISSIONER DEASON: I'm fine to move over
4 to P-3.

5 MS. HARVEY: Okay.

6 COMMISSIONER DEASON: At the end of your
7 recommendation column, you make the statement
8 that staff partially agrees and believes the
9 level of disaggregation proposed by BellSouth
10 which include xDSL and line sharing is
11 appropriate. This is the -- is that the only
12 amount of disaggregation that is appropriate?
13 First of all, contrast the positions of the
14 parties for me, and then describe to me why --
15 go ahead.

16 MS. HARVEY: The ALECs are requesting that
17 the loops themselves be disaggregated and not
18 lumped together, so that you would see the
19 difference between an ADSL loop and an HDSL loop
20 or an unbundled copper loop. And in addition to
21 that, they're asking for line sharing and line
22 splitting. Staff agrees that line sharing and
23 line splitting should be disaggregated, but we
24 believe that loops should be one category at
25 this particular point in time.

1 COMMISSIONER DEASON: And why? As opposed
2 to, you know, a copper loop, DSL-capable loop,
3 why is it -- is it that a loop is a loop, or is
4 it -- why is it that it should not be
5 disaggregated?

6 MS. HARVEY: I'm not certain whether it's
7 an HDSL or an ADSL will make a difference in
8 terms of a missed installation appointment, and
9 that a loop is a loop, and we can put them
10 together for purposes -- without trying to --
11 I'm trying to not complicate this thing too
12 much.

13 COMMISSIONER DEASON: Oh, I appreciate
14 that. Seriously, I do. If it were more
15 complicated than it is, I would be even more
16 frustrated.

17 MS. HARVEY: When is enough disaggregation?

18 COMMISSIONER DEASON: I guess if this
19 becomes a problem, it can be reviewed in six
20 months?

21 MS. HARVEY: Yes, sir.

22 COMMISSIONER DEASON: Okay. On P-4 at the
23 bottom of page 57, you indicate that BellSouth
24 should disaggregate provisioning metrics as
25 shown in Attachment 5. I guess this is

1 basically a disaggregating question. Should we
2 just wait on that?

3 MS. HARVEY: You can ask it wherever you've
4 got a note on it. That's fine.

5 COMMISSIONER DEASON: Well, I'm just --
6 we'll just wait on it.

7 MS. HARVEY: Okay.

8 COMMISSIONER DEASON: P-4.

9 CHAIRMAN JACOBS: I'm sorry. Could I ask a
10 question on the prior one before you get there?

11 MS. HARVEY: Sure.

12 CHAIRMAN JACOBS: Back over to P-2, page
13 56. I think I asked this question when we
14 talked, but I can't recall. The concern here is
15 that the information that is useful to determine
16 how an order is progressing be made available
17 electronically, correct, for ALECs?

18 MS. HARVEY: I'm sorry, Chairman. Could
19 you ask that question again?

20 COMMISSIONER DEASON: The concern that is
21 at the basis of this metric is how effectively
22 ALECs are able to get information on how an
23 order is progressing electronically.

24 MS. HARVEY: P-2 defines if an order is not
25 going to be completed in a timely manner, they

1 would receive a notice.

2 CHAIRMAN JACOBS: Right, and they want to
3 get it electronically.

4 MS. HARVEY: That's correct.

5 CHAIRMAN JACOBS: And they're saying that
6 function exists now for BellSouth under this
7 system here. My question is, is this the same
8 system, or is this a different system that
9 you've cited in your recommendation. You say
10 that they can get that information, and I assume
11 electronically, but is it the same system or is
12 it a different system than what BellSouth uses?

13 MS. HARVEY: For itself?

14 CHAIRMAN JACOBS: Yes.

15 MS. HARVEY: It's a different system from
16 what BellSouth uses for itself. I believe it's
17 a web-based system called CSOTS, and on it ALECs
18 can check the status of a given order.

19 CHAIRMAN JACOBS: Okay. And the
20 information is updated, and so there's no
21 problem with that information and all that sort
22 of thing. Why don't we just have that checked
23 and confirm how that -- you know, what the
24 quality of that information is in that system.

25 COMMISSIONER JABER: Staff makes the

1 comment there that you're not clear on what the
2 ALECs are requesting there. Chairman Jacobs, if
3 I understand your question, could it be that
4 they're saying it's a timing issue?

5 CHAIRMAN JACOBS: Or quality of
6 information. I thought either the timing or
7 quality of information, one of the two.

8 COMMISSIONER JABER: Do they address that
9 in the briefs?

10 MS. HARVEY: No, Commissioner.

11 CHAIRMAN JACOBS: Okay. P-4.

12 COMMISSIONER DEASON: Moving right along,
13 MR-1, unless there's something you want to talk
14 about in between.

15 CHAIRMAN JACOBS: I did have one on P-4.
16 I'm sorry. Very briefly, on disaggregation, the
17 concern there with pending facilities is whether
18 or not they're being completed at an equal --
19 whether ALEC orders that have pending resources
20 are being completed in a manner that's on par
21 with Bellsouth orders that have pending
22 resources. And I can agree with the idea that
23 we don't want to disaggregate to that level,
24 but I would like for our six months review to
25 give some analysis to that activity.

1 MS. HARVEY: Commissioner, which metric are
2 you referring to?

3 CHAIRMAN JACOBS: This is P-4 again.

4 MS. HARVEY: P-4? Okay. And you're
5 interested in more information regarding a
6 potential increase in disaggregation for xDSL?

7 CHAIRMAN JACOBS: No, no. What I'm
8 concerned with is what the ultimate concern for
9 disaggregating this element was. It was to try
10 -- for there to be some kind of basis to monitor
11 how parallel orders that are pending resources
12 are fulfilled for both the ALECs and BellSouth.
13 I think that's what it was supposed to be doing.

14 So if an order comes in and resources
15 aren't there to fulfill it, it becomes a pending
16 order. It ultimately gets resolved, and this is
17 simply an effort to determine whether or not the
18 resolution of that order is on par for both the
19 ALECs and BellSouth. And what we're saying is,
20 we don't think you need to disaggregate this
21 metric down to accomplish that, but I still want
22 to get the raw data reported as to what's
23 happening with that activity. Okay?

24 MS. HARVEY: I understand.

25 CHAIRMAN JACOBS: Thank you.

1 COMMISSIONER DEASON: MR-1, page 60. At
2 the bottom of the page there, you make the
3 observation that this metric measures missed
4 appointments. And apparently there's a question
5 in the ALECs' mind about end time. I'm trying
6 to understand what the ALECs' concern is with
7 end time and why it fits into the category of
8 missed repair appointments.

9 I think you're making -- you're disagreeing
10 with the ALEC position because you don't think
11 it fits in with what is being measured here,
12 which is missed appointments. I guess my
13 concern is, the concern expressed by the ALECs,
14 it sounds like a fairly valid concern, and where
15 should it be expressed, and has staff considered
16 and just disagrees with it from a policy
17 standpoint?

18 MS. HARVEY: MR-1 addresses whether or not
19 the appointment was met and not the time frame.
20 The time frame would be -- we do not have a
21 metric that captures how long it takes.

22 COMMISSIONER DEASON: Well, how do you
23 determine if an appointment was missed? Just no
24 one showed up, so it was not a question of a
25 period of time to make a repair?

1 MS. HARVEY: If BellSouth fails to clear
2 the trouble by the committed time.

3 COMMISSIONER DEASON: So how do you measure
4 that time? when BellSouth says they cleared it
5 or when they notify the ALEC that it has been
6 restored or cleared?

7 MS. HARVEY: The cleared time is the date
8 and time that BellSouth personnel cleared the
9 trouble and closed the trouble ticket in their
10 computer access terminal or workstation.

11 COMMISSIONER DEASON: Okay. Is there any
12 requirement to notify the ALEC that that action
13 was taken, or is there some database that the
14 ALEC should monitor to make that determination?
15 It seems to me this is needed information. Now,
16 if the ALEC can obtain it by their own due
17 diligence, assuming the information is available
18 in the BellSouth database, that's fine.

19 MS. HARVEY: The information would be
20 available through TAFI and ECTA, the ALEC
21 maintenance and repair databases.

22 COMMISSIONER DEASON: So when the service
23 technician enters that into his computer and
24 says this trouble has been closed, that
25 information would be available to the ALEC?

1 MS. HARVEY: That's correct.

2 COMMISSIONER DEASON: Okay. Fine.

3 On B-2, you're recommending that this
4 exclusion should be eliminated, and I guess when
5 you eliminate an exclusion the requirement is
6 for BellSouth to include this subject matter,
7 which is bills rejected because of BellSouth
8 formatting errors. Is that correct?

9 MS. HARVEY: That's correct.

10 COMMISSIONER DEASON: So if there's a
11 BellSouth formatting error, it should be
12 included within the metric and reported;
13 correct?

14 MS. HARVEY: That's correct.

15 COMMISSIONER DEASON: Why would BellSouth
16 -- does BellSouth take a contrary position?

17 MS. HARVEY: Are they in an unfair
18 position?

19 COMMISSIONER DEASON: No, no, no. Does
20 BellSouth take a contrary position?

21 MS. HARVEY: Oh.

22 COMMISSIONER DEASON: I mean, it would just
23 seem intuitive that if BellSouth committed a
24 formatting error that they should be held
25 accountable. It appears that -- I'm trying to

1 understand what BellSouth's position is, why
2 they apparently feel like that should not --

3 MS. HARVEY: Commissioner, all I can tell
4 you is that the business rule for this metric
5 excludes any invoices rejected due to formatting
6 or content errors.

7 COMMISSIONER DEASON: Okay. B-3, usage
8 data delivery accuracy. You're recommending or
9 you're making the statement that you agree that
10 the measure should be modified to reflect
11 records rather than data packs.

12 MS. HARVEY: That's correct.

13 COMMISSIONER DEASON: Can you explain the
14 difference between a record and a data pack?

15 MS. HARVEY: A data pack may include 10
16 reports, or it may contain a thousand records.
17 And it's a unit that we didn't feel made a lot
18 of sense, and that instead that the accuracy
19 should be based on the record itself.

20 COMMISSIONER DEASON: So under BellSouth's
21 proposal, there's a possibility that the results
22 could be skewed? Is that the concern?

23 MS. HARVEY: Yes.

24 COMMISSIONER DEASON: And B-6, mean time to
25 deliver usage. In your recommendation, you

1 describe that there should be differences
2 reflected between the date data -- it says date
3 data is mailed. Is that date data are mailed
4 and date -- I'm having difficulty understanding
5 what is being recommended.

6 MS. HARVEY: Staff is recommending that --

7 COMMISSIONER DEASON: Date data, is that a
8 concept, or is it --

9 MS. HARVEY: The date the --

10 COMMISSIONER DEASON: The date that data --

11 MS. HARVEY: The date that that data is
12 mailed versus the date that the data is
13 generated by the customer divided by the total
14 record volume.

15 COMMISSIONER DEASON: Okay. And explain to
16 me the significance of mailing as opposed to
17 generated by the customer.

18 MS. HARVEY: The data could be generated
19 two or three days earlier than the date that it
20 is mailed.

21 COMMISSIONER DEASON: Okay. So there's a
22 standard there that BellSouth should have to
23 meet concerning that difference in time between
24 -- what are we measuring here? what are we
25 accomplishing?

1 MS. HARVEY: We're trying to capture how
2 long it takes BellSouth to deliver usage to the
3 ALECs. And it's one of those "where do you
4 start the clock" questions. Do you start it
5 when the data -- the bills go in the mail, or do
6 you start it when the BellSouth computer kicks
7 out the bills? And the ALECs are proposing that
8 it should be started when the computer kicks out
9 the bill as opposed to BellSouth's proposal that
10 -- when they're placed in the mail.

11 COMMISSIONER DEASON: So what we're trying
12 to do, we're trying to make sure that BellSouth,
13 when they generate a bill, they just don't hold
14 onto it, they go ahead and mail it?

15 MS. HARVEY: Correct.

16 COMMISSIONER DEASON: That seems logical.
17 Why wouldn't they do that anyway?

18 MS. HARVEY: Because it shortens the time
19 frame for the time to deliver the usage.

20 COMMISSIONER DEASON: I'm learning a lot
21 about the telephone business here.

22 TGP-1. I'm glad to know that I'm not the
23 only one that is unclear about certain things.
24 Apparently staff is unclear as to what the ALECs
25 are proposing.

1 MS. HARVEY: That's correct. And we would
2 propose to talk about this again in six months.

3 COMMISSIONER DEASON: Okay. C-2, I guess
4 this is another situation where you're going to
5 rely on Bellsouth to incorporate appropriate
6 language in their 45-day filing?

7 MS. HARVEY: That's correct. That's
8 correct, Commissioner.

9 CHAIRMAN JACOBS: There was a lot of
10 discussion of this idea of proper calculation of
11 trunk capacity, and we were discussing it, and I
12 still -- it's kind of vague, but I feel better
13 about it, I think.

