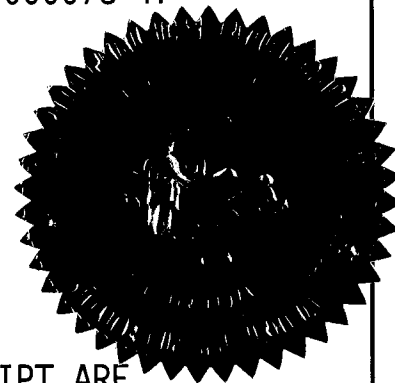


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000075-TP

In the Matter of:

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



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PROCEEDINGS: SPECIAL AGENDA CONFERENCE

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

DATE: Wednesday, December 5, 2001

TIME: Commenced at 9:30 a.m.  
Concluded at 1:10 p.m.

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

REPORTED BY: LINDA BOLES, RPR  
Official FPSC Reporter  
(850) 413-6734

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2           BETH KEATING and FELICIA BANKS, FPSC Division of  
3 Legal Services.

4           CAYCE HINTON, KEVIN BLOOM, DAVID DOWDS,  
5 SALLY SIMMONS, and WALTER D'HAESELEER, FPSC Division of  
6 Competitive Services.

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

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2 CHAIRMAN JACOBS: Good morning. We'll call the  
3 Special Agenda to order. We're on Docket 000075.

4 Staff, you want to tee it up?

5 MR. HINTON: Yes, Commissioners. This item is  
6 staff's recommendation regarding Phase II of Docket Number  
7 000075, the investigation into appropriate methods to  
8 compensate carriers for exchange of traffic subject to Section  
9 251 of the Telecommunications Act of 1996.

10 Staff is available for questions; however, before we  
11 proceed staff would like to make a few minor oral modifications  
12 to its recommendation regarding Issue 16. These modifications  
13 are intended to correct a misrepresentation that BellSouth was  
14 the only party that had not signed the Joint Position Statement  
15 on that issue that was filed before the hearing.

16 In examining the post-hearing position staff was  
17 under the impression that BellSouth was the only party, but  
18 counsel for FCTA informed staff last week that there were FCTA  
19 and a couple of other, I believe two other ALECs had not  
20 actually signed the Joint Position Statement. So if --  
21 Mr. Dowds is passing out a strike and underlined version of the  
22 modifications.

23 You'll see on Page 99, the first paragraph under  
24 staff analysis, the, the final or the second sentence in that  
25 paragraph formerly read, "Staff notes that all parties to this

1 proceeding except BellSouth filed a Joint Position Statement."  
2 That should be corrected to read, "Staff notes that the  
3 majority of parties to this proceeding (including Verizon)  
4 filed a Joint Position Statement on July 5th, 2001, stating:"  
5 and so forth.

6 The second modification is on Page 102, the second  
7 full paragraph. Staff would like to strike the first sentence  
8 which said, "The only party to this proceeding that did not  
9 take part in the Joint Position Statement mentioned above is  
10 BellSouth."

11 And then the final modification is on Page 106, the  
12 second full paragraph under "Analysis" formerly read, "The only  
13 party that did not participate in the Joint Position Statement,  
14 BellSouth, argues," that should be modified to read,  
15 "BellSouth, who did not participate in the Joint Position  
16 Statement, argues that a phone-to-phone IP telephony call  
17 should be treated no differently," and so forth.

18 CHAIRMAN JACOBS: Very well. Commissioners, would  
19 you like to vote issue by issue?

20 COMMISSIONER JABER: Sure.

21 CHAIRMAN JACOBS: Very well. Let's begin then with  
22 issue, I assume we can just go as, as they are ordered in the  
23 recommendation, that would be the best order?

24 MR. HINTON: Yes.

25 CHAIRMAN JACOBS: So we can begin with Issue 10.

1 COMMISSIONER JABER: I can move Issue 10.

2 CHAIRMAN JACOBS: Have any questions, discussion? I  
3 have, I have a motion.

4 COMMISSIONER BAEZ: Second.

5 COMMISSIONER DEASON: Hold on just a second.

6 Yeah. No questions.

7 CHAIRMAN JACOBS: Have a motion and a second. All in  
8 favor?

9 (Simultaneous affirmative vote.)

10 CHAIRMAN JACOBS: Opposed?

11 Show Issue 10 is approved.

12 Issue 12A.

13 COMMISSIONER JABER: I don't have questions on 12A  
14 and can make a motion, if the Commissioners are ready.

15 COMMISSIONER PALECKI: To second that motion?

16 COMMISSIONER JABER: Yeah. To move staff.

17 COMMISSIONER BAEZ: Second.

18 CHAIRMAN JACOBS: Any further discussion? Motion and  
19 a second. All in favor?

20 (Simultaneous affirmative vote.)

21 CHAIRMAN JACOBS: Show Issue 12A is approved.

22 Issue 12B.

23 COMMISSIONER JABER: I have a question on 12B.

24 COMMISSIONER DEASON: I have a question on 12B.

25 CHAIRMAN JACOBS: Okay.

1 COMMISSIONER DEASON: Go ahead.

2 CHAIRMAN JACOBS: You want to go first?

3 COMMISSIONER JABER: No. Go ahead, Commissioner  
4 Deason. I'm trying to find it.

5 COMMISSIONER DEASON: I'm looking at Page 19 of the  
6 recommendations, Paragraph 1090, which is provided there in the  
7 underlined section of that. There is reference made to other  
8 technologies that can be utilized. I guess I'm trying, I'm  
9 having difficulty meshing this particular language with staff's  
10 bottom line recommendation. So if you could clarify that for  
11 me, I'd appreciate it.

12 MR. HINTON: While this, Commissioner, while this  
13 language does refer to, say that, "State shall also consider  
14 whether new technologies perform similar functionalities,"  
15 staff didn't find any compelling evidence in the record  
16 regarding a new technology that performed the function of a  
17 tandem switch.

18 The traditional definition that staff falls back on  
19 is trunk-to-trunk switching. That's, that's the function that  
20 a tandem switch actually performs in a network.

21 And the similar functionality criteria, since the FCC  
22 established that geographic area alone merely, is all that's  
23 required to be entitled to the tandem switching rate, staff  
24 wanted to include the similar functionality criterion primarily  
25 just to address special cases where a, a carrier may actually

1 perform that tandem switching function but may not necessarily  
2 serve a geographic area but would still be entitled to the  
3 switching, tandem switching rates to perform that function.

4 COMMISSIONER DEASON: Well, I guess I'm trying --  
5 first of all, let me try to ascertain what the significance of  
6 this issue is.

7 Given that it's an either/or test, how many instances  
8 are there going to be where an ALEC does not have geographic  
9 comparability and -- well, just explain to me how, how many  
10 times are we going to find out that if an ALEC does not have  
11 geographic comparability are we going to be confronted with the  
12 second option under this test, and that is the functionality  
13 question?