14 I think what happens is, there's some
15 moment in time when the interconnection trunks
16 that go between the ALEC and the CLEC reach some
17 threshold level where they've got to consider
18 adding capacity, and at that point in time, I
19 assume some automatic ordering mechanism kicks
20 off. And what they're saying is that you've got
21 this calculation of this threshold point that
22 has to be accurate, and it has to match the
23 amount of time it takes to process the trunk
24 order to get the new trunk capacity. Is that a
25 fair description of the concern? And I don't

1 even know if this one is related to it, but I
2 assume that it's somewhat related.

3 MS. HARVEY: I think you're referring to 1a
4 and the additional metrics that were proposed
5 relating to trunks?

6 CHAIRMAN JACOBS: Right.

7 MS. HARVEY: Yes, you've characterized --
8 it seems like you've characterized it correctly.

9 CHAIRMAN JACOBS: Now, is that a legitimate
10 concern out there? What I take your comments to
11 mean is that you're not clear how this metric
12 would measure that. But it doesn't go to the
13 point of whether or not that's a legitimate
14 concern or not.

15 MS. HARVEY: I don't have any information
16 to tell me one way or another whether it's a
17 legitimate concern.

18 CHAIRMAN JACOBS: I would be very
19 interested in following through on that, and
20 your expectations as to resolution of this trunk
21 issue as well.

22 MS. HARVEY: Okay.

23 COMMISSIONER DEASON: CM-1, page 64. Staff
24 is recommending a benchmark of 98% on time.

25 MS. HARVEY: Yes, sir.

1 COMMISSIONER DEASON: First of all, how did
2 you determine this particular benchmark? And
3 this is in the context of change management
4 process. What is the change management process?

5 MS. HARVEY: Did you say C-1?

6 COMMISSIONER DEASON: CM-1 on page 64.

7 MS. HARVEY: Right. This is timeliness of
8 change management notices.

9 CHAIRMAN JACOBS: But what change
10 management is, I think --

11 MS. HARVEY: This is how long does it take
12 BellSouth or how timely does BellSouth --

13 COMMISSIONER DEASON: Notify an ALEC that
14 they've had a change in procedure, or is that --

15 MS. HARVEY: Or that there's going to be a
16 change in some kind of system that they need to
17 be aware of. There are --

18 COMMISSIONER DEASON: And how do you
19 measure 98% on time? How do you say --

20 MS. HARVEY: There are various levels of
21 change management type notices, one being a
22 defect notice, a change that --

23 COMMISSIONER DEASON: Change management
24 notice, is that something that's generally --
25 that is understood within the industry and it

1 means a certain thing, and everybody agrees as
2 to what a change management notice is?

3 MS. HARVEY: Anybody that's dealing with
4 BellSouth does.

5 COMMISSIONER DEASON: Okay.

6 MS. HARVEY: But there are various types of
7 change management notices. For example, a
8 defect notice has a certain time requirement
9 associated with it in terms of how soon it has
10 to be presented to the ALEC community so that
11 they can --

12 COMMISSIONER DEASON: And these time
13 requirements are in the current SQM?

14 MS. HARVEY: They're not in the current
15 SQM. They're in the change management manual.

16 COMMISSIONER DEASON: Oh, okay. So this is
17 something that is internally generated by
18 BellSouth.

19 MS. HARVEY: It was negotiated by the
20 parties.

21 COMMISSIONER DEASON: Really? I'm
22 thrilled. And we're saying it should be 98% on
23 time.

24 MS. HARVEY: That's correct.

25 COMMISSIONER DEASON: And it's consistent

1 with the time measures within the manual which
2 the parties --

3 MS. HARVEY: "On time" is referring to the
4 rules that are specified in the manual, and
5 we're saying that 98% of the time, BellSouth
6 should be complying with these negotiated
7 standards.

8 COMMISSIONER DEASON: Okay. Good. CM-2,
9 average delay days for change management
10 notices. What is a delay day in the context of
11 a change management notice?

12 MS. HARVEY: This measure measures the
13 average delay days for change management system
14 releases for system release notices. That's the
15 notice that is sent out that are sent outside
16 the time frame that was set forth in that change
17 control manual that I referred to.

18 COMMISSIONER DEASON: So if it exceeds the
19 time frame within the manual, they would still
20 need to comply with 95% within five days in
21 excess of what's contained in the manual? I'm
22 just trying to understand.

23 MS. HARVEY: Yes.

24 COMMISSIONER DEASON: That's it?

25 MS. HARVEY: Yes. For those that don't

1 meet the 98% on time, 95% of those should be
2 resolved in five days.

3 COMMISSIONER DEASON: And CM-3 is the same
4 type concept? Here again, you have 98% on
5 time, and this relates to timeliness of
6 documents associated with changes.

7 MS. HARVEY: Oftentimes when BellSouth
8 proposes a change to a system, prior to the
9 system being changed, they have to produce a
10 document manual with the business rules that
11 will tell the CLECs what they need to do in
12 advance in order to get ready for the change
13 that's coming out, the system change. And so
14 this is how quickly they get the documents
15 associated with the change published and out to
16 the CLECs in a timely manner.

17 COMMISSIONER DEASON: Okay. Well, you'll
18 be happy to know that's all the questions I have
19 on Attachment 3.

20 COMMISSIONER JABER: Lisa, probably you
21 said all of this in the introduction, but that
22 was so long ago, I've forgotten what you said.
23 On the six-month review, how is it that you
24 intend to bring that back to us in a
25 recommendation that's still going to be

1 post-hearing? It would be at an agenda
2 conference, or what did you intend to do?

3 MS. KEATING: I think we intend to bring
4 them back to agenda, but hopefully they'll be --
5 we'll be able to work through some of the
6 issues, and so hopefully they won't be quite as
7 lengthy.

8 COMMISSIONER JABER: But since it's just a
9 continuation or a review of our findings today,
10 is it considered a post-hearing item, or how is
11 it that the parties -- the reason I ask is
12 because there are a couple of places where it
13 says staff is unclear on what has been requested
14 by the ALECs. What is it you envision doing?
15 Are you going to meet with the parties and ask
16 the ALECs what it is they meant, and you'll
17 bring that back to us in the form of a
18 recommendation, or do we hear from them
19 directly?

20 MS. HARVEY: When I specified that it was
21 unclear, I would propose -- if we didn't
22 specifically say staff recommends, then wait
23 until the six-month review cycle. But it was
24 not my intention that BellSouth try to work with
25 the parties and come up with a resolution to

1 that. If they want to, that's fine. But
2 because of the lack of evidence, I had believed
3 that we would wait until the six-month review
4 and take care of issues that specifically stated
5 staff isn't clear what the ALECs are proposing
6 in this manner.

7 COMMISSIONER JABER: But I guess my concern
8 is with respect to participation in front of the
9 Commission. Would it still be post-hearing?

10 MS. KEATING: As to whether it would be
11 staff and Commissioners only or parties?

12 COMMISSIONER JABER: Uh-huh.

13 MS. KEATING: I'll have to be honest. We
14 have not hashed through that issue just yet. I
15 have a feeling it may not be like a
16 post-hearing, but it's possible it could be
17 treated in the context of, say, procedural, as
18 opposed to PAA. But to be honest, we have not
19 hashed out that issue.

20 MR. D'HAESELEER: Commissioners, we did
21 discuss this a little bit. And because it's new
22 grounds, we thought every six months -- there's
23 a question whether it ought to be six or a year
24 -- that we would review the whole process. And
25 there may be things in here that just are not

1 workable or things we missed in its entirety.
2 So it was always our intent to bring it back to
3 the Commission. You know, it could be a PAA,
4 whatever.

5 COMMISSIONER JABER: My concern with
6 forever looking at it and reviewing it is that
7 defeats the purpose of having the penalties and
8 the performance measures in place and the
9 complaint process.

10 MR. D'HAESELEER: Well, I would assume --

11 COMMISSIONER JABER: I mean, somewhere it
12 has to stop.

13 MR. D'HAESELEER: -- once we knew after
14 we've gone through a review once or twice, you
15 know, there wouldn't be any changes, and then
16 you wouldn't have this continuing review
17 process.

18 COMMISSIONER JABER: You'll discuss that
19 further and get back to us is what you're --

20 MS. KEATING: That's right. I was just
21 going to add just one other thing. It's
22 possible that maybe after a few rounds of this,
23 then perhaps it could be done administratively.
24 Just a thought.

25 COMMISSIONER JABER: Don't misunderstand.

1 It's not that I -- this has been very helpful.
2 It's not that that process is bothersome to me.
3 I was just wondering. There's so many questions
4 we've had, and this is post-hearing. So, you
5 know, at some point, is it appropriate to allow
6 the parties to address some of these concerns,
7 and might that be in the next go-round?

8 COMMISSIONER DEASON: well, let me say, I
9 think it's going to be important for the parties
10 to address it, but I think the first line of
11 defense or the first stop should be between
12 themselves, work it out, and only bring high
13 level policy issues that you think need to be
14 addressed by the Commission. That's my
15 concern.

16 And I think staff could play a vital role
17 in this process. And if you want to call it
18 mediation or whatever, I think that that -- I
19 guess we're all kind of exploring. This is new
20 for all of us, and as Walter says, we're plowing
21 new ground, but --

22 MR. D'HAESELEER: Terry, you want me to
23 work it out?

24 COMMISSIONER DEASON: -- we don't want to
25 plow it more times than we have to.

1 MR. D'HAESELEER: You want me to work it
2 out?

3 COMMISSIONER JABER: No, he said he wanted
4 it to work.

5 COMMISSIONER DEASON: I don't know. I've
6 seen Walter in action before. We could get a
7 big room and lock the door and give Walter a big
8 stick and --

9 COMMISSIONER JABER: That's true.

10 COMMISSIONER DEASON: Disaggregation.

11 MS. HARVEY: Attachment 5?

12 COMMISSIONER DEASON: Well, before we get
13 to Attachment 5, let's see if we can discuss it
14 on a broader level.

15 MS. HARVEY: Okay.

16 COMMISSIONER DEASON: I'm looking at pages
17 47 through 50, or 49.

18 MS. HARVEY: Commissioner, you're going
19 backwards.

20 COMMISSIONER DEASON: Yes, I know, but it
21 may expedite things.

22 MS. HARVEY: Okay.

23 COMMISSIONER DEASON: These are your
24 recommendations on the level of disaggregation.
25 And as I understand it, these recommendations

1 are then incorporated within Attachment 5. Is
2 that correct?

3 MS. HARVEY: That's correct.

4 COMMISSIONER DEASON: Okay.

5 MS. HARVEY: They should be the same.

6 COMMISSIONER DEASON: Let's discuss this
7 level of disaggregation more on a policy
8 perspective as opposed to each individual line
9 item.

10 I assume that what you were trying to
11 accomplish here was a balance between meaningful
12 information, meaningful metrics, and providing
13 the correct incentives in the form of BellSouth
14 to comply with what we determine to be parity,
15 and basically overdoing it with too many -- too
16 much disaggregation, the cost and expense, and
17 whether you -- when you get small sample sizes,
18 the meaningfulness of those small sample sizes.
19 From a general policy perspective, is that what
20 you weighed?

21 MS. HARVEY: That's correct, Commissioner.

22 COMMISSIONER DEASON: And these are the
23 ones that it resulted in?

24 MS. HARVEY: That's correct.

25 COMMISSIONER DEASON: Okay. I guess I

1 don't have any particular problem with any of
2 this disaggregation. I guess I'm in the
3 position where I'm just relying on staff to
4 weigh those competing interests. And I assume
5 that this is something that's going to be looked
6 at again in the future as to whether the level
7 of disaggregation is too large and too
8 cumbersome or whether we need even additional
9 information to have meaningful metrics and
10 meaningful incentives. I guess we'll continue
11 to look at it in that context.

12 MS. HARVEY: That's correct, Commissioner.

13 COMMISSIONER DEASON: Okay. In your review
14 of the level of disaggregation, obviously, this
15 is the middle ground between the ALECs' position
16 and the BellSouth position; is that correct?

17 MS. HARVEY: This is similar to BellSouth's
18 position, with the --

19 COMMISSIONER DEASON: Well, explain to me
20 the major -- not every item, but the major
21 differences --

22 MS. HARVEY: Okay. The changes --

23 COMMISSIONER DEASON: Yes, the major
24 changes from BellSouth's position.

25 MS. HARVEY: I've added line splitting and

1 EELS as separate disaggregation categories.

2 In addition, under the provisioning product
3 disaggregation listed on page 48, I believe I
4 have identified some levels of dispatch and
5 nondispatch that may not have been in
6 BellSouth's original proposal.

7 COMMISSIONER DEASON: And whether an item
8 is dispatched or not dispatched could have a
9 meaningful effect on the timeliness, I mean on
10 the time that should be required, and that's
11 what you're --

12 MS. HARVEY: Exactly, yes, sir.

13 CHAIRMAN JACOBS: The concern about the DS
14 Level issue, where was that? On page -- I saw
15 it.

16 MS. HARVEY: What issue, Commissioner?

17 CHAIRMAN JACOBS: It's on disaggregation,
18 and it's a concern that the ALECs -- here it is
19 on page 41.

20 MS. HARVEY: We're going back even
21 further.

22 CHAIRMAN JACOBS: Page 41. And it's a
23 concern that was raised regarding the DS1 versus
24 DS3 loops. As I understand it, there are
25 different ordering processes for DS1s versus

1 DS3s.

2 MS. HARVEY: The processes are the same.

3 CHAIRMAN JACOBS: Okay.

4 MS. HARVEY: The difference is that you're
5 ordering a different quantity.

6 CHAIRMAN JACOBS: Okay. Because DS3 is
7 just made up of multiple DSS. I guess DS0s make
8 up DS1, and then -- whatever.