14 MR. HINTON: I don't know if we will. Staff put this  
15 in there for the anomaly to address that situation where it, in  
16 fact, might occur. There's no evidence to, to suggest that it  
17 will. Looking at past proceedings, ALECs have generally, you  
18 know, set forth to show that they serve the geographic area and  
19 would place their main emphasis on that. That would seem to be  
20 the overall carrying factor for obtaining the tandem rate would  
21 be geographic comparability. I don't know if any ALEC would  
22 attempt to prove similar functionality since it doesn't serve a  
23 comparable geographic area, especially with the networks that  
24 they're deploying. They're serving larger areas with a single  
25 switch and, therefore, I think that's, that's why the

1 comparable geographic area was the primary means of obtaining  
2 the tandem switching rate. And I think, I think that's what  
3 you're going to see. I don't know if we will ever see an ALEC  
4 come in and say, we don't serve a geographic area but we serve  
5 a tandem switching function. But in case that situation did  
6 occur, we didn't want an ALEC or any carrier to say that, we  
7 don't serve a geographic area but we are performing a tandem  
8 switching function, but because we don't serve a geographic  
9 area, we're not entitled to the same tandem switch.

10 COMMISSIONER DEASON: Well, I'm not so much concerned  
11 about that situation as if there's a scenario where there is  
12 not geographic comparability but there's an ALEC who doesn't  
13 meet the strict definition as you've provided of what  
14 constitutes tandem switching but is basically providing the  
15 same level, same similar service, has the same capability when  
16 it comes to service to end use customers, why they then would  
17 be denied the tandem switching rate if they are then required  
18 to pay it when their calls, their originating calls have to be  
19 terminated on an ILEC network which has that particular  
20 architecture.

21 MR. HINTON: Well, that's always been the sticking  
22 point on this particular -- the debate regarding similar  
23 functionality is, you know, are you, is similar functionality  
24 completing a call? You know --

25 COMMISSIONER DEASON: And what's wrong with saying



1 that?

2 MR. HINTON: Staff, staff just fell back on, if we're  
3 talking about what is the tandem switching function, we fell  
4 back on how the FCC defined it.

5 COMMISSIONER DEASON: Well, I guess my problem is  
6 this. If you've got an ALEC who has tried to design a network  
7 that they think is most efficient and it just so happens that  
8 they think their efficient way of doing it doesn't have the  
9 particular architecture where it meets the strict definition of  
10 what constitutes a tandem switching function but they're  
11 providing quality of service, they're completing the calls, but  
12 they have to pay to have their calls completed more than what  
13 they get when they complete another call, where's the fairness  
14 in that?

15 MR. HINTON: Well, I believe that's, that's what the  
16 comparable geographic area, that's how that, why that comes  
17 into play. The FCC recognized that the ALECs wouldn't be  
18 deploying identical networks and didn't want to encourage them  
19 to do that. They wanted them to deploy whatever network  
20 architecture that would allow them to efficiently serve their  
21 customers and so they established that you don't have to deploy  
22 a tandem switch. But if you serve the same area or a  
23 comparable area that their tandem, the ILEC's tandem switch  
24 serves, then you'll get the rate regardless of how you're  
25 provisioning service.

1           COMMISSIONER DEASON: So that goes back to my  
2 previous question. In the vast majority of the cases with that  
3 scenario they're going to meet the requirement by having, and  
4 if they're going to have an efficient network, they're most  
5 likely going to have geographic comparability.

6           MR. HINTON: Staff believe that's the case, yes.

7           COMMISSIONER DEASON: I guess I'm still just  
8 uncomfortable if there's, you know, one case out of 10,000, if  
9 they're denied because they cannot prove geographic  
10 comparability, they're, they're under that requirement, I  
11 guess, and that's what this recommendation would provide.  
12 They've got to meet the strict definition. If they don't meet  
13 comparability, geographic comparability, they've got to meet  
14 the strict definition of tandem switching.

15           MR. HINTON: That would be staff's recommendation,  
16 yes, sir.

17           COMMISSIONER DEASON: Okay. Thank you.

18           COMMISSIONER JABER: Commissioner Deason, you may  
19 have asked a couple of mine, but let me, just to drive the  
20 point home, staff, on the bottom of Page 26 something that came  
21 out of the hearing that was a concern from the ALECs was the  
22 possibility that a strict definition would send the wrong  
23 incentive to the ALECs who have a more efficient, better  
24 designed operating system. And it's, it's sort of aligned with  
25 the questions that Commissioner Deason was asking, but can you

1 walk me through why you believe this recommendation, if we  
2 agree with it, would not send that reverse incentive?

3 MR. HINTON: Well, there's a couple of reasons.  
4 First and primary, the development and deployment of a network  
5 should never be motivated by reciprocal compensation and what  
6 rate that you, you'll recover. It should be motivated by  
7 serving customers and putting out a competitive product in the  
8 marketplace.

9 Two, the FCC provided for situations where an ALEC  
10 can provide their own cost studies and show that the rate that  
11 they're getting, the ILEC's proxy rate that they're receiving  
12 does not cover their, their costs.

13 Paragraph -- you know, the controversy surrounds  
14 Paragraph 1090; however, Paragraph 1089 and Paragraph 1091, the  
15 preceding and following paragraphs, both discuss an ALEC  
16 providing their own cost study and showing that their costs are  
17 greater, that they're not recovering their costs through the  
18 ILEC's rate and, therefore, they can receive asymmetric  
19 reciprocal compensation.

20 The context of these, of the tandem rate and so forth  
21 is symmetrical compensation, but there's provisions by the FCC  
22 to allow an ALEC to provide their own cost study, show that  
23 they're not recovering their costs and receive asymmetrical  
24 compensation.

25 COMMISSIONER JABER: And they would file that cost

1 study where?

2 MR. HINTON: I believe -- it would be here with the  
3 State Commission, yeah.

4 COMMISSIONER JABER: Okay. And agreeing with staff's  
5 recommendation on this in no way precludes them from filing  
6 such a cost study and showing that they're not recovering their  
7 costs?

8 MR. HINTON: Not at all.

9 MR. BLOOM: No, Commissioner, it wouldn't. And when  
10 we get to Issue 17, we'll probably go to that in greater  
11 detail. But Issue 17 specifically addresses Subpart H of FCC  
12 rules, which specifically contemplates asymmetrical  
13 compensation.

14 COMMISSIONER JABER: Excellent. Thank you, Mr.  
15 Bloom.

16 Now this is probably a good point for you to explain  
17 to me, maybe legal as well, what the overall purpose of our  
18 decision today, is it, is it going to restrict parties from  
19 bringing an issue to us in arbitration just because we provided  
20 some guidance today or can they still take issue through the  
21 arbitration process with anything we've decided today? Not  
22 relitigating but if we agree with staff's recommendation on  
23 this issue, for example, can they still raise a similar issue  
24 in individual arbitration proceedings?

25 MS. BANKS: Commissioner Jaber, as staff envisioned

1 it, the issues that staff has addressed in staff's  
2 recommendation is viewed as the default status, meaning that if  
3 parties were not able to agree or come to an agreement, that an  
4 arbitration would be a form in which they could pursue an issue  
5 that could not be resolved.

6 COMMISSIONER JABER: This provides guidance for their  
7 negotiation process, it, it could be the foundation, but not  
8 necessarily the ultimate result if it comes back here?