9 MS. HARVEY: And it's staff's position that
10 the DS1s and below can be categorized together.

11 CHAIRMAN JACOBS: So the UNE digital loop
12 less than DS1 and UNE digital loop greater than
13 DS1, that disaggregation will take care of that.
14 Okay. That was my question.

15 COMMISSIONER DEASON: Commissioners, I'm
16 ready to move on to the next issue.

17 CHAIRMAN JACOBS: All right. You had
18 questions on 1b.

19 COMMISSIONER JABER: No, I think I moved
20 it.

21 COMMISSIONER DEASON: There's been a motion
22 to move 1b? Second.

23 CHAIRMAN JACOBS: Let me just make sure
24 real, real quick here. I think I tried to make
25 sure I got through all mine as we were going

1 through, and I think I did.

2 Okay. A motion and a second on Issue --

3 COMMISSIONER JABER: Commissioner Deason,
4 you didn't want me to modify the motion. We
5 just want to make clear to direct the parties,
6 give guidance to the parties that before the
7 next review, they really should sit down and
8 work out some of these issues.

9 COMMISSIONER DEASON: Yes. If they're
10 listening and not asleep, I think they should
11 have received the message by now.

12 COMMISSIONER JABER: That would be the
13 motion.

14 CHAIRMAN JACOBS: And to make sure all
15 those items that I brought out for particular
16 attention in the next review as well.

17 COMMISSIONER JABER: Yes.

18 CHAIRMAN JACOBS: It has been moved and
19 seconded. All in favor, aye.

20 COMMISSIONER JABER: Aye.

21 COMMISSIONER DEASON: Aye.

22 CHAIRMAN JACOBS: Aye. Show it
23 approved.

24 Issue 2a. Any questions?

25 COMMISSIONER PALECKI: I have a question on

1 page 96, specifically measure P-11, where
2 BellSouth had proposed that this measure be both
3 Tier 1 and Tier 2 for enforcement, and staff has
4 not recommended it for either level of
5 enforcement. And I just wanted to inquire as to
6 if BellSouth has already agreed to this level of
7 enforcement, why staff has backed away from it.

8 MS. HARVEY: Staff is concerned about that
9 metric and the calculation of that metric, and
10 we did not feel comfortable that it should be a
11 Tier 1 or Tier 2 metric with penalties
12 associated with it. We could readdress that in
13 six months, but I would like to look at six
14 months' worth of data and determine if the
15 calculation is appropriate or not. It will
16 still be reported, but I have concerns about the
17 calculation.

18 There are questions regarding -- again, it
19 gets back to the issue of the date/time stamp
20 and when the clock stops in this case, whether
21 it stops, as was specified in the business rule,
22 when the order is completed in the switch or
23 versus when the order is completed in SOCS,
24 which is the actual OSS system that would be
25 what is used to notify the ALEC of the

1 disconnect in this case.

2 COMMISSIONER PALECKI: Could those concerns
3 be taken -- or could they have been taken care
4 of in the previous exhibits, 1 through 5? I'm
5 not sure whether those issues that you've just
6 described couldn't have been defined or resolved
7 in Issue 1. I don't want to go back to Issue 1,
8 but why is it that we were unable to further
9 define what the expectation of the companies are
10 with regard to this measure?

11 MS. HARVEY: That's a good question,
12 Commissioner, and I'm not sure I have a good
13 answer. And we can certainly include this in
14 Tier 1 and Tier 2, but as I said, staff is just
15 not comfortable with the calculation as it
16 stands in the business rules that were proposed
17 by BellSouth.

18 COMMISSIONER PALECKI: Well, if staff isn't
19 comfortable with it, then I guess we shouldn't
20 move forward. But I would like you to closely
21 look at this issue in the six-month evaluation,
22 especially since it's a matter that BellSouth
23 has already agreed to Tier 1 and Tier 2
24 treatment.

25 Apparently whatever BellSouth's expectation

1 of the measure is, they didn't have a problem.
2 And perhaps staff and BellSouth have different
3 expectations of what is entailed with regard to
4 that measure. But if you would feel more
5 comfortable with six months to evaluate that, I
6 wouldn't have any problem.

7 MS. HARVEY: That would be staff's
8 position, is to look at it again in six months.

9 COMMISSIONER PALECKI: Thank you.

10 COMMISSIONER DEASON: I have a question.
11 It's found on pages 86 and 87 of the
12 recommendation dealing with method of
13 submission. And here you're describing
14 BellSouth's position and describe that since the
15 majority of the submissions are going to be
16 fully mechanized, this is the only activity to
17 which BellSouth would apply the remedy plan. Am
18 I reading that correctly? That's BellSouth's
19 position; correct?

20 MS. HARVEY: That's correct.

21 COMMISSIONER DEASON: What is staff's
22 position?

23 MS. HARVEY: Staff disagreed with that
24 position for purposes of the remedy plan and
25 included mechanized, non-mechanized, and

1 partially mechanized as part of --

2 COMMISSIONER DEASON: So on pages 94 and
3 95, for example, O-2, when you have in
4 parentheses fully mechanized, partially
5 mechanized, and totally mechanized, each one of
6 those is being measured, and there is the
7 potential for a remedy to apply to each one of
8 those categories. Am I reading that correctly
9 or not?

10 MS. HARVEY: Yes.

11 COMMISSIONER DEASON: Okay.

12 CHAIRMAN JACOBS: Any further questions?

13 COMMISSIONER DEASON: That's all the
14 questions I have.

15 CHAIRMAN JACOBS: I had a question. I
16 think I remembered the answer to the one I
17 raised earlier about why percent order
18 flow-through was Tier 1 instead of Tier 2. I
19 think you said it's not --

20 MS. HARVEY: Reported CLEC-specific.

21 CHAIRMAN JACOBS: Reported CLEC-specific.
22 Is there a big problem with making that
23 reported --

24 MS. HARVEY: I don't know how difficult
25 that would be, Commissioner. I would like to

1 check on that and report back on that at the
2 six-month review.

3 CHAIRMAN JACOBS: And then is there any
4 connection between O-9 and O-10?

5 MS. HARVEY: Commissioner, what page are
6 you on?

7 CHAIRMAN JACOBS: I'm on page 94 of the
8 chart. O-9, we have Tier 1 and Tier 2, which is
9 firm order confirmation timeliness. And O-10
10 speaks to service inquiry, which I assume means
11 for ordering. It would an inquiry for ordering;
12 is that correct?

13 MS. HARVEY: When they're going to do a
14 service inquiry.

15 CHAIRMAN JACOBS: Which means that an ALEC
16 is not seeking to determine whether or not they
17 can get an offering to meet their customer's
18 need. Is that what a service inquiry is? I
19 can't remember.

20 MS. HARVEY: Yes, that's correct. If they
21 need additional information on whether
22 facilities, for example, are available, they
23 would do a service inquiry. And O-10 measures
24 the interval and the percent of the interval
25 from the time that a service inquiry is

1 submitted.

2 CHAIRMAN JACOBS: Okay. So we're saying
3 that's basically information only. I wondered,
4 because I think we have enough from pre -- in
5 the preordering, we have -- all of those are
6 Tier 2. And I heard enough about preordering
7 where I wondered -- I mean, is there some
8 pressing or compelling reason why we would want
9 to have something on the preordering side in
10 Tier 1? I've heard -- there's been a lot of
11 concern raised about the difficulties of getting
12 orders properly constituted, first of all, and
13 then second of all, the delays coming from
14 faxing it back and forth and that sort of
15 thing.

16 I think we have a fairly good makeup here
17 of enforcement mechanisms, but none really going
18 to Tier 1. And that's my only thought here.

19 MS. HARVEY: Commissioner, for preordering
20 metrics, BellSouth is incapable of delineating
21 preordering response time and interface
22 availability on a CLEC-by-CLEC basis.

23 CHAIRMAN JACOBS: Okay. Well, we'll hold
24 on on that one then.

25 P-1.

1 MS. HARVEY: P-1?

2 CHAIRMAN JACOBS: Yes, mean held order
3 interval. As I understand what this is looking
4 at, it's the length of time that an order may be
5 held --

6 MS. HARVEY: That's correct.

7 CHAIRMAN JACOBS: -- in order to -- we're
8 not saying that that is part of the enforcement
9 program. As I understand it, this would measure
10 those orders that are held because of resource
11 limitations?

12 MS. HARVEY: Correct.

13 CHAIRMAN JACOBS: Okay. My concern here is
14 that it would be of interest to me if that
15 becomes a trend. If it's some minor number that
16 is being accepted as part of the system, that's
17 one thing. But if it becomes a growing trend or
18 it fluctuates in one quarter or another or one
19 season or another, that could be a particular
20 impact. I guess I'm okay now not having it as
21 part of the enforcement program, but I would
22 want -- I want to understand a little bit more
23 about the data, the raw data that supports that.

24 MS. HARVEY: We can monitor that metric --

25 CHAIRMAN JACOBS: Okay.

1 MS. HARVEY: -- on an ongoing basis. Just
2 because it's not part of the enforcement plan
3 doesn't mean that we wouldn't look at it.

4 CHAIRMAN JACOBS: Right. Okay. That's it
5 for me.

6 COMMISSIONER DEASON: I have no -- what
7 issue are we on at this point?

8 COMMISSIONER JABER: I'm sorry?

9 CHAIRMAN JACOBS: 2a.

10 COMMISSIONER DEASON: 2a? I can move staff
11 on Issues 2a, 2b, 3a, and 3b.

12 COMMISSIONER PALECKI: I would like to go
13 up to 2a and 2b, and I have a question on 3a.

14 COMMISSIONER DEASON: That's fine.

15 COMMISSIONER PALECKI: I would second 2a
16 and 2b.

17 CHAIRMAN JACOBS: Okay. We have a motion
18 and second on 2a and 2b. Let me just look very
19 quickly.

20 Motion and a second. All in favor, aye.

21 COMMISSIONER JABER: Aye.

22 COMMISSIONER DEASON: Aye.

23 CHAIRMAN JACOBS: Aye. Opposed? Show them
24 approved.

25 COMMISSIONER PALECKI: On Issue 3a,

1 specifically on page 111, there is a suggestion
2 that staff would like to encourage BellSouth to
3 consider incorporating these measure into PMAP
4 if at all possible. This is information
5 specified in the BellSouth SQM report structure
6 section.

7 I would much prefer that we issue an order
8 that instructs BellSouth to go ahead and do
9 that, if it can be done, within the six-month
10 period, and if they cannot do it within the
11 six-month period, to report back to us and
12 explain why that cannot be accomplished.

13 Does staff have any reason that they were
14 -- that they didn't go a little bit further with
15 that in the recommendation? If it's something
16 like because you're not aware of the expense,
17 that would be a legitimate reason.

18 MS. HARVEY: It has -- I'm sorry.

19 COMMISSIONER PALECKI: I mean, if this is
20 something that's going to cost millions and
21 millions of dollars, well, obviously it would be
22 something that might be encouraged rather than
23 ordered. But do you have a -- is there a reason
24 you just encouraged it rather than recommended
25 that we order them to do it?

1 MS. HARVEY: Staff is uncertain as to the
2 expense that would be associated with
3 incorporating these metrics that are not
4 currently in PMAP into PMAP. Staff is aware,
5 however, that some new system developments may
6 come about in future months that would make that
7 possible, but I'm not certain as to that. But
8 we can certainly --

9 COMMISSIONER PALECKI: Is that new software
10 or --

11 MS. HARVEY: Yes.

12 COMMISSIONER PALECKI: -- development of
13 the existing software?

14 MS. HARVEY: Yes. It's currently a matter
15 of incompatibility of the software that certain
16 metrics, specifically LNP metrics, are captured
17 through. That database is not compatible with
18 PMAP, but in the future that problem may go
19 away.

20 COMMISSIONER PALECKI: Commissioners, since
21 the staff does have concerns on the expense of
22 requiring BellSouth to actually take that
23 action, I would have no problem with moving the
24 staff recommendation, but with very strong
25 encouragement that BellSouth go ahead and take

1 that action if it's at all possible.

2 MS. HARVEY: Thank you, Commissioner.

3 COMMISSIONER JABER: Second, if there are
4 no further questions.

5 CHAIRMAN JACOBS: Any other questions? On
6 Issue 3, all in favor -- it has been moved and
7 seconded. All in favor, aye.