9 MS. BANKS: Yes, staff would agree with that.

10 COMMISSIONER DEASON: I just, I need some  
11 clarification on that.

12 COMMISSIONER JABER: Yeah.

13 COMMISSIONER DEASON: I'm not really sure. It's a  
14 default. What we're establishing here, the parties are free to  
15 negotiate what the parties can negotiate. And if they reach an  
16 agreement and they present it to us, I guess we ultimately have  
17 to approve that agreement. But they're free to negotiate  
18 between themselves and there should be perhaps some give and  
19 take.

20 If they can't reach agreement, the default is what  
21 we've provided here and they, I don't think it would be looked  
22 favorably upon them filing an arbitration that is squarely an  
23 issue that we've addressed here. I think we would tell them  
24 that has already been addressed, the default position is X, you  
25 know, go away, don't bother us anymore, we've already addressed

1 it. I mean, is that the way you envision it working? Are we  
2 going to continue to arbitrate all of these issues in  
3 perpetuity?

4 MS. KEATING: I think what Ms. Banks said is correct.  
5 But just to clarify, if it is something that you've squarely  
6 addressed here, sure, I mean, this should be the default  
7 position. And I believe that you're correct; if the parties  
8 file, it is an arbitration issue, then it should be something  
9 that should be resolved by what you've done here today.

10 But I think in, there may be circumstances where  
11 parties have a real unique situation that they believe warrants  
12 consideration --

13 MR. DEASON: Well, I agree with that. But there  
14 should be a burden to show that the default doesn't apply in  
15 their unique situation.

16 MS. KEATING: Exactly. Exactly. They should only  
17 bring those issues to you when they believe they can make a  
18 demonstration that there is a unique circumstance.

19 CHAIRMAN JACOBS: Further questions, Commissioners?

20 COMMISSIONER DEASON: Yeah, I have another question  
21 that was, is triggered by one that Commissioner Jaber asked.

22 The, this FCC rule which allows an ALEC, if they can  
23 demonstrate and file a cost study, to have asymmetrical  
24 compensation based upon that cost study, is that an FCC rule?

25 MR. BLOOM: Yes, sir, it is. It is 51.711.

1 COMMISSIONER DEASON: Has that rule ever been  
2 challenged or is it currently being challenged?

3 MR. BLOOM: To my knowledge, no, sir. And I believe  
4 we actually did have a filing of that nature, I believe, with  
5 Sprint PCS did file for asymmetrical compensation at one point  
6 but it was resolved before it got to the Commission.

7 COMMISSIONER DEASON: Are we obligated to follow that  
8 FCC rule? It just seems to me that it should be an extremely  
9 difficult burden to try to demonstrate that there should be  
10 asymmetrical compensation. Maybe it can be demonstrated. I  
11 just, I personally think it's, it should be extremely  
12 difficult.

13 MR. HINTON: Well, I think that was the FCC's intent  
14 in initially establishing symmetrical where the ALEC would  
15 utilize the ILEC's rates as a presumptive or proxy for their  
16 own costs. But I think in a situation where, you know, an ALEC  
17 is, you know, is, is receiving a rate, even if they're  
18 receiving the tandem rate and they feel it's not that, not  
19 covering their costs --

20 COMMISSIONER DEASON: Right. I guess my concern is,  
21 is competition should, we should be getting away from  
22 cost-based rate setting. It should be what the market should  
23 bear and who's the most efficient provider. And if they can do  
24 it very efficiently and they have low costs, they should make  
25 lots of money and have a high market share, and those that

1 can't, they will suffer accordingly.

2           When do we get away from saying we're going to base  
3 upon your -- you know, we don't care if you're inefficient.  
4 Because you're inefficient and your cost study shows you're  
5 inefficient, we're going to allow you to charge your  
6 competitors more to complete their calls. That doesn't sound  
7 like competition to me.

8           MR. BLOOM: Well, Commissioner, I, I would point out  
9 that the way the rule is structured on asymmetrical  
10 compensation, you would have to approve it. They don't just  
11 get to file a cost study and say here it is. You would have to  
12 go through that cost study and agree that their costs were  
13 higher than the ILEC's.

14           COMMISSIONER JABER: Yeah. That's the point though.  
15 It's still a regulatory agency going through the cost benefit  
16 analysis.

17           MR. BLOOM: Yes, ma'am.

18           COMMISSIONER DEASON: Well, maybe we won't have very  
19 many of those filings.

20           CHAIRMAN JACOBS: It strikes me though as, that as we  
21 can see more of these new technologies evolve into the network,  
22 then the prospect is probably heightened that we can see the  
23 market begin to take care of this issue. But to the extent  
24 that we don't see new technologies coming, I think that's  
25 probably the transition phase we're in right now is to even get



1 these new technologies rolled out effectively so that they can  
2 have that effect in the marketplace.

3 MR. DEASON: Well, I think we need a structure which  
4 provides incentives for companies to provide quality of service  
5 in a most efficient manner possible. Generally markets do that  
6 and generally markets aren't concerned about costs, they're  
7 concerned you either do well in the market -- I mean, if your  
8 costs are high and you cannot charge a high enough rate to  
9 recover your costs, you suffer in the market. That's what  
10 competition is all about and that's where we need to be  
11 eventually.

12 MR. HINTON: And on a retail basis I believe, I  
13 believe that applies even presently. You know, you're going to  
14 live or die by how you, how you compete in the marketplace.  
15 However, what we're addressing here is not the retail market  
16 but intercarrier compensation where we still have to muddle  
17 through the complexities of the FCC rules.

18 COMMISSIONER DEASON: I realize that and I still, I'm  
19 having difficulty just, you know, getting away from the concept  
20 that fair and procompetitive reciprocal compensation is I  
21 complete your calls, you complete my calls. I don't pay you  
22 anything, you don't pay me anything; you just complete my calls  
23 and I'll complete yours.

24 MR. HINTON: That would be the simplest method of  
25 doing things, yes.

1           COMMISSIONER JABER: I heard you say, Cayce, that  
2 this issue would address the anomaly.

3           MR. HINTON: Yes.

4           COMMISSIONER JABER: Might those anomalies be better  
5 addressed then just in individual arbitration agreements? I'm  
6 focused on, I need to get past sending the wrong signal about  
7 having efficient networks.

8           If a company can still rely on geographic  
9 comparability, then why even decide on the anomaly? Maybe  
10 we're actually creating more problems with this issue. Help,  
11 walk me through that, because I'm leaning towards denying  
12 staff's recommendation on this because ALECs can rely on the  
13 geographic comparability part of the two-prong test.

14           MR. HINTON: And I think that is the case. And, you  
15 know, like I said, it's the anomaly. And I don't, I don't  
16 think having a provision to address the anomaly motivates  
17 anybody to move towards the anomaly. I think, you know, any,  
18 anybody in their right mind will go towards the more efficient  
19 way of serving the area, which would be, you know, you serve  
20 the larger area at the lowest cost. And I think that's what  
21 the comparable geographic area criterion, you know, takes into  
22 account.

23           Staff merely wanted to, just in case this ever  
24 occurred, we didn't want to have to, you know, tell somebody,  
25 well, you're not serving a geographic area. Even though you

1 may be serving a tandem switching function, this small little  
2 area you're serving for whatever reason -- and, you know, staff  
3 acknowledges it's, you know, we may never see it, but it was  
4 just a matter of let's, while we're in this proceeding let's  
5 address it so we don't have to --

6 COMMISSIONER JABER: Commissioners, I don't think I  
7 want to create a default position for something we may never  
8 see.

9 The whole -- I always thought of this proceeding as  
10 creating efficiencies for the companies and negotiating but  
11 also creating efficiencies for how we handle arbitrations. We  
12 wanted, just as one commissioner I know I was looking forward  
13 to this proceeding as having the ability to not arbitrate so  
14 many issues over and over again. This is to provide guidance  
15 for the parties, for staff, for us.

16 As a prehearing officer there have been issues that I  
17 really, really have wanted to strike or, you know, say to the  
18 parties, we've already decided this. The problem is the  
19 arbitration procedure and the Act wasn't designed that way.  
20 It's was a, it's a very restrictive language. This helps us  
21 in, in that regard.

22 We can say the PSC has looked at this issue, we have  
23 provided a ruling on it in some form or fashion; therefore,  
24 when a company requests issues that, through arbitration that  
25 have been well decided by this Commission, we can toss them out

1 and justify it.

2 MR. HINTON: Well, Commissioner, that was staff's  
3 intent in throwing the similar functionality part in there.

4 Paragraph 1090 is still out there and if an ALEC  
5 can't show that they serve a comparable geographic area,  
6 they're still going to want to get the tandem rate. Their only  
7 means of doing that will be, well, let's pull Paragraph 1090  
8 back out and show that we service, you know, we perform similar  
9 functions.

10 Staff merely wanted to let's define the term so that  
11 before you come back to arbitrate it you can say, well, do we  
12 meet the definition the FC, the Florida Commission has already  
13 established before we even bring it back to arbitrate it again?  
14 And if they feel like they do meet this definition of similar  
15 functionality, then they can't come in and say, Paragraph 1090,  
16 similar functionality, look what we're doing.

17 COMMISSIONER JABER: There you go. If I had to make  
18 a motion on this, Commissioners, it would be to deny staff and  
19 find that no ruling on this issue is necessary at this time.

20 COMMISSIONER DEASON: Well, let me say I think I'm  
21 going to second that. I'm not comfortable with at this point  
22 having the default position that similar functionality  
23 basically means the same, that thou shalt have a tandem switch  
24 which does tandem switching, which I understand that's your  
25 position. Is that correct? Am I reading more --

1 MR. HINTON: Well, the trunk-to-trunk switching  
2 function, yes.

3 COMMISSIONER DEASON: Okay. I'm not comfortable with  
4 that as a default, so maybe it's best not to have, take a vote  
5 on this and just if there is that rare situation where an ALEC  
6 cannot demonstrate geographic comparability and they want to  
7 utilize Paragraph 1090 or whatever to indicate that they should  
8 be, still be compensated at the tandem switching rate, maybe  
9 that's something we just need to handle on an  
10 arbitration-by-arbitration basis until we can get more  
11 information.

12 COMMISSIONER PALECKI: Well, the question I have is  
13 do we need to come up with some definition? I was thinking  
14 that perhaps as an alternate to the staff recommendation we  
15 could decide that similar functionality should be defined in a  
16 manner that focuses on the results of the network operation  
17 when comparing functionality so that an ALEC is entitled to the  
18 tandem interconnection rate as long as their networks provide  
19 the same kind of transport and termination service.

20 COMMISSIONER DEASON: Well, I think that maybe is  
21 open to debate, too, as to exactly what that means. I think I  
22 tend to agree with where you're trying to go and those are good  
23 words, but I still think that that's, those words still are  
24 going to result in an arbitration.

25 COMMISSIONER PALECKI: I guess the question I have is

1 by not voting on it at all, we're, we're in some sort of limbo.  
2 I'm not sure where we, where we stand on it.

3 COMMISSIONER DEASON: Well, I think your language is  
4 superior to what we're being presented by staff. I think it, I  
5 think we end up in the same, almost the same way in the sense  
6 that your language, I don't think, is going to be so crystal  
7 clear that we're going to avoid arbitrations and I think we're  
8 going to end up there.

9 But I, I'm not -- can you repeat your language again?

10 COMMISSIONER PALECKI: Well, I pretty much took this  
11 out of the analysis of the staff's recommendation. But  
12 staff -- okay. "Similar functionality should be defined" --

13 COMMISSIONER DEASON: Can you, can you point me to  
14 where you're reading?

15 COMMISSIONER PALECKI: Well, I've written this down  
16 myself.

17 COMMISSIONER DEASON: Oh, okay.

18 COMMISSIONER PALECKI: I picked it out from, from  
19 within the analysis.

20 COMMISSIONER PALECKI: "Similar functionality should  
21 be defined in a manner that focuses on the results of the  
22 network's operation when comparing functionality so that an  
23 ALEC is entitled to the tandem interconnection rate as long as  
24 their networks provide the same kind of transport and  
25 termination service."

1           COMMISSIONER JABER: Would it put our staff in the  
2 posture of deciding whether their networks provide the same  
3 originating and terminating service? I was concerned about the  
4 limbo, whether this puts us in a limbo situation, until I heard  
5 Cayce just say that Paragraph 1090 is out there and they could  
6 take advantage of it on a case-by-case basis. But I, it is  
7 superior language as long as we're not changing the test for  
8 staff, you know.

9           COMMISSIONER PALECKI: Perhaps I should ask staff.  
10 Would that definition be problematic and would it make your  
11 lives more difficult?

12           MR. HINTON: Well, there's still --

13           COMMISSIONER PALECKI: We don't want to do that.

14           COMMISSIONER JABER: Right.

15           MR. HINTON: There's still a threshold manner, matter  
16 to be determined. And with your definition, the same transport  
17 and termination service, well, what does that mean? ILECs will  
18 say, well, the same transport and termination service means  
19 you've got a tandem switch in your network. That's how we do  
20 it. So there's, there's a very subjective threshold matter  
21 that that's why staff fell back on, well, how does the FCC  
22 define tandem switching function? That's why we fell back  
23 because everything prior to that is just, you know, he said/she  
24 said; well, we think it's this, you think it's that. So we  
25 fell back on what, well, what definition do we already have?

1           One thing that we need to, need to understand is the  
2 law of the land right now is geographic comparability. The FCC  
3 has established that. That's what's in the rule.

4           Paragraph 1090, like I said, raises something that an  
5 ALEC may try to meet something other than that rule and go  
6 beyond what the FCC has already established as this is it,  
7 geographic comparability. And that's why the staff wanted to  
8 define that term and we defined it based on the FCC's  
9 definition already.

10           But we do need to keep in mind that even doing that  
11 we're going beyond at this point what the FCC is requiring  
12 because they just say comparable geographic area. But like I  
13 said, we wanted to address the anomaly, too, and just make  
14 provision for that rare case.

15           But, like I said, there's, there's a threshold matter  
16 of what is same, what is the same? Is it identical, is it, you  
17 know, are you just completing the call? We complete a call,  
18 you complete a call; therefore, we pay each other the same  
19 thing.