8 COMMISSIONER PALECKI: Aye.

9 COMMISSIONER JABER: Aye.

10 COMMISSIONER BAEZ: Aye.

11 COMMISSIONER DEASON: Aye.

12 COMMISSIONER JABER: Is that 3a and 3b,
13 Commissioner Palecki?

14 COMMISSIONER PALECKI: I could move Issue
15 3b as well.

16 CHAIRMAN JACOBS: Okay.

17 COMMISSIONER JABER: Second.

18 CHAIRMAN JACOBS: It has been moved and
19 seconded. All in favor, aye.

20 COMMISSIONER PALECKI: Aye.

21 COMMISSIONER PALECKI: Aye.

22 COMMISSIONER DEASON: Aye.

23 CHAIRMAN JACOBS: Show 3a and 3b are
24 approved.

25 Issue 4a, and I guess we can take b and c.

1 COMMISSIONER JABER: I had a question on
2 4a, staff, from the brief, the ALEC brief.
3 Let's see. I made a note to myself that it was
4 on page 35. They make -- the ALECs make the
5 assertion that this state does have the
6 authority to allow for a self-executing remedy
7 because of the Act, and I just wanted you all to
8 comment on that a little bit, that in fact you
9 don't derive your authority from the state law,
10 you would derive it from the federal law. How
11 do you feel about that?

12 MR. FUDGE: There isn't any explicit
13 authority in the Act that allows for the
14 imposition of a self-executing remedy plan. And
15 to the extent that there are -- since it's
16 silent on the authority for a self-executing
17 remedy plan, you have to look to the state law
18 on whether it would be allowed. And since our
19 analysis under state law shows that it's
20 questionable at best, and under the Tier 2
21 payments it wouldn't be feasible because of due
22 process concerns, then there isn't authority to
23 do it.

24 COMMISSIONER JABER: Okay. That's what I
25 thought. Even if it did exist clearly in the

1 federal law, don't you need some sort of
2 authority from the State Legislature accepting
3 the directive from the federal law? That's not
4 the right terminology, but it's not enough to
5 have it in the Act; correct?

6 MR. FUDGE: That's correct.

7 COMMISSIONER DEASON: Well --

8 COMMISSIONER JABER: Now, that's -- I'm
9 sorry.

10 COMMISSIONER DEASON: No, I'll wait.

11 COMMISSIONER JABER: Now, that's different
12 from, however, BellSouth volunteering on its own
13 to implement a self-executing remedy plan, and
14 in fact, we encouraged that.

15 MR. FUDGE: Yes, Commissioner, because they
16 can waive their due process rights, or they can
17 agree between the parties to have the
18 self-executing remedies.

19 COMMISSIONER JABER: Okay. Now, contrast
20 that to everything we do in telecommunications
21 that we cite the Act for. You're telling me
22 that the reason we do arbitrations and all of
23 the complaints is because someplace in our state
24 law, our State Legislature has accepted that
25 delegation or that authority from the Federal

1 Government?

2 MS. KEATING: We also have state law
3 authority to do those arbitrations.

4 COMMISSIONER JABER: Specifically.

5 MS. KEATING: We have an interconnection
6 statute, and we have a resale statute.

7 COMMISSIONER JABER: Okay. Now, that does
8 not take away our ability to show cause
9 BellSouth for violation of our orders, our
10 rules, and our statutes.

11 MR. FUDGE: That's correct.

12 COMMISSIONER JABER: And that's in addition
13 to whatever penalties we find appropriate at the
14 end of our entire 271 process.

15 MR. FUDGE: Yes, Commissioner.

16 COMMISSIONER JABER: Okay. Thank you.

17 COMMISSIONER DEASON: My question is this.
18 You make reference to our broad authority under
19 Chapter 364 and the Legislature's mandate to the
20 Commission that we encourage competition through
21 flexible regulatory treatment, ensure that
22 providers are treated fairly, and to prevent
23 anticompetitive behavior. Is it your opinion
24 that that does not give us the authority to
25 order a self-effectuating penalty plan?

1 MR. FUDGE: It's our opinion that the
2 specific statute of 364.285 limits our ability
3 to do that.

4 COMMISSIONER DEASON: Okay. Refresh my
5 memory. What does that particular section
6 specify?

7 MR. FUDGE: That's the imposition of
8 penalties on companies that are found to have
9 willfully violated a Commission rule, order, or
10 statute.

11 COMMISSIONER DEASON: And we don't have the
12 authority to order BellSouth to implement a
13 self-effectuating remedy plan such that if they
14 don't do it, then they're in noncompliance with
15 a Commission order?

16 MS. KEATING: I don't think that staff is
17 going quite that far. What we're saying is that
18 the law is unclear at best at this time, and we
19 don't believe that it -- it doesn't appear to us
20 that you may really need to come down on one
21 side or the other at this point in time, and
22 that it may be better to refrain from actually
23 making a determination at this time whether or
24 not you have the authority to impose
25 self-effectuating Tier 1 penalties until you

1 see whether or not there's really going to be a
2 problem. And then if there is going to be a
3 problem, wait and see if the law has been
4 clarified at this time, because the way the law
5 in telecom changes, who knows? It may be
6 clearly defined one way or the other.

7 COMMISSIONER DEASON: Refresh my memory.
8 Tier 1 is penalties to whom?

9 MS. KEATING: To the ALECs.

10 COMMISSIONER DEASON: Paid to ALECs, and
11 Tier 2 is penalties paid to the State.

12 MS. KEATING: To the State.

13 COMMISSIONER DEASON: And the question, the
14 ambiguity within the law is in reference to Tier
15 1?

16 MS. KEATING: I believe so. I believe that
17 you have the authority to impose the Tier 2
18 penalties. The question -- well, if they do not
19 consent, I believe that you have to provide an
20 opportunity, though, for them to -- a point of
21 entry.

22 COMMISSIONER DEASON: And what has
23 BellSouth consented to?

24 MR. FUDGE: They have consented to the
25 procedures that would be used, basically the

1 Tier 1 and Tier 2, the self-effectuating penalty
2 parts of it, but they disagree as to the penalty
3 amounts and how they would be calculated.

4 COMMISSIONER DEASON: So if we do anything
5 contrary to exactly what BellSouth is proposing
6 as it relates to Tier 1, then they're saying we
7 don't have the -- unless they agree precisely
8 with what they've proposed, well, then we don't
9 have the authority to do anything more than
10 that.

11 MR. FUDGE: Not exactly. They say they
12 agree up to a point, and they don't want to rule
13 out anything. That is not their plan. They'll
14 say they agree to other --

15 COMMISSIONER JABER: So they want us to
16 make a decision, and they'll evaluate whether
17 they can live with that or not.

18 COMMISSIONER JABER: Their position, at
19 least as they articulate it in the brief, the
20 Commission has the legal authority to enter an
21 order that is consistent with the voluntary
22 enforcement mechanism offered by BellSouth, but
23 the Commission does not have the legal authority
24 to order a self-executing remedy plan that
25 includes elements to which BellSouth does not

1 agree.

2 And, you know, the only reason I can be
3 okay with not making that decision today is
4 because I recognize that through the show cause
5 process, that penalty might be even more than a
6 self-executing remedy plan, which is really the
7 absurdity in BellSouth's position, because the
8 last time I checked, we could impose a huge fine
9 on a company for noncompliance.

10 MS. KEATING: You're absolutely correct.
11 And just to be perfectly clear, we're strongly
12 recommending that you not come down on this one
13 way or the other, because we think honestly that
14 arguments can be made both ways. It's just that
15 the law is not real clear-cut, and we think it
16 might be advisable to hold off. But if --

17 COMMISSIONER DEASON: well, let me ask you
18 this.

19 MS. KEATING: -- you have to really come
20 down one way, wait until you're really honestly
21 pushed.

22 COMMISSIONER DEASON: Do you really think
23 that this is not going to come to a head, that
24 BellSouth, whatever decision is made here,
25 they're going to say, "well, we can live with

1 this," and the issue doesn't ever -- it seems to
2 me that if we think we have jurisdiction, we
3 ought to assert it and then let a court tell us
4 we don't.

5 MS. KEATING: That was an avenue --

6 COMMISSIONER DEASON: And let BellSouth be
7 the one -- you know, go on over to the court,
8 and that's certainly within their right, and I
9 wouldn't be upset one bit. I think they have a
10 requirement to do that to protect their
11 interests. And have the court decide it.

12 MS. KEATING: That's certainly an avenue
13 you could take, Commissioner. I think the
14 reason that we're suggesting this approach is
15 that we're hopeful.

16 COMMISSIONER DEASON: Is why? I'm sorry.

17 MS. KEATING: That we are hopeful that
18 perhaps it won't.

19 COMMISSIONER JABER: Come to a head?

20 MS. KEATING: Come to a head.

21 COMMISSIONER JABER: Well, now, if we do
22 take the road of ordering the self-executing
23 remedy plan, does that prohibit us from imposing
24 additional penalties through the show cause
25 process? I like the flexibility, honestly.

1 MS. KEATING: In addition to the Tier 1
2 penalties, I think the Tier 2 penalties would
3 essentially -- and staff can correct me if I'm
4 wrong, but would essentially replace the show
5 cause process.

6 COMMISSIONER JABER: Right. The remedy
7 plans govern once you implement them; correct?

8 MS. KEATING: Right.

9 COMMISSIONER DEASON: Do we have the
10 ability to implement a self-effectuating Tier 2
11 remedy plan?

12 MS. KEATING: I believe you do,
13 Commissioner, as long as -- if the company does
14 not agree, as long as you provide a point of
15 entry for them to object.

16 COMMISSIONER DEASON: Well, then it's not
17 self-effectuating, is it?

18 MS. KEATING: Well --

19 COMMISSIONER BAEZ: I think everybody knows
20 the number, and that's --

21 MS. KEATING: It's essentially -- right.
22 That's it. It would --

23 COMMISSIONER DEASON: We normally do that
24 with a show cause anyway. We say, you know,
25 we're going to fine you X dollars, and if you

1 don't pay it, then we're going to -- you know,
2 whatever, revoke your certificate or whatever.

3 MS. KEATING: It would eliminate a step in
4 the process.

5 COMMISSIONER PALECKI: I agree with the
6 staff's recommendation. I think it's well
7 thought out. I don't think there's any need for
8 the Commission to make any determination on the
9 Tier 1 authority at this time. I trust that
10 BellSouth will agree to a self-implementing plan
11 that's consistent with the Commission's order.

12 COMMISSIONER JABER: And I could agree with
13 that based on staff's assurances that by not
14 making a decision on this jurisdictional issue,
15 we're not prohibited from using our show cause
16 authority to impose the appropriate penalties at
17 the appropriate time if they arise.

18 COMMISSIONER DEASON: Now, how do you use
19 show cause in the context of Tier 1?

20 MS. KEATING: I guess maybe I need some
21 clarification on that, because maybe I
22 misspoke. I'm not sure I answered your question
23 correctly.

24 COMMISSIONER JABER: Well, we've got
25 flexible authority, as I understand it, with

1 respect to our show cause proceedings and
2 finding that there are violations, willful
3 violations with our order, rules, and statutes.

4 MS. KEATING: Correct.

5 COMMISSIONER JABER: And to the degree that
6 compliance is not met with those orders, rules,
7 and statutes -- and I'm assuming at the end of
8 this process there will be an order, and at the
9 end of that six-month review process, there will
10 be an order. Any violation of that order might
11 result in a show cause process.

12 MS. KEATING: I suppose -- well, I believe
13 the Tier 1 and Tier 2 penalties, administrative
14 penalties, were contemplated to replace that
15 process. But if perhaps there were a blatant
16 disregard for the order, just a general collapse
17 of the process, then that may be the way to go,
18 would be another show -- a separate show cause
19 outside the context --

20 COMMISSIONER DEASON: Well, we would show
21 cause them for -- saying, "You didn't pay AT&T
22 an amount that under our plan you should have
23 paid," so we show cause them?

24 MS. KEATING: No, sir, that's not what I'm
25 saying. I think that's --

1 COMMISSIONER JABER: That is the Tier 1
2 question. That is my question.

3 COMMISSIONER BAEZ: The show cause is for
4 violation of an order issued by the Commission
5 that establishes performance measures.

6 COMMISSIONER JABER: Right.

7 MS. KEATING: If they don't pay and the
8 parties dispute that, then I think that would
9 come to the Commission. I don't think that that
10 would be in the context of a show cause
11 proceeding. It would be more a complaint about
12 whether or not the appropriate penalty under the
13 approved plan had been paid.

14 COMMISSIONER DEASON: Well, let me ask you
15 this. If we don't have the authority to order
16 BellSouth to pay that penalty to AT&T, then what
17 authority do we have to order them to do it
18 after AT&T files a complaint?

19 MS. KEATING: Assuming -- and this is just
20 assuming that you believe that you don't have
21 the authority to do that --

22 COMMISSIONER DEASON: I'm not saying that I
23 don't believe that.

24 MS. KEATING: But I'm just -- I'm going on
25 that hypothesis.

1 COMMISSIONER DEASON: Okay.

2 MS. KEATING: I think you could still
3 resolve the dispute between the parties. Now,
4 whether you would actually force the payment of
5 that penalty, that may be another question.