20           COMMISSIONER DEASON: And what's wrong with that as a  
21 concept for both fairness and pro, the procompetition signal  
22 that it sends?

23           MR. HINTON: Philosophically I find no problem with  
24 that whatsoever. FCC has established all these rules as cost  
25 recovery. So that's what we always, you know, bounce back to



1 that that, yeah, intercarrier compensation really is about cost  
2 recovery. And if an ALEC is serving one neighborhood in a  
3 metropolitan area, are they doing, are they performing,  
4 providing transport and termination on the same basis as an  
5 ILEC who is serving the entire, you know, exchange or what have  
6 you? So there's, there's always going to be some --

7 (Simultaneous conversation.)

8 COMMISSIONER DEASON: Well, they complete every call  
9 to the service area that they serve just like the large company  
10 completes every call to the service area they serve, it's just  
11 two different service areas. And you provide, you complete  
12 those calls in the most efficient manner that you can and you  
13 get paid the same rate, you know. If you're going to charge me  
14 to complete my call, I want to charge you the same thing that I  
15 have to pay you.

16 MR. HINTON: That would seem to make sense. The only  
17 problem, you know, the FCC looked like they were going in that  
18 direction, but then in Paragraph 1090 said, but we also have to  
19 consider that ILECs have tandem switching, too. So in that  
20 case their cost goes up so we can have them charge additional  
21 rates, and then they try to make up for it by saying, okay,  
22 well, if the ALEC serves the same geographic area, we'll just  
23 apply that rate to them, too.

24 And, you know, that, the recovery of costs was based  
25 on the ILEC's function but the ALEC serving that area that the

1 ILEC does, not, you know, they didn't apply that to, well,  
2 you're terminating calls, too, so even if it may be a smaller  
3 area, we'll give that rate. It was, they were trying to, you  
4 know, in symmetrical compensation they were just trying to say  
5 ILEC is doing this using a tandem switch, ALEC is not going to  
6 deploy a tandem switch, but if they serve the same geographic  
7 area or comparable geographic area that that tandem switch is  
8 serving, then we'll apply that rate to them as well.

9 I think in Paragraph 1085 it talks about two carriers  
10 operating in the same geographic area will, you know,  
11 presumably have similar costs. And I think that's where they  
12 really drew that from is, you know, the presumption that  
13 serving the same geographic area, you're incurring the similar  
14 costs regardless of what network architecture that you've  
15 deployed.

16 COMMISSIONER DEASON: I guess that's maybe some of my  
17 fundamental problem. Perhaps from a philosophical level I just  
18 disagree with the FCC's concept that we're still in the cost  
19 recovery business. I'm just not so sure that that is what  
20 competition is all about.

21 Sure, companies have to recover their costs. But the  
22 way they're recovered is providing service efficiently and  
23 getting adequate market share to cover fixed costs and have a  
24 contribution so that they make an adequate rate of return.

25 You know, why should regulators have to be looking at

1 a cost study and then design reciprocal comp rates to make sure  
2 they recover their costs? That sounds like a step backward to  
3 me. That's what we used to do ten years ago when we had rate  
4 cases with the telephone companies.

5 MR. D'HAESELEER: Commissioners, it doesn't matter to  
6 the staffers whether you vote on this issue or not. We, you  
7 know, we can live without a vote.

8 COMMISSIONER JABER: Well, I don't want to take away  
9 from what you just said. I appreciate that. But I have to  
10 tell you that the concern I have is that I don't want the vote  
11 to confuse, complicate or make an issue out of a non-issue, so.

12 MR. D'HAESELEER: It's not critical to us.

13 COMMISSIONER JABER: It's not critical to me.

14 MR. HINTON: The law of the land is comparable  
15 geographic area. So however you decide on this, I don't think  
16 it's going to have drastic impact.

17 CHAIRMAN JACOBS: I think I had a motion and then,  
18 Commissioner Palecki, were you looking to offer --

19 COMMISSIONER PALECKI: I wasn't really making an  
20 alternate motion unless the other Commissioners would like  
21 specific language. I think I heard staff say that the language  
22 I suggested puts us back at ground zero anyway where we're,  
23 where the staff is going to have very difficult, very, a  
24 difficult role in interpreting almost any definition. Unless,  
25 staff, could you take a stab at a definition that would

1 accomplish what Commissioner Deason has, has been referring to  
2 with regard to comparable functionality?

3 COMMISSIONER DEASON: My definition is pretty simple.  
4 If you complete the call, you're providing comparable service  
5 and you should be entitled to whatever rate you're required to  
6 pay you should receive yourself. If that's zero, that's fine,  
7 too. But whatever the companies -- you know, it should be  
8 equal, it should be the same regardless of what your cost  
9 structure is.

10 COMMISSIONER PALECKI: Well, Commissioner Deason, I,  
11 I agree with you and I would like to hear that as a motion.

12 COMMISSIONER JABER: Is that in the record? See, we  
13 need to be careful not to create more problems. That's not --  
14 philosophically I think we're all there.

15 The absurdity about, of how the FCC designed that  
16 rule or what the, the door that got opened with that rule is  
17 that if you want to see a company create a more efficient  
18 network, then you don't allow them to recover all the costs  
19 that they think they need to recover. They'll, you know, look  
20 within and figure out how to create a less costly, more  
21 efficient network.

22 We're going to get motions for reconsideration on our  
23 vote. If there's something we're missing by not voting on the  
24 issue, wouldn't it be more efficient to let that be pointed  
25 out? I'm worried about crafting a definition today and not

1 have it be supported by the record. Maybe the definition is  
2 supported by the record and perhaps that's what David wants to  
3 tell us.

4 COMMISSIONER DEASON: You know, I -- David, I don't  
5 want to cut you off, but let me say this up front. I'm, right  
6 now I'm leaning towards not defining anything at this point.  
7 And if there is a rare circumstance where a company can't  
8 demonstrate geographic comparability, we can just deal with it  
9 and maybe then we'll, we'll be in a better, better position.  
10 I'm just, I'm not comfortable. I guess I've espoused what my  
11 general philosophy is and the difficulty I'm having in a  
12 so-called procompetitive environment that the FCC has created  
13 while we're still concerned about costs and cost recovery and  
14 trying to guarantee somebody recovers their costs.

15 You know, hopefully if they're, if they're effective  
16 in the market, they're going to recover their costs and earn a  
17 profit. And if they're very effective and very efficient,  
18 they're going to earn a very high profit. That's what  
19 competition is all about and they, if they can do that, they  
20 deserve it.

21 CHAIRMAN JACOBS: I took your -- I'm inclined to, to  
22 agree somewhat. But because of the caveat that I, that I heard  
23 you give, and that is that in the absence, in the absence of an  
24 agreement on, on comparable geographic area the parties can  
25 look to Paragraph 1090, because I think that --

1           COMMISSIONER DEASON: The parties can agree, the  
2 parties can agree, as I understand, they can agree to anything.  
3 They can agree that I'm going to complete your calls, if you  
4 complete mine, and I'm not going to pay you anything and you  
5 don't have to pay me anything or they can agree to pay each  
6 other \$100 per completed call. I mean, whatever they want to  
7 structure is up to them. It's when they can't agree that these  
8 things get triggered is my understanding.

9           MR. DOWDS: That's correct. Just a couple of  
10 observations.

11           One, similar functionality is not the law of the  
12 land, that is not the standard anymore for whether a carrier is  
13 entitled to the tandem switching rate. As a result, as  
14 Mr. D'Haeseleer said, we can agree that there's no really, no  
15 real need for you to vote on this issue.

16           Two, just as a little reminder the FCC currently has  
17 a proceeding open on intercarrier compensation and one of the  
18 key issues pertains to whether or not they should have a  
19 mandatory bill and keep regime is being teed up. Presumably  
20 something will transpire next year.

21           COMMISSIONER DEASON: So, you know, if you work at  
22 something long enough, you can always see the light.

23           MR. DOWDS: Third, just a general point.

24           I think the reason the FCC designed the Subpart H  
25 recip comp rules the way they did as cost recovery mechanisms,

1 I think they were concerned about the unequal relative power of  
2 the incumbents versus the ALECs, and I think that's probably  
3 why they gave the, the entrant the option of using the rates  
4 that had been established by a commission for the incumbent.

5 CHAIRMAN JACOBS: But I, but I would beg to differ a  
6 bit because, yes, perhaps, I think, yes, they probably were  
7 concerned about any, any, an inequality, but it was for a  
8 purpose, and I think Commissioner Jaber touched on that.

9 There is an attempt here to provide some incentive to  
10 deploy newer technologies into the network. And to the extent  
11 that it can be done through this albeit inexact formula, I  
12 think it was, there was, there was a desire to accept the  
13 inexactness in order to achieve that incentive. And I, I agree  
14 with that objective. I agree that it is a good thing to incent  
15 to bring in these newer technologies. I also -- but I'm torn  
16 by that because there is some point in time in my mind where as  
17 costs are driven downward, there should be some conduct on, on  
18 price, too. Because as costs go down, that formula that was  
19 mentioned, people should be able to recover their face costs  
20 very, more readily and then those newer technologies should  
21 begin to drive prices down.

22 So that's why I'm willing to accept this formula, not  
23 just to, to provide equity over cost structures. I'm willing  
24 to accept this because I'm hoping that these newer technologies  
25 will find a more rapid deployment and ultimately they'll begin,

1 they will drive market conduct.

2 COMMISSIONER DEASON: Well, see, the difficulty I'm  
3 having is I think we're sending the perverse price signal is  
4 that if you, if you design something efficient, meet your  
5 needs, meet your customers' needs, and you complete, complete  
6 the calls that come onto your network and you, but you don't  
7 have a tandem switch which does a tandem switching function,  
8 you have to pay your competitor more to complete your calls  
9 than they have to pay you to complete your calls.

10 I don't see where that is, sends the right price  
11 signal to deploy the most efficient network. It sends the  
12 price signal to copy what the incumbent LEC has so you can at  
13 least charge what you're having to pay them.

14 CHAIRMAN JACOBS: Exactly. Exactly the incentive,  
15 find a way to duplicate what they already have so you can get,  
16 you can get the revenue kitty. And in my mind that's exactly  
17 perverse to what we want to be, be incenting.

18 COMMISSIONER DEASON: I'm comfortable with no vote.

19 COMMISSIONER JABER: Motion and a second.

20 CHAIRMAN JACOBS: Motion and a second to deny staff  
21 and basically do not issue a vote on Issue 12, is it, B. Any  
22 further discussion? All in favor?

23 (Simultaneous affirmative vote.)

24 CHAIRMAN JACOBS: Opposed?

25 Show that approved.



1 Issue 12C.

2 COMMISSIONER JABER: I actually can move 12C, if no  
3 one has any questions.

4 MR. DEASON: I may have a question. Yes. I'm  
5 looking at Page 37 of the recommendation, the first full  
6 paragraph. And what I understand staff is saying is that there  
7 is a requirement for the ALEC to have its, to deploy its own  
8 switch, that they cannot rely upon acquiring UNEs, loop ports  
9 and acquiring, relying upon the switching of the incumbent to  
10 make this showing; is that correct?

11 MR. HINTON: That's correct.

12 COMMISSIONER DEASON: My question is why?

13 MR. HINTON: Primarily based on the rule, 51.711.

14 COMMISSIONER DEASON: FCC rule again?

15 MR. HINTON: Yes. That says, and I'm quoting it from  
16 Page 32 and 33 of the recommendation, "Where the switch of a  
17 carrier other than incumbent LEC serves a geographic area  
18 comparable to the area served --

19 COMMISSIONER DEASON: Slow down. Slow Down.

20 MR. HINTON: Sorry. "Where the switch of a carrier  
21 other than an incumbent LEC serves a geographic area comparable  
22 to the area served by the incumbent LEC's tandem switch, the  
23 appropriate rate for the carrier other than the incumbent LEC  
24 is the incumbent LEC's tandem interconnection rate." That's  
25 51.711(a)(3).

1           COMMISSIONER DEASON: So does that mean then that  
2 they can, that that is one avenue they have of showing it or  
3 that's the only way that they can demonstrate comparability?

4           MR. HINTON: Staff believes that's the threshold,  
5 that it's, it's, you know, it's the first thing that has to be,  
6 that has to occur is you have to plant a switch, you have to be  
7 utilizing a switch.

8           COMMISSIONER DEASON: Well, let me ask you this. If  
9 an ALEC comes in and they're going to rely upon UNEs and they  
10 pay the rates for the UNEs, which they say are way too high to  
11 start with, but nevertheless that's a different debate and not  
12 for today, they pay those rates and they acquire switching from  
13 the incumbent LEC, isn't that the same as their switch?  
14 They're paying for it. Why aren't they then entitled to rely  
15 upon that to demonstrate they've got comparability?

16           MR. HINTON: Staff believes the context of this rule  
17 is examining the ALECs, we're taking a look at the ALEC's  
18 network.

19           COMMISSIONER DEASON: Are we strictly bound by that  
20 interpretation or do we have the discretion to interpret that  
21 differently?

22           MR. HINTON: I don't, I don't -- staff doesn't see  
23 another way of interpreting where a switch, it doesn't, you  
24 know, the rule doesn't say where the switch or a UNE serves a  
25 geographic area. I think the, the assumption or the, the

1 purpose of this, you know, my evaluation of what the FCC stated  
2 was that they were examining the ALEC's network.

3 COMMISSIONER DEASON: So what is the policy reason  
4 for it?

5 MR. HINTON: I'm sorry?

6 COMMISSIONER DEASON: What's the FCC's policy reason  
7 for that?

8 MR. HINTON: I'm not sure I understand your question.

9 COMMISSIONER DEASON: Well, why do they want to limit  
10 it only to an ALEC having their own switch that they own and  
11 they've deployed as opposed to relying upon UNEs?

12 MR. HINTON: Well, if we're looking to, if we're  
13 looking to create an incentive for carriers to deploy network  
14 facilities and become facility-based providers, I would think,  
15 you know, if we're looking for a policy or, you know, something  
16 that, that they were looking to to promote, then basing it  
17 according to, you know, utilizing your own switch, I think,  
18 would go in that direction.