6 COMMISSIONER DEASON: Are we going through
7 a course that's going to proliferate disputes
8 coming to this Commission?

9 MS. KEATING: We're hopeful that it won't.
10 We're hopeful we didn't go through the process
11 for nothing. But I think you could still
12 resolve the dispute, and then if necessary, the
13 parties could take it to Circuit Court to get
14 the payment enforced. But that's assuming that
15 you believe that you don't have jurisdiction to
16 do it.

17 COMMISSIONER JABER: No. I'm trying to
18 figure out what our penalty authority is. And
19 as I understand it, unlike damages, we've got
20 the penalty authority given to us in the show
21 cause statute, and that's for the violations of
22 the orders, rules, and statutes. We issue an
23 order through every complaint. We're going to
24 issue an order here and probably an order in six
25 months. In addition to the complaint process

1 where we're asked a specific question and we
2 answer the question and make it right, don't we
3 also have the ability to impose a penalty for a
4 violation of a previous order?

5 MS. KEATING: Yes, you do.

6 COMMISSIONER JABER: Okay. If the answer
7 is yes, then I don't -- then I would agree with
8 you that perhaps it's not important to reach
9 that jurisdiction question. But, Beth, if the
10 answer is no, or even a question in your mind,
11 then I would rather reach the jurisdiction
12 question. I mean, you have to have the stick,
13 and it doesn't matter to me if you get the stick
14 from --

15 COMMISSIONER DEASON: Let me ask a
16 clarification --

17 MS. KEATING: I thought you were talking
18 about between the two parties. But, no, this
19 doesn't eliminate to show cause.

20 COMMISSIONER DEASON: well, if we go
21 through that as the Commissioner is
22 contemplating and we show cause and make a
23 determination there should be a payment made,
24 that payment goes to the State, not to AT&T.

25 MS. KEATING: That's true.

1 COMMISSIONER DEASON: We do not have the
2 ability, as I understand it, under a show cause,
3 because there has been numerous times that we
4 show cause a company and say, "Wouldn't it be
5 nice if we could order the company when we find
6 out there's a penalty to pay it to customers as
7 opposed to going to the State." But, no, our
8 ability is that when we penalize a company, it
9 goes to the State.

10 MS. KEATING: Right. And I think --
11 that's how I understood the Commissioner's
12 question.

13 COMMISSIONER JABER: That's the
14 distinction the Commissioner is making, that in
15 the show cause process, we need to recognize
16 that the penalties go to the State Revenue Fund,
17 whereas through this process the penalty is paid
18 to the person that has been harmed.

19 COMMISSIONER DEASON: But money to the
20 State is not something -- that's not where the
21 jurisdiction question comes in. It's how do we
22 effectuate payments to the aggrieved party, and
23 that's where we have a question as to whether we
24 have the jurisdiction to do that; correct?

25 MS. KEATING: That's correct.

1 COMMISSIONER DEASON: Well, let me ask you
2 this. Under the staff's recommendation, how are
3 you going to word this in the order? Is it that
4 we order BellSouth to pay these amounts to the
5 ALECs if these parameters are not met if they
6 agree to do so?

7 MS. KEATING: The order would reflect that
8 the plan should be implemented as approved, and
9 we would go forward on that basis, and they
10 would either file a motion for reconsideration
11 if they have a problem with it, or we would go
12 forward with the implementation of it.

13 MS. SIMMONS: Commissioner Deason, let me
14 mention that as far as the recommendation in the
15 remedy plan area, staff is recommending that the
16 plan contain certain parameters, and we are
17 asking that BellSouth come back with a specific
18 remedy plan that fits those parameters.

19 COMMISSIONER DEASON: I understand that. I
20 guess the question is, when they come -- we may
21 be making some decisions today ordering them to
22 come back with a plan that they totally disagree
23 with and say, you know, "That stupid Commission.
24 There's no way we're going to pay that level of
25 a fine to AT&T." So they may be required to put

1 it in their plan because this is what we
2 decided, but that doesn't mean they buy into the
3 concept. And once there's a deficiency
4 somewhere in the provision of service to AT&T,
5 and AT&T says, "Oh, a fine is due to me or a
6 payment is due to me," and BellSouth says,
7 "Sure, it's part of the SQM, but the Commission
8 didn't have the authority to order us to do that
9 anyway. Sorry, AT&T. We're not making the
10 payment." And then where do we find ourselves?

11 MS. KEATING: Well, they would need to file
12 a motion for reconsideration.

13 COMMISSIONER DEASON: So if they don't file
14 a motion for reconsideration, does that mean
15 that then they are acquiescing to our
16 jurisdiction?

17 MS. KEATING: That's our read of it.

18 COMMISSIONER JABER: The order becomes
19 final, and they would have to appeal it.

20 COMMISSIONER PALECKI: We have basically a
21 stipulation, don't we? We enforce stipulations
22 every day. And I would refer staff to
23 Attachment No. 6 starting off on page 94.
24 Almost all of the enforcement mechanisms, at
25 least very many of them, both Tier 1 and Tier 2,

1 are already agreed to by BellSouth. There are a
2 few that are not. But don't we, in effect,
3 already have a stipulation on almost all of
4 these issues?

5 MS. SIMMONS: Commissioner Palecki, I would
6 just note that staff's recommendation in the
7 area of a remedy plan where we're talking about
8 recommended parameters is quite different from
9 what BellSouth recommended.

10 COMMISSIONER PALECKI: But as far as --
11 we're only talking about jurisdiction with
12 regard to Tier 1 and Tier 2. BellSouth has
13 already stipulated that we -- to some extent
14 that they will make payments to the ALECs by
15 acknowledging that they're willing to make
16 Tier 1 payments. I don't think that this is
17 going to turn out to be that big a problem. I
18 think that we will have a stipulation and that
19 that stipulation will be enforced. And I think
20 the staff's recommendation is well thought out.
21 I don't see that there's any need for us to make
22 a jurisdictional issue on whether Tier 1
23 payments are within our jurisdiction or not.
24 They've already acknowledged that they're
25 willing to go along with Tier 1 payments to a

1 great extent.

2 COMMISSIONER DEASON: Well, let me ask you
3 this. If we issue the order and they don't
4 petition for reconsideration or don't appeal it,
5 you're taking the position then that they are
6 acquiescing to our jurisdiction, and they cannot
7 question it after that?

8 MS. KEATING: It would be a final order.
9 They would have waived their opportunity --

10 COMMISSIONER DEASON: If we issue a final
11 order, though, if it goes beyond our
12 jurisdiction, someone can question our
13 jurisdiction any time, can they not?

14 MS. KEATING: I think at that point,
15 though, they would have waived their
16 opportunity.

17 COMMISSIONER JABER: There's a clear-cut
18 noticing period that shows recourse rights,
19 appellate rights, so they would either have to
20 seek reconsideration or an appeal.

21 COMMISSIONER DEASON: And if they don't,
22 well, then even though the Legislature didn't
23 give us the jurisdiction, because we issued an
24 order that says we have jurisdiction -- well, we
25 issued an order telling them to do something,

1 if they didn't object to that and say it's
2 beyond your jurisdiction, they can't ever
3 question that again?

4 COMMISSIONER JABER: well, there is at the
5 Legislature, I suppose.

6 COMMISSIONER DEASON: No, I'm talking about
7 -- no, in front of this agency, or a court.

8 MS. KEATING: For purposes of this plan,
9 no, I don't believe they could. They would have
10 already acquiesced to the imposition of the
11 plan.

12 COMMISSIONER DEASON: That's interesting.

13 MS. SIMMONS: And BellSouth has indicated
14 that they will not object to a reasonable plan.

15 COMMISSIONER DEASON: well, everybody knows
16 that everything we do here is reasonable.

17 MS. SIMMONS: So presumably, if they don't
18 ask for reconsideration or appeal, they believe
19 that the plan is reasonable. I mean, that's
20 what I would infer from it.

21 COMMISSIONER DEASON: Everybody is a little
22 more optimistic than I am, I suppose.

23 CHAIRMAN JACOBS: what about this
24 Pennsylvania Commission decision that you
25 reference on page 123, bottom of 123 going over

1 to 124? Actually, it's the ALECs who cite an
2 order of the Pennsylvania Commission in which
3 the Commission found that its implementation of
4 performance measures and standards is a
5 legitimate exercise of its authority to ensure
6 compliance with 251 obligations. Was that
7 challenged? Was that order challenged?

8 MR. FUDGE: Not that I'm aware of,
9 Commissioner.

10 COMMISSIONER DEASON: This was in
11 Pennsylvania?

12 MR. FUDGE: Yes, Commissioner.

13 COMMISSIONER DEASON: It was based upon
14 Pennsylvania law? It doesn't apply here.

15 CHAIRMAN JACOBS: Wait a minute. I thought
16 it said it was based on its obligation -- so
17 there's a Pennsylvania statute that holds the
18 Commission responsible to enforce Section 251 of
19 the Act?

20 MR. FUDGE: It's unclear. The order I
21 think is basically quoted here. It's really --
22 they only spend like a sentence on their
23 authority to implement the plan. They just say
24 that 251 gives them the authority.

25 CHAIRMAN JACOBS: No, what they're saying

1 -- let me not speak too far in advance either,
2 but what I hear the rationale of the
3 Pennsylvania Commission to be is that they have
4 inherent authority to ensure that the
5 obligations under 251 are abided by, and that's
6 what the whole process of doing performance
7 metrics is. And therefore, that authority would
8 imply that there is then inherent authority to
9 implement some kind of remedy plan to ensure
10 that, and they based that again on their
11 authority to seek compliance with 251. Okay?
12 Now, what I hear you saying is that that's
13 different because there's some Pennsylvania
14 statute that gives them the authority to enforce
15 section 251.

16 MR. FUDGE: No. What we're saying is that
17 they don't have a Pennsylvania statute that
18 limits their authority to implement a
19 self-executing remedy plan.

20 CHAIRMAN JACOBS: 251.

21 MR. FUDGE: 251.

22 MS. KEATING: Mr. Chairman, just to be
23 clear, I don't think the Pennsylvania Commission
24 even referenced a Pennsylvania statute, so we're
25 not all that clear that they even took into

1 account their state law. Not to make any
2 assessment of how the Pennsylvania Commission
3 rendered its decision, but this Commission
4 derives its underlying authority from state
5 law.

6 CHAIRMAN JACOBS: But what you're saying
7 is that we do have a clear state -- the Florida
8 authority limits our ability to implement a
9 self-effectuating remedy plan, and that's the
10 guiding principle here.

11 COMMISSIONER PALECKI: I don't think so.

12 CHAIRMAN JACOBS: Then I'm confused.

13 COMMISSIONER BAEZ: That's not -- the staff
14 is saying nothing about --

15 COMMISSIONER PALECKI: Staff is saying
16 they're not taking a position. They're not
17 saying that we do not have that authority.

18 CHAIRMAN JACOBS: Okay. Then I'm confused,
19 because on the one hand, there is a purported
20 reference here to the idea that because we have
21 the responsibility to implement these
22 provisions, we should be able to put in force a
23 remedy plan to ensure that those provisions are
24 adhered to. And the only limitation to that
25 authority, which comes from the federal law,

1 will be via state law, which is an arguable
2 presumption or proposition also. But let's buy
3 off on it for the moment, that we have something
4 in our law that precludes us from being able to
5 do a self-effectuating remedy plan.

6 COMMISSIONER JABER: Wait. This was my
7 fault, Commissioner, Mr. Chairman. I confused
8 the issue. I brought up the ALEC brief. It's
9 the ALECs that make the argument that we do have
10 the authority --

11 CHAIRMAN JACOBS: Right, right. And
12 they're the ones that cite the Pennsylvania
13 Commission case in support of that.

14 COMMISSIONER JABER: And they cite the Act
15 and say you have the authority from the federal
16 law. And what I asked staff was to comment --
17 if they had to comment on that, what is their
18 opinion. And it's staff's opinion that even if
19 it was expressly provided for in federal law
20 that that's not enough. Our State Legislature
21 has to accept that authority. But staff in its
22 recommendation is saying to us that we don't
23 need to reach that issue today.

24 CHAIRMAN JACOBS: I understand. I
25 understand.

1 COMMISSIONER JABER: To move this along, I
2 can live with not reaching that issue today and
3 move staff, staff's recommendation. But if I
4 could add the direction to staff to bring the
5 parties together, because Commissioner Palecki
6 makes a very good point with respect to they're
7 close already. And I know we can't require
8 mediation, but we can certainly require them to
9 come to the table in Legal and talk seriously
10 about a self-executing remedy plan. That would
11 be my motion.

12 COMMISSIONER PALECKI: I would second that
13 motion.

14 CHAIRMAN JACOBS: It has been moved and
15 seconded. All in favor?

16 COMMISSIONER JABER: Aye.

17 CHAIRMAN JACOBS: Aye.

18 COMMISSIONER PALECKI: Aye.

19 CHAIRMAN JACOBS: Opposed?

20 COMMISSIONER DEASON: No.

21 CHAIRMAN JACOBS: Show it approved by
22 four-one.

23 Very well. We're on to Issue 5. I'm
24 sorry. That was only 4a.

25 COMMISSIONER DEASON: That was 4a, b, and c

1 all in one, I believe.