19 COMMISSIONER DEASON: Does the FCC state that, that  
20 they're doing that because they want ALECs to deploy their own  
21 network?

22 MR. HINTON: That's me reading between the lines.  
23 But just the bare reading of the rule just says where, where  
24 the switch of an ALEC or where the switch of a carrier other  
25 than incumbent.

1           COMMISSIONER DEASON: But when they buy that  
2 functionality, switching functionality, UNE, doesn't it become  
3 theirs? Isn't that in effect their switch?

4           MR. HINTON: They're leasing the functionality.  
5 It's, I don't believe it's their switch. They're just  
6 purchasing the functionality.

7           COMMISSIONER DEASON: So when they're purchasing  
8 that, they're purchasing all the rights, privileges and  
9 functionality associated with that except for they can't rely  
10 upon that to show its comparability?

11          MR. HINTON: That's staff's position.

12          COMMISSIONER DEASON: So should we give them a  
13 discount off the UNE rate then?

14          MR. HINTON: That's a whole other matter.

15          COMMISSIONER DEASON: I'm just having difficulty.  
16 Here, this is another example of why we're here and apparently  
17 we feel like that we're just, we're strapped by the FCC rule,  
18 you know, and we've, we can't really do much interpretation or  
19 policy analysis or innovation on our own. We're here just  
20 interpreting FCC rules as our function. I'm not necessarily  
21 comfortable with that. Are you comfortable with that?

22          MR. HINTON: If you're not comfortable with that, I'm  
23 not comfortable with that.

24          COMMISSIONER DEASON: Good answer.

25          COMMISSIONER JABER: See, Walter? Do you see,

1 Walter?

2 MR. D'HAESELEER: Well, just because he says.

3 CHAIRMAN JACOBS: He thinks, thinks on his feet.  
4 I'll say that much.

5 COMMISSIONER DEASON: Is this a big issue that the --  
6 I'm trying to put it in context. Is this, does this have broad  
7 implications on, on what rates would apply? Are there  
8 situations where ALECs would not be deploying their own switch  
9 and relying upon UNEs and, if permitted, would demonstrate  
10 comparability based upon that?

11 MR. HINTON: I can tell you from my experience in  
12 dealing with this issue in several arbitrations leading up to  
13 this generic docket that the ALECs always provided evidence  
14 that they had their own switch. That was always the assumption  
15 they were operating under. We have a switch and it's serving  
16 this area.

17 COMMISSIONER DEASON: So they buy into the same  
18 interpretation of the FCC rule you do?

19 MR. HINTON: That's my, been my experience. From  
20 this moment going forward, I don't know. But that's been my  
21 experience that they've always gone on the assumption that they  
22 had to deploy their own switch.

23 COMMISSIONER DEASON: The first criteria was they had  
24 to have their on switch?

25 MR. HINTON: That's what they always seem to argue in

1 there.

2 COMMISSIONER DEASON: Okay.

3 CHAIRMAN JACOBS: You gave a lot of attention to how  
4 you, the process by which you define or establish the  
5 geographic scope. And one of the areas, one of the criterion  
6 that you point to is the extent to which companies have  
7 established collocation agreements and so forth, and one of the  
8 things that does concern me, and I've heard this time and time  
9 again, I've seen it in some instances, is that collocation  
10 arrangements are established but not used. And I'm concerned  
11 that, that in order to meet this criteria that process might be  
12 proliferated.

13 MR. HINTON: I don't know if it would be  
14 cost-effective to purchase collocation space just in order to  
15 get the tandem switching rate. I don't know.

16 COMMISSIONER DEASON: You don't? Okay.

17 MR. HINTON: There's no evidence in the record one  
18 way or the other, you know, whether that's actually occurring  
19 or whether anybody would be motivated to do that.

20 CHAIRMAN JACOBS: Okay. Any other questions,  
21 Commissioners?

22 COMMISSIONER DEASON: No, I don't have anymore  
23 questions. I, I can, I can move staff's recommendation. I'm  
24 not entirely happy with it but, you know, we're a faithful FCC  
25 field office here and we're doing what they tell us to do.

1 MR. D'HAESELEER: And one day the FCC will do you  
2 proud.

3 MR. DOWDS: Commissioner Deason, just for your  
4 information, the FCC presumably will be doing its triannual  
5 review of UNEs next year, they're supposed to issue an NPRM  
6 within a couple of weeks, and presume, presumably this issue  
7 may be revisited. It's just our -- based on what we know, the  
8 FCC is silent. They haven't said anything other than what  
9 Mr. Hinton has indicated as to whether UNE combinations would  
10 suffice for geographic comparability. However, they may  
11 revisit it for all we know.

12 COMMISSIONER DEASON: And then if they revisit it and  
13 change it, well, then we'll have to change it, too.

14 Okay. I, I can move staff.

15 CHAIRMAN JACOBS: I have a motion.

16 COMMISSIONER JABER: Second.

17 CHAIRMAN JACOBS: Second. Further discussion? All  
18 in favor?

19 (Simultaneous affirmative vote.)

20 CHAIRMAN JACOBS: Opposed?

21 Show Issue 12C is approved.

22 Issue 13.

23 COMMISSIONER JABER: I have a lot of questions on 13  
24 to staff, really just trying to understand what the analysis is  
25 behind the recommendation, staff, on, not in any particular

1 order either, but you point out very aptly that extending the  
2 LATA for the purposes of determining reciprocal compensation  
3 has already been pursued by AT&T and BellSouth is the example  
4 that we were given from the hearing. I think you said AT&T  
5 witness Follensbee said that and BellSouth acknowledged it in  
6 the hearing. How has that worked?

7 MR. HINTON: In their interconnection agreement?

8 COMMISSIONER JABER: Right.

9 MR. HINTON: That evidence is not in the record. I  
10 don't know the specific terms that relate to that particular  
11 general, you know, that particular aspect of their agreement.  
12 It was just, you know, mentioned in the record that, that they  
13 did have that agreement.

14 COMMISSIONER JABER: I'm asking because Verizon then  
15 tries to make the point that if you expand the LATA, the local  
16 calling area to be the entire LATA, then you are in effect  
17 affecting the access charges that are collected.

18 Number one, I'm having trouble seeing that argument  
19 and, number two, I don't think it's an argument that we can  
20 address anyway. So can you walk me through that?

21 MR. HINTON: Hopefully with the help of Dave Dowds.

22 While that, that's, you know, staff acknowledges that  
23 if, if the default mechanism kicks in and local calling becomes  
24 LATA-wide and each party is paying recip comp for any call that  
25 originates and terminates within the LATA, that staff



1 acknowledges that there may be some loss in access revenue.  
2 There's nothing in the, in the record that suggests how  
3 significant that would be.

4 COMMISSIONER DEASON: Let me, let me explore that.

5 COMMISSIONER JABER: Wait. But you acknowledge that  
6 that might be a problem? It's a side effect.

7 MR. HINTON: Well, anytime that -- yeah. Anytime  
8 that you're going to expand the local area and shrink the long  
9 distance area or toll area that would be effect because the  
10 intercarrier compensation that applies changes from access to  
11 recip comp for some calls.