2 CHAIRMAN JACOBS: It was. You're right.
3 We did do that. We're on to Issue 5.

4 COMMISSIONER DEASON: Mr. Chairman, I have
5 no questions on Issues 5, 6, and 7. I know --
6 on Issues 5, 6, and 7 I have no questions.

7 COMMISSIONER JABER: Did I need to make
8 clear that that was all of 4, Commissioner
9 Deason, or is that what you just said?

10 COMMISSIONER DEASON: Yes, it was for all
11 the issues in 4, is my understanding.

12 COMMISSIONER JABER: 5a?

13 COMMISSIONER PALECKI: I can move staff on
14 5, 6, and 7 if there are no questions.

15 CHAIRMAN JACOBS: That was I think --

16 COMMISSIONER JABER: I have a question on
17 5b.

18 CHAIRMAN JACOBS: Okay.

19 COMMISSIONER JABER: So I can second 5a.

20 CHAIRMAN JACOBS: So we'll hold off 5b for
21 the moment, because -- were there any questions
22 on 6 or 7?

23 COMMISSIONER JABER: No.

24 CHAIRMAN JACOBS: Okay. So we have a
25 motion and a second on Issue 5a, all of Issue 6,

1 and Issue 7. All in favor?

2 COMMISSIONER PALECKI: Aye.

3 COMMISSIONER JABER: Aye.

4 COMMISSIONER DEASON: Aye.

5 COMMISSIONER BAEZ: Aye.

6 CHAIRMAN JACOBS: Opposed? Show it is
7 approved. Show those approved.

8 We're on Issue 5b.

9 COMMISSIONER JABER: On 5b, staff, on page
10 140 at the top, since only 10 percent of the
11 registered ALECs are accessing this information,
12 staff suggests \$2,000 per day is a sufficient
13 and appropriate assessment. How is it that they
14 get the information, ALECs?

15 MR. VINSON: That's accessed through the
16 Internet website, the BellSouth Interconnection
17 Services website, the PMAP system.

18 COMMISSIONER JABER: Okay. I can move
19 that.

20 COMMISSIONER PALECKI: Second.

21 CHAIRMAN JACOBS: It has been moved and
22 seconded. All in favor, aye. Aye.

23 COMMISSIONER PALECKI: Aye.

24 COMMISSIONER JABER: Aye.

25 COMMISSIONER DEASON: Aye.

1 COMMISSIONER BAEZ: Aye.

2 CHAIRMAN JACOBS: Opposed? Show 5b is
3 approved.

4 We're now on Issue 8.

5 COMMISSIONER JABER: On Issue 8, with
6 respect to staff having administrative authority
7 to approve the plan, how is it you'll be
8 approving the plan? By order? You want us to
9 give you the administrative authority to issue
10 an order; right?

11 MR. FUDGE: Yes, Commissioner.

12 COMMISSIONER JABER: Okay. So it's 90 days
13 from that order, from issuance of that order?

14 MR. FUDGE: Yes, Commissioner.

15 COMMISSIONER JABER: Okay. If there aren't
16 any questions, I can move that with that
17 clarification. I think we should probably be
18 specific that an order will be issued and the
19 plan will become effective 90 days from the
20 issuance of that order.

21 COMMISSIONER BAEZ: Commissioner, I have a
22 question. During the course of Commissioner
23 Deason's -- when we were reviewing -- I guess it
24 was Attachment 3 that we went through at length.
25 Several issues or several instances were pointed

1 out where -- and I'm trying to recall your
2 language, but we're just going to count on
3 BellSouth to come back with some language, and
4 if it's acceptable to us, and so on and so
5 forth. And it was my understanding that that
6 would be at the end of 45 days when the staff
7 was going to evaluate the adequacy of the
8 language that's proposed.

9 Is there any way that, if the staff has
10 already made a determination and the Commission
11 has already somehow approved the need for
12 clarification or for additional language or
13 modified language to be proposed, that we can
14 work within those 45 days so that what we don't
15 get is, at the end of 45 days, we've got
16 proposed language certainly that the staff can't
17 work with or wouldn't recommend approval on, and
18 we have to start the whole cycle all over again.
19 So if that's --

20 MS. HARVEY: Staff is certainly willing to
21 do that in order to expedite that process, yes.

22 COMMISSIONER BAEZ: That's all I have.

23 COMMISSIONER DEASON: Well, Commissioner,
24 you asked the precise question I was going to
25 ask. I want -- I do not want to find ourselves

1 in a position where in 45 days Bell makes a
2 filing that they think is in compliance with the
3 Commission's decision here today, but then there
4 are legitimate issues that the ALECs have with
5 that, and then they have to have a point of
6 entry into that.

7 Now, if it's got to be that way, so be it.
8 But it seems to me that it should be incumbent
9 upon all of the parties -- while BellSouth may
10 have to make the filing, I think that to the
11 extent there are ambiguities that need to be
12 clarified or whatever, or maybe there's
13 different interpretations as to what the
14 Commission's intent is, let them try to work
15 that out so that 45-day filing -- while it's
16 made by BellSouth, it needs to be made with
17 input from the ALECs so that the amount of
18 controversy can be eliminated. And if there is
19 something that needs to be brought to the
20 Commission's attention, it is after they have
21 tried to work it out between themselves, and it
22 is an issue that they both agree is an issue,
23 and it's something that needs to be brought to
24 the Commission to determine.

25 COMMISSIONER BAEZ: Commissioner, I agree

1 with you. And I think the purpose of having the
2 cooperative effort go on during this time period
3 is so that this decision on Issue 8 actually has
4 meaning. Otherwise, 45 days, 90-day effective
5 date, its means nothing. It turns into a
6 military style process, and I think we can find
7 ourselves discussing this in March, you know,
8 and I know that that's not something that we
9 want. So in order to give some meaning to these
10 dates that we're approving, these implementation
11 dates that we're approving, I think we need to
12 at least try and have everybody on the same page
13 when it gets here again.

14 COMMISSIONER DEASON: Or at least be able
15 to say, "We tried to work this out and,
16 Commission, we just can't work it out. Here's
17 the issue. You need to decide it."

18 COMMISSIONER JABER: Now, how to accomplish
19 that? Is it just appropriate to not put dates
20 in here, or add the language that shows the
21 flexibility to allow time for collaboration
22 among the parties?

23 MS. HARVEY: Commissioner, staff would
24 recommend a status meeting with all the parties
25 sometime within the 45-day window, perhaps at

1 the 30th day, where staff would bring a draft of
2 the proposed performance assessment plan that
3 could be evaluated by all parties and commented
4 on at that time, perhaps put that out for
5 comment and then discuss it at a status meeting
6 on the 30th day.

7 COMMISSIONER BAEZ: Could a second status
8 meeting be had after BellSouth makes its filing?

9 MS. HARVEY: Yes.

10 COMMISSIONER PALECKI: The draft that
11 you're anticipating, is that a staff draft, or
12 is it a BellSouth draft?

13 MS. HARVEY: A BellSouth draft.

14 COMMISSIONER PALECKI: Oh, okay. I wasn't
15 aware of that. All right.

16 COMMISSIONER JABER: You really are trying
17 to accomplish two things. Obviously, you need
18 the administrative authority to approve the
19 plan, but we also want the plan to go into
20 effect. So can we leave this broad by allowing
21 you all the authority. And should we go a step
22 further in allowing you all the authority to
23 figure out when it should become effective after
24 those status meetings have been held? Does that
25 accomplish -- I see what you're saying.

1 COMMISSIONER BAEZ: Well, Commissioner, I
2 think that begs an additional question in terms
3 of what kind of authority the staff is going to
4 have to do this administratively, because
5 Commissioner Deason raises, or at least implied,
6 have a narrowing of issues so that whatever gets
7 up here -- I don't know whether he intended
8 this Commission to entertain the assessment plan
9 yet again, but rather that there be some
10 narrowing of issues that you actually need a
11 decision on, that --

12 COMMISSIONER JABER: Staff is hopeful it
13 won't come back.

14 COMMISSIONER DEASON: I'm hopeful too.

15 COMMISSIONER BAEZ: As we all are. If I
16 could get down on my knees right now, I would.
17 But assuming reality takes place and there are
18 issues that are left out there, what kind -- and
19 I guess I will ask staff, what were you
20 contemplating in terms of making a -- I mean,
21 there's got to be a situation where you're going
22 to have to make a call, or whoever has the
23 authority to do it, whether it be this
24 Commission or, by delegation, the staff, you
25 know, you're going to have to say, "This

1 language is no good, and we're going to go with
2 this one." I mean, is that what you're
3 contemplating?

4 COMMISSIONER DEASON: Let me say this. I
5 think staff -- I don't think that we -- if the
6 parties really try to work out something that is
7 really a true issue and they can't resolve it,
8 I'm not -- I don't think that we can just
9 delegate administratively to staff to decide
10 that.

11 COMMISSIONER BAEZ: I would agree.

12 COMMISSIONER DEASON: We've got to decide
13 that.

14 COMMISSIONER BAEZ: I would agree with you.

15 COMMISSIONER DEASON: The reality of the
16 situation, though, is that if the parties try to
17 work it out and staff is part of that process,
18 and staff goes to the parties and says, "Look,
19 we agree with AT&T on this one, BellSouth, and
20 this is what we're going to recommend to the
21 Commission, and you know the Commission. You
22 know, 99.9% of the time they agree with us. You
23 know, there's no need to take it to the
24 Commission and create bad" -- whatever,
25 vibrations. Maybe BellSouth will say is this --

1 if BellSouth says, "No, this is a big enough and
2 significant enough issue, and we think we're
3 right," and they want to take it to the
4 Commission, I invite you in. Fine. But be sure
5 that's the case before you bring it, and make
6 sure that you have exhausted all areas to try to
7 work it out. And I want staff to be involved
8 and be forceful and don't just sit back and
9 listen. Be in there and take sides and say,
10 "When it comes to the Commission, this is what
11 we're going to recommend. So if you still want
12 to take it to the Commission, fine." And I
13 think that staff playing that role can help
14 facilitate some of these things being resolved.

15 MS. KEATING: I think you're right on all
16 points, Commissioner. I think there is a level
17 of delegation of that kind of discretion that
18 can't be done.

19 COMMISSIONER BAEZ: It can't be done.

20 MS. KEATING: And if there is major
21 disagreement, we would have to come back to you.
22 But I think you're absolutely right too.

23 COMMISSIONER JABER: It goes without saying
24 that anything we give you all administrative
25 authority to approve, if it's controversial,

1 you're going to know ahead of time, and you're
2 going bring it back.

3 But what should the motion be to accomplish
4 what we've just talked about?

5 COMMISSIONER DEASON: Move staff as
6 discussed.

7 COMMISSIONER JABER: There you go. And I
8 would second that.

9 COMMISSIONER DEASON: Is it clear to staff
10 really what our intent is here?

11 MS. KEATING: Yes, sir, I think so. The
12 only concern I think that we have maybe is with
13 actually completely eliminating the days,
14 because that gives some direction, some clear
15 time frame so that we're not sort of messing
16 around trying to figure out, well, would it
17 really take this long.

18 COMMISSIONER DEASON: I think that we
19 should include the days. And there is a
20 Prehearing Officer who can always entertain --

21 COMMISSIONER BAEZ: Can crack the whip.

22 COMMISSIONER DEASON: We still have -- as I
23 understand it, you still have post-hearing
24 responsibilities even though you're titled
25 Prehearing Officer, and I believe that's

1 Commissioner Palecki.

2 CHAIRMAN JACOBS: Yes.

3 COMMISSIONER JABER: I would second
4 Commissioner Deason's motion.

5 CHAIRMAN JACOBS: A motion and a second to
6 conform to the discussion the recommendation in
7 Issue 8. All in favor?

8 COMMISSIONER DEASON: Aye.

9 COMMISSIONER PALECKI: Aye.

10 COMMISSIONER JABER: Aye.

11 COMMISSIONER BAEZ: Aye.

12 CHAIRMAN JACOBS: Opposed? Show it
13 approved.

14 Issue 9.

15 COMMISSIONER DEASON: Move staff.

16 COMMISSIONER JABER: Second.

17 COMMISSIONER PALECKI: Second.

18 CHAIRMAN JACOBS: I had one brief question
19 on page 159, the last sentence on that page.
20 what you say here is that on the whole,
21 benchmarks should be above 90% in order to give
22 a fair opportunity to compete, and I recall that
23 there were a few that were not. I'm not
24 suggesting that we go back and change that, but
25 you want to be clear that you made exceptions to

1 that, because arguably, somebody will come back
2 with this statement and argue that we set
3 something outside of the bounds that would allow
4 a fair opportunity to compete.

5 I can't think of the measures right now.
6 It was too long ago. But I know I saw a couple,
7 one where they were disaggregated out, and two
8 of the disaggregated benchmarks were at 85%. I
9 do remember that, and there were some others,
10 I'm sure.

11 MS. HARVEY: You may be correct,
12 Commissioner, and we certainly wouldn't want to
13 allow for that.

14 CHAIRMAN JACOBS: Okay. All I'm suggesting
15 is just be clear on this issue that you note
16 that those -- you give reason to those
17 exceptions and you note them. Otherwise, this
18 blanket statement could cloud those measures.

19 MS. HARVEY: Yes.

20 CHAIRMAN JACOBS: Okay.

21 MS. HARVEY: Okay.

22 MS. SIMMONS: Chairman Jacobs, I was going
23 to observe that it does talk in terms of it
24 being a general premise, so I didn't take that
25 statement necessarily to mean it would apply in

1 every case.

2 CHAIRMAN JACOBS: Exactly my point. I'm
3 suggesting let's just be real clear on it.

4 MS. HARVEY: Thank you, Commissioner.

5 CHAIRMAN JACOBS: We had a motion and a
6 second. All in favor?

7 COMMISSIONER JABER: Aye.

8 COMMISSIONER DEASON: Aye.

9 COMMISSIONER BAEZ: Aye.

10 COMMISSIONER PALECKI: Aye.

11 CHAIRMAN JACOBS: Opposed? Show Issue 9 is
12 approved.

13 Issue 10.

14 COMMISSIONER JABER: Move it.

15 COMMISSIONER BAEZ: Second.

16 COMMISSIONER DEASON: Second.

17 CHAIRMAN JACOBS: Moved and seconded. All
18 in favor, aye.

19 COMMISSIONER JABER: Aye.

20 COMMISSIONER PALECKI: Aye.

21 COMMISSIONER DEASON: Aye.

22 COMMISSIONER BAEZ: Aye.

23 CHAIRMAN JACOBS: Opposed? Show Issue 10
24 is approved.

25 Issues 11 and 12 are together. Any

1 questions?

2 COMMISSIONER PALECKI: I would move it.

3 COMMISSIONER DEASON: I have one quick
4 question. Hopefully it's quick. I'm looking at
5 page 184 of the recommendation, at the bottom of
6 the second full paragraph. Basically, staff is
7 making the statement that they believe that the
8 transaction-based remedy with a minimum payment
9 provision would be preferable in concept and
10 then go on to say that for now, however, there's
11 no choice but to recommend that a measure-based
12 remedy plan be adopted.

13 Can you expand on that? Why is it that
14 staff believes that in concept the transaction-
15 based remedy is preferable?

16 MS. SIMMONS: Well, I guess in theory, it
17 would seem as though the volume of transactions
18 should play into the remedies in some fashion.
19 I think you've got to consider more than just
20 the volume of remedies because of situations --
21 I mean volumes of transactions. In situations
22 where you have small volumes of transactions and
23 transaction-based remedies, it's quite
24 conceivable that the remedy payment would not
25 provide an adequate incentive. So I think this

1 idea of a minimum coupled with a per transaction
2 or per adversely affected transaction kind of
3 remedy plan to me intuitively makes some sense,
4 but I did not have the wherewithal to get to
5 that point with the available evidence in this
6 proceeding.

7 COMMISSIONER DEASON: So it's a lack of
8 evidence, in your opinion?

9 MS. SIMMONS: Yes. I really did not have
10 the wherewithal to get there. As I mentioned in
11 the recommendation, I had a lot of concerns with
12 BellSouth's proposed remedy plan, which was
13 transaction-based, that depended on so-called
14 parity gap and affected volume calculations that
15 I thought were quite questionable.

16 Until those kinds of questions can really
17 be resolved, I don't think it's possible to have
18 any sort of transaction-based remedy plan, and
19 thus, it follows that a transaction-based plan
20 with a minimum -- at least in my opinion, I
21 don't feel I have ample evidence to recommend a
22 plan such as that right now because of problems
23 with the affected volume calculations.

24 And similarly, of course, I also talk in
25 the recommendation about the ALECs' recommended

1 remedy plan, and I had difficulties with their
2 plan, in that I felt that it confused
3 statistical certainty and severity. Under the
4 ALECs' plan, as the statistical certainty
5 increased, the remedies increased. But I don't
6 think that the statistical certainty is
7 necessarily indicative of severity. So I had
8 problems with both remedy plans and basically
9 did this recommendation by process of
10 elimination, quite honestly.

11 COMMISSIONER DEASON: I can move staff's
12 recommendation.

13 CHAIRMAN JACOBS: Is there any thought to
14 coming back and looking at how to refine this
15 process?

16 MS. SIMMONS: Certainly as a member of
17 staff, I would be interested in looking at, you
18 know, possible ways a transaction-based remedy
19 plan with a minimum could be implemented, but I
20 am not at all comfortable with the calculations
21 that BellSouth proposed in this proceeding. You
22 know, I mention it because I think it has some
23 merit in theory if the concerns could be
24 overcome. So the review cycle perhaps would
25 provide a venue to look at that.

1 CHAIRMAN JACOBS: Very well. I would like
2 to see that, see it dealt with in ways to refine
3 the process in the review cycle.

4 It has been moved. A second?

5 COMMISSIONER PALECKI: Second.

6 CHAIRMAN JACOBS: Moved and seconded. All
7 in favor, aye.

8 COMMISSIONER DEASON: Aye.

9 COMMISSIONER JABER: Aye.

10 COMMISSIONER BAEZ: Aye.

11 COMMISSIONER PALECKI: Aye.

12 CHAIRMAN JACOBS: Opposed? Aye for myself.
13 Show it adopted, that is, Issue -- 12?

14 COMMISSIONER DEASON: Eleven and 12.

15 CHAIRMAN JACOBS: Eleven and 12.
16 Issue 13.

17 COMMISSIONER DEASON: Mr. Chairman, I can
18 move Issues 13 through 18.

19 COMMISSIONER PALECKI: Second.

20 COMMISSIONER JABER: I'm sorry. I have a
21 a question on Issue 16.

22 COMMISSIONER DEASON: Well, I move Issues
23 13 through 15.

24 COMMISSIONER JABER: Second.

25 CHAIRMAN JACOBS: Moved and seconded. All

1 in favor?

2 COMMISSIONER PALECKI: Aye.

3 COMMISSIONER BAEZ: Aye.

4 COMMISSIONER JABER: Aye.

5 COMMISSIONER DEASON: Aye.

6 CHAIRMAN JACOBS: Opposed?

7 We're on Issue 16.

8 COMMISSIONER JABER: Okay. On Issue 16,
9 staff, in your conclusion you're allowing for
10 the collaborative process, let them work it
11 out. I think you don't mean, though, to limit
12 the mediation opportunities to just mediation
13 conducted by staff; right? There are two things
14 going on. They can start mediating anytime they
15 want. They don't have to wait the 120-day
16 period, and they have don't have to use staff
17 mediators. As a matter of fact, we don't have
18 to get involved at all.

19 MR. FUDGE: That's correct.

20 COMMISSIONER JABER: Okay. With that
21 clarification -- and I don't want to speak for
22 you, but I think that's what you would have
23 intended.

24 MR. FUDGE: Yes, Commissioner. We intended
25 as a last resort that they would come to us.

1 COMMISSIONER JABER: Okay. So with that
2 clarification in the order, I can move staff.

3 COMMISSIONER PALECKI: Second.

4 CHAIRMAN JACOBS: We have a motion on --
5 that was Issue 16?

6 COMMISSIONER JABER: Yes.

7 CHAIRMAN JACOBS: All in favor?

8 COMMISSIONER DEASON: Aye.

9 COMMISSIONER PALECKI: Aye.

10 COMMISSIONER JABER: Aye.

11 COMMISSIONER BAEZ: Aye.

12 CHAIRMAN JACOBS: Show it approved. And I
13 believe Commissioner Deason had moved 17 and
14 18.

15 COMMISSIONER DEASON: Yes. I will renew
16 that motion.

17 COMMISSIONER JABER: Second.

18 CHAIRMAN JACOBS: Moved and seconded. All
19 in favor?

20 COMMISSIONER PALECKI: Aye.

21 COMMISSIONER BAEZ: Aye.

22 COMMISSIONER JABER: Aye.

23 COMMISSIONER DEASON: Aye.

24 CHAIRMAN JACOBS: Opposed? Show Issues 16
25 and 17 are approved.

1 We're on Issue 19.

2 COMMISSIONER DEASON: I have a question on
3 19. The cap that is being proposed, it's a
4 percentage of operating revenue, net operating
5 revenue. And my question is, is that a number
6 that is readily ascertainable?

7 MR. VINSON: Yes, sir, that's ascertainable
8 through the FCC's ARMIS system.

9 COMMISSIONER DEASON: And the parties agree
10 that that's the data source that can be
11 utilized?

12 MR. VINSON: Yes.

13 CHAIRMAN JACOBS: And this is not a part of
14 -- this ARMIS reporting is not going to be
15 affected by the FCC's rulemaking on ARMIS, is
16 it?

17 MR. VINSON: There are revisions in place,
18 but I understand that this data will still be
19 available.

20 CHAIRMAN JACOBS: Can we confirm that?

21 MR. VINSON: It's in process.

22 CHAIRMAN JACOBS: Let's confirm that.

23 COMMISSIONER DEASON: I can move Issue 19
24 and the subparts, all the subparts.

25 COMMISSIONER PALECKI: Second.

1 CHAIRMAN JACOBS: Okay. Show a motion and
2 second on Issues 19a and b. All in favor?

3 COMMISSIONER JABER: Aye.

4 COMMISSIONER PALECKI: Aye.

5 COMMISSIONER DEASON: Aye.

6 COMMISSIONER BAEZ: Aye.

7 CHAIRMAN JACOBS: Opposed? Show it
8 approved.

9 COMMISSIONER PALECKI: I have a question
10 on Issue 20. I support the absolute cap that's
11 being recommended by the Commission, but I would
12 be more comfortable if the order reflected that
13 this is a docket that's subject to periodic
14 review and that if performance is unsatisfactory
15 under the plan, that this is an issue that can
16 be revisited. And I would move the staff
17 recommendation with that minor modification.

18 COMMISSIONER JABER: Second.

19 CHAIRMAN JACOBS: It has been moved and
20 seconded. All in favor?

21 COMMISSIONER DEASON: Aye.

22 CHAIRMAN JACOBS: Aye. All opposed? Show
23 it is approved.

24 Issue 21.

25 COMMISSIONER DEASON: Mr. Chairman, I can

1 move Issues 21 through 30.

2 COMMISSIONER JABER: Hang on a second.

3 COMMISSIONER PALECKI: I have a question on
4 26 and 27.

5 COMMISSIONER DEASON: Okay. I can move
6 Issues 21 through 25.

7 COMMISSIONER JABER: Second.

8 COMMISSIONER PALECKI: Second.

9 COMMISSIONER BAEZ: Second.

10 CHAIRMAN JACOBS: It has been moved and
11 seconded. All in favor?

12 COMMISSIONER PALECKI: On Issue --

13 CHAIRMAN JACOBS: Twenty-one through 25, it
14 has been moved and seconded. All in favor?

15 COMMISSIONER BAEZ: Aye.

16 COMMISSIONER JABER: Aye.

17 COMMISSIONER PALECKI: Aye.

18 COMMISSIONER DEASON: Aye.

19 CHAIRMAN JACOBS: Opposed? Show them
20 approved.

21 Issue 26.

22 COMMISSIONER PALECKI: On Issue 26 I
23 support the staff recommendation, but I think
24 that the ALECs should have at least some say or
25 voice in the selection of the auditor. Even

1 though I understand that the auditor will be
2 paid for by BellSouth, normally on something
3 such as an audit or arbitration or mediation,
4 both parties should have at least some voice.

5 COMMISSIONER JABER: How did you -- my
6 question related to that. Staff, how did you
7 envision selecting the auditor? What would be
8 the process? Interview process, I guess.

9 MR. HALLENSTEIN: I gather just that the
10 process will be done before -- BellSouth would
11 choose the auditor subject to the Commission's
12 confirmation. I didn't take into consideration
13 that since BellSouth was bearing the cost that
14 the ALECs would participate in the selection of
15 the auditor.

16 COMMISSIONER PALECKI: Well, BellSouth's
17 position is that the auditor be selected based
18 on input from BellSouth, the PSC, and the ALECs.

19 MR. HALLENSTEIN: And they were assuming
20 that costs were going to be split between the
21 two parties, BellSouth and -- well, between
22 BellSouth and the ALECs.

23 COMMISSIONER PALECKI: I'm not sure whether
24 who pays for the audit should have anything to
25 do with what auditor gets selected, and that's

1 why I think both parties need some input. In my
2 experience in selecting a mediator in civil
3 litigation, generally there's a list of many,
4 many mediators, and both parties are asked to
5 select eight or ten, and you keep asking them to
6 select more until there finally is one that all
7 parties agree on. Could there be some process
8 such as that set up so that an auditor could be
9 selected on the basis of what is satisfactory to
10 both BellSouth and the ALECs?

11 MR. HALLENSTEIN: In the confirmation
12 process, we could get the ALECs to file comments
13 possibly on the third-party auditor selected.

14 CHAIRMAN JACOBS: That's a whole 'nother
15 dueling process.

16 COMMISSIONER JABER: Yes. I guess even
17 that is important, but I think even more
18 critical to me is the auditor's ability in this
19 situation too, which is why I was asking how did
20 you envision the selection process going before
21 even who should participate. I mean, are there
22 auditors that specialize in things like this?
23 Have other states had to go through this
24 decision-making?

25 COMMISSIONER BAEZ: I think there's one

1 auditor there; right?

2 MR. HALLENSTEIN: I'm not aware.

3 CHAIRMAN JACOBS: My concern goes to the
4 combination of Issue 26 and 27a. In 27a, we say
5 that the ALECs can't do their own separate
6 audits even if they pay for it, and then in 26
7 we say they can't participate in who does the
8 audit.

9 MR. HALLENSTEIN: I'm sorry. Can you
10 repeat the question?

11 CHAIRMAN JACOBS: We have a circumstance
12 here where in 26 we say unless the ALECs pick up
13 the charge, then they can't have a say in who is
14 the auditor. So they do have an opportunity
15 under 26 to pay part of the cost and then have a
16 say in who --

17 MR. HALLENSTEIN: That is correct.

18 CHAIRMAN JACOBS: Do they have to -- if
19 they pay half, do they get half say in who gets
20 picked as the auditor?

21 MR. HALLENSTEIN: That's what I assumed
22 when writing the recommendation. I chose
23 BellSouth to bear 100% of the cost.

24 CHAIRMAN JACOBS: That's my point. What
25 you've done is, you've reinforced what the only

1 option is for ALECs, is to pay part of that
2 cost, because they can't do their own separate
3 audits.

4 MR. HALLENSTEIN: That's correct.

5 CHAIRMAN JACOBS: So we need to be clear
6 about under what terms that should occur. If
7 they're going to pay half, do they get a half
8 vote on who the auditor is? If they pay a
9 quarter, do they get a quarter vote?

10 MR. HALLENSTEIN: Good question.

11 COMMISSIONER DEASON: Well, I wouldn't want
12 to have a quarter vote, if I had to pay a
13 quarter of the cost and not have a say, a real
14 say as to who it is.

15 MR. HALLENSTEIN: I gather if the ALECs --
16 if you would like the ALECs to participate in
17 the selection of the auditor, then the ALECs
18 should bear a percentage of the cost. It is
19 possible I guess that BellSouth could bear the
20 cost, 100% of the cost, but the ALECs still have
21 a say in the selection process of the
22 third-party auditor.

23 COMMISSIONER JABER: Well, let me read you
24 the brief. This is -- BellSouth's brief on page
25 70 seems -- they seem to concede the

1 participation of the ALECs, and they've got the
2 two little asterisks by their position, which
3 means this is a new position, and it doesn't say
4 anything about bearing the cost. It says, "In
5 their respective testimony, Mr. Coon and
6 Ms. Kinard each suggested that BellSouth, the
7 ALECs, and staff should have a part in the
8 selection of the auditor. Thus, BellSouth and
9 the ALECs agree. Assuming that staff is
10 amenable to the ALECs' having a role in the
11 selection process, there is no dispute."

12 MR. HALLENSTEIN: That is correct, but I'm
13 under the assumption that BellSouth -- that the
14 cost would be split between BellSouth and the
15 ALECs.

16 COMMISSIONER JABER: Well, it doesn't say
17 that in Issue 26 of their brief.

18 MR. HALLENSTEIN: True.

19 COMMISSIONER JABER: But assuming the -- it
20 doesn't matter to me who participates with
21 respect to -- do you have a process in mind, or
22 is it something you just need to sit down and
23 talk about with the parties?

24 MR. HALLENSTEIN: Yes.

25 COMMISSIONER JABER: Okay.

1 COMMISSIONER PALECKI: Well, I think I can
2 make a motion that we adopt BellSouth's
3 position, that both BellSouth and the ALECs have
4 a voice in selecting the auditor, and that we
5 leave the details of that process to the
6 parties.

7 COMMISSIONER JABER: With staff's
8 consultation.

9 COMMISSIONER PALECKI: With staff's, yes.

10 COMMISSIONER JABER: I can second that.

11 CHAIRMAN JACOBS: Moved and seconded. All
12 in favor?

13 COMMISSIONER PALECKI: Aye.

14 COMMISSIONER JABER: Aye.

15 COMMISSIONER DEASON: Aye.

16 COMMISSIONER BAEZ: Aye.

17 CHAIRMAN JACOBS: Opposed? Show it
18 approved.

19 Item 27a.

20 COMMISSIONER PALECKI: On Item 27a, I have
21 the same modification that I previously made
22 with Issue 20, and that is that this is a docket
23 that's subject to periodic review and that this
24 issue can be revisited if we find it's
25 necessary. I certainly don't want a lot of

1 mini-audits. I think the idea of BellSouth
2 having to undergo an individual audit on these
3 minute details is something that would be very
4 expensive and very time-consuming, but I don't
5 think we should reject it for all time. We
6 should see how the plan works, and if we need
7 to, come back and revisit this issue. If we see
8 that perhaps certain individual issues are
9 problematic and that it would not require the
10 expense of an overall audit, it may well be that
11 in the future you want to revert to simply
12 auditing the problem areas.

13 But for now, I would certainly go along
14 with the staff recommendation and would move the
15 staff recommendation just with the modification
16 that the Commission might revisit this issue if
17 it finds it necessary to do so.

18 COMMISSIONER DEASON: Second.

19 CHAIRMAN JACOBS: It has been moved and
20 seconded as modified. All in favor?

21 COMMISSIONER JABER: Aye.

22 COMMISSIONER PALECKI: Aye.

23 COMMISSIONER DEASON: Aye.

24 COMMISSIONER BAEZ: Aye.

25 CHAIRMAN JACOBS: Opposed? Show it

1 approved. So 27b becomes moot.
2 Twenty-eight.
3 COMMISSIONER DEASON: Move staff.
4 COMMISSIONER BAEZ: Second.
5 CHAIRMAN JACOBS: Moved and seconded. All
6 in favor?
7 COMMISSIONER JABER: Aye.
8 COMMISSIONER DEASON: Aye.
9 COMMISSIONER PALECKI: Aye.
10 COMMISSIONER BAEZ: Aye.
11 CHAIRMAN JACOBS: Aye. Opposed? Show 28
12 is approved.
13 Issue 29.
14 COMMISSIONER DEASON: Move staff.
15 COMMISSIONER PALECKI: Second.
16 CHAIRMAN JACOBS: It has been moved and
17 seconded. All in favor?
18 COMMISSIONER JABER: Aye.
19 COMMISSIONER DEASON: Aye.
20 COMMISSIONER BAEZ: Aye.
21 COMMISSIONER PALECKI: Aye.
22 CHAIRMAN JACOBS: Opposed? Show Issue 29
23 is approved.
24 Issue 30.
25 COMMISSIONER JABER: I can move a and b.

1 COMMISSIONER DEASON: Second.

2 CHAIRMAN JACOBS: It has been moved and
3 seconded that a and b are approved. All in
4 favor?

5 COMMISSIONER JABER: Aye.

6 COMMISSIONER PALECKI: Aye.

7 COMMISSIONER DEASON: Aye.

8 COMMISSIONER BAEZ: Aye.

9 CHAIRMAN JACOBS: Aye. Without objection,
10 show it approved.

11 Issue 31.

12 COMMISSIONER DEASON: Mr. Chairman, on 31
13 we just need to make sure that the vote here is
14 consistent with what we did in Issue 8, which
15 dealt with when the performance plan should
16 become effective, and we had some discussion
17 there. I just want to make sure that what we do
18 with 31 is consistent with what we did in Issue
19 8. And with that clarification, I would move
20 staff.

21 COMMISSIONER JABER: And just in case
22 there are any other changes because of any other
23 issues, how about we just give staff sort of
24 that fallout authority, you know, making all the
25 changes that are appropriate to this issue.

1 CHAIRMAN JACOBS: Change management is an
2 area that I had some concerns with, but the
3 metrics that we have developed for change
4 management go to noticing provisions. I assume
5 that there are no other measures of change
6 management, i.e., to what extent -- here's my
7 thought. If there are systematic issues that
8 are identified through the SQM, it would occur
9 to me that at some point in time they've got to
10 be dealt with. And the thought occurs, change
11 management would be the place, but I don't know
12 that an enforcement mechanism is the right way
13 to do that. But certainly if you see millions
14 of dollars worth of penalties racking up on an
15 item, it occurs to me that we ought to begin to
16 take a look at how to address that as a systemic
17 issue.

18 So let's give that some thought and come
19 back. I don't think it's a measure that we want
20 to put in for change management, but I think
21 it's a process that we may want to explore going
22 forward.

23 And having said that, any other questions?

24 COMMISSIONER DEASON: I just want to make a
25 concluding remark before we finish.

1 CHAIRMAN JACOBS: We have -- and do we
2 understand? We're clear on Commissioner
3 Deason's modification, or is there a
4 modification necessary?

5 Okay. So on Issue 31, all in favor -- I
6 have a motion and a second, I believe. All in
7 favor?

8 COMMISSIONER PALECKI: Aye.

9 COMMISSIONER JABER: Aye.

10 COMMISSIONER DEASON: Aye.

11 COMMISSIONER BAEZ: Aye.

12 CHAIRMAN JACOBS: Aye. Opposed? Show
13 Issue 31 is approved.

14 COMMISSIONER DEASON: Mr. Chairman, I want
15 to take just a second and first of all say that
16 I had some words for the parties, and I don't
17 want them to be misinterpreted. I didn't want
18 them to come off as harsh, and I certainly
19 didn't want to insinuate that the issues that
20 were presented to the Commission were in any way
21 insignificant or not important to the parties.
22 I guess the thrust of my comments is that we
23 need to improve upon this process, and I think
24 there's a better way of doing this, and I think
25 that it is incumbent upon the parties to try to

1 work with the Commission to try to find a better
2 way. And I think in the long term, there's
3 going to be better decisions made if we can
4 focus on what is truly at issue, what could not
5 be resolved by the parties.

6 And maybe the effort was made here too.
7 I'm not trying to prejudge that. I just know
8 that there was a lot of information that was
9 before us, intricate information that I felt
10 like in reviewing the recommendation and the
11 record in this case that perhaps could have been
12 better addressed by the parties with the
13 assistance of our staff. That was the reason
14 for my comments, and it certainly should not be
15 considered in any way negative towards the
16 efforts of the parties in this docket or the way
17 they conducted themselves in presenting their
18 evidence. That's not the thrust of my
19 statements. I didn't want that to be
20 misinterpreted.

21 The second thing is, I want to compliment
22 staff. I had some frustration with this
23 recommendation, not because of the work that
24 staff did or the way they presented it. I guess
25 it was just the subject matter and the

1 difficulty of that subject matter. But I think
2 staff did an outstanding job, in spite of the
3 fact that Walter was here today.

4 CHAIRMAN JACOBS: I have to echo your
5 comments with regard to staff. This was
6 yeoman's work. The volume of data, the
7 complexity of the data, and the scope of the
8 data is beyond I think anything I've experienced
9 since I've been here. Maybe UNE, but it was
10 close. So you are to be congratulated for I
11 think really doing an excellent job in
12 evaluating and analyzing the many issues that
13 were raised here.

14 COMMISSIONER JABER: And keep up the good
15 work, because it's not over.

16 CHAIRMAN JACOBS: It's not over yet.


17 On your point, Commissioner, we have
18 announced a process that may be a candidate to
19 do some of what you're exploring, and I would
20 encourage the parties to give serious thought to
21 how to make use of the collaborative process
22 that we've announced to come to some better
23 decision-making. That process has been used in
24 other states and has been cited favorably by the
25 Department of Justice and by the FCC as a manner

1 in which to explore exactly what you just
2 described, better ways of tackling some of these
3 decisions outside of the granular, painfully
4 granular analysis we've just attributed to them
5 just now. So I would encourage the parties to
6 give serious consideration to that. We'll be
7 having an organizational meeting for that in the
8 not too distant future.

9 And one matter that I need to address real
10 quickly. Earlier we voted out Issue 24a as a
11 full Commission. It was noticed as a panel, and
12 I'm told all I need to do is correct the record
13 and that the proper people sign the vote sheet,
14 so we don't need go back and revisit it.

15 And with that, if there's nothing else,
16 thank you all for a very eventful day, and
17 agenda is adjourned.

18 (Conclusion of consideration of Item 19.)
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2 CERTIFICATE OF REPORTER3
4 STATE OF FLORIDA)5 COUNTY OF LEON)
67 I, MARY ALLEN NEEL, do hereby certify that the
8 foregoing proceedings were taken before me at the time
9 and place therein designated; that my shorthand notes
10 were thereafter transcribed under my supervision; and
11 that the foregoing pages numbered 1 through 170 are a
12 true and correct transcription of my stenographic
13 notes.14 I FURTHER CERTIFY that I am not a relative,
15 employee, attorney or counsel of any of the parties,
16 or relative or employee of such attorney or counsel,
17 or financially interested in the action.18 DATED THIS 21st day of August, 2001.
19
2021 
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