12 COMMISSIONER JABER: Uh-huh. It's either, it's  
13 either an access charge for the delivery of the call or it's  
14 reciprocal compensation.

15 Now let's say Verizon, and I'm assuming BellSouth,  
16 although I didn't see it in here, let's assume BellSouth agrees  
17 with Verizon's argument. That involves rate rebalancing. We  
18 don't have jurisdiction over the level of access charges. We  
19 can't address it at the PSC, can we?

20 MR. DOWDS: Bear with me. Now by rate rebalancing --  
21 let me try to fill in some gaps here.

22 Presumably what Verizon is arguing is that if the  
23 LATA is the default, quote, local calling area, end quote, then  
24 there will be no longer any access charge payments between  
25 ILECs and ALECs. Instead it will be reciprocal compensation.

1 Now to the extent that that equates to a net revenue loss and  
2 you're referring to the fact that they cannot recover it or  
3 they may have problems recovering it from increasing other  
4 rates, that may be the case. There are restrictions on, on  
5 allowable increases in rates.

6 COMMISSIONER JABER: Right. And said another way,  
7 local, the argument is local rates have been subsidized  
8 traditionally in the telephone arena by access charges that are  
9 collected by the companies.

10 MR. DOWDS: Correct, among other rates.

11 COMMISSIONER JABER: So if I really wanted to address  
12 that situation here to make sure I'm looking at the issue  
13 comprehensively, I couldn't. My hands are tied because that  
14 issue is a legislative issue; right?

15 MR. DOWDS: Under the existing state law there isn't  
16 really enough what I call headroom to do much in the way of  
17 local rate rebalancing. That's correct.

18 There are allowable increases but there are, I  
19 believe it's GDPPI less one percent, which doesn't add up to  
20 very much. This year, for example, I think they increased  
21 local rates by a rate of one-and-a-half percent, which is not  
22 terribly significant.

23 COMMISSIONER JABER: I ask all these questions just  
24 to send a strong signal to anyone who really is troubled by the  
25 vote we may take on this issue to the degree there's a revenue

1 stream loss associated with the effect this has on access  
2 charges. I would hope that the parties work really hard,  
3 really together to make sure that something happens during this  
4 legislative session that addresses this issue.

5 On Page 45, you think this recommendation actually  
6 increases the ILECs' negotiating power?

7 MR. HINTON: No. I would, I would say this would  
8 increase the ALECs' negotiating power.

9 COMMISSIONER JABER: Okay.

10 MR. HINTON: If we, if we restricted the local  
11 calling area to the ILECs', you know, retail local calling  
12 areas as established, they'd have no motivation or staff's  
13 opinion is they'd have no motivation to give and take or  
14 negotiate in that process.

15 However, if, if they are looking at LATA-wide local  
16 calling, perhaps they would be a little more inclined to give  
17 and take in the negotiation process.

18 COMMISSIONER JABER: Okay. Well, look at Page 45  
19 because I thought that was the case with this issue that this  
20 actually gives, which is consistent with the Act, some leverage  
21 to the ALECs. But if you look at Page 45, the end of the first  
22 paragraph, it says, it says, "Staff believes this would merely  
23 serve to increase the ILECs' negotiating powers." Is that, is  
24 that just a typo or am I missing something?

25 MR. HINTON: Staff does not believe that establishing

1 a default definition based on ILEC local calling areas will  
2 inspire ILECs to compromise during negotiations, rather staff  
3 believes this would merely serve to increase the ILECs'  
4 negotiating power.

5 Staff was saying that establishing a default based on  
6 the ILEC local calling area would not --

7 COMMISSIONER JABER: I see.

8 MR. HINTON: It would, that would serve to increase  
9 the ILECs.

10 COMMISSIONER JABER: Okay. Those are the only  
11 questions I had, Commissioners.

12 COMMISSIONER DEASON: Well, I have, I have a question  
13 about, I want to better understand the mechanics that apply on  
14 the access charge argument.

15 If we have -- there's -- let's assume there's an  
16 incumbent LEC customer and they make a call to an ALEC  
17 customer, and just for this example let's assume that both the  
18 ALEC and the ILEC, they've agreed that local calling areas are  
19 the same as they currently exist for the ILEC. So let's assume  
20 that this call is a, is a long distance call, intraLATA long  
21 distance call. What are the revenue streams associated with  
22 this? Who pays who what?

23 MR. HINTON: I believe that if an ILEC originates the  
24 call --

25 COMMISSIONER DEASON: Yes.

1 MR. HINTON: -- that is intraLATA toll call --

2 COMMISSIONER DEASON: Right.

3 MR. HINTON: -- then the ILEC would charge  
4 originating access for the call.

5 COMMISSIONER DEASON: So the ILEC would get  
6 originating access?

7 MR. HINTON: Correct.

8 COMMISSIONER DEASON: From the ALEC?

9 MR. HINTON: Correct.

10 COMMISSIONER DEASON: Because there's no IXC involved  
11 in this?

12 MR. HINTON: Correct.

13 COMMISSIONER DEASON: And there would be no  
14 reciprocal comp because it's not a local call.

15 MR. HINTON: Correct.

16 COMMISSIONER DEASON: Okay. All right. Now let's  
17 change that for just a moment. If, if the ALEC under your  
18 recommendation and the, they can't agree, and the ALEC says,  
19 well, the default is, is that I define the entire LATA as local  
20 calling, okay, and that same call is made, their, the  
21 originating access goes away?

22 MR. HINTON: They would pay reciprocal compensation.

23 COMMISSIONER DEASON: And they would actually -- so  
24 they'd lose revenue and have to pay out expense.

25 MR. HINTON: Correct.

1           COMMISSIONER DEASON: Okay. So you've got two  
2 directions there.

3           Now for the ALEC, for that to be accomplished, the  
4 ALEC has to define their local calling area as the entire LATA;  
5 is that correct?

6           MR. HINTON: I'm sorry. Say that one more time.

7           COMMISSIONER DEASON: The ALEC would have to declare  
8 that their local calling area is the entire LATA for that, the  
9 second example.

10          MR. HINTON: Uh-huh. Only on a wholesale basis.  
11 That's what was just whispered in my ear. We are talking about  
12 wholesale basis. The exchange of re, of reciprocal  
13 compensation or access charges, what we're talking about is  
14 establishing a local calling area for intercarrier compensation  
15 basis.

16          COMMISSIONER DEASON: Okay. That's what I'm trying  
17 to establish.

18          MR. HINTON: Yeah. It may not --

19          COMMISSIONER DEASON: So that ALEC customer that  
20 receives that call, if they in turn decide to make a call,  
21 okay, and they're calling another ALEC customer within that  
22 LATA, is that a local call or is that a long distance call?

23          MR. HINTON: Well, that was one of many options that  
24 was presented in how we should establish a local calling area,  
25 whether it, should it be based upon the originating caller's

1 local calling area, meaning if it's a local call for me, it  
2 should be treated as a local call for reciprocal compensation.  
3 If it's a long distance call for you, then it should be treated  
4 as a long distance call for intercarrier compensation. That  
5 was one of the many options that were presented and that staff  
6 evaluated.

7 Presently I think it's, I'm not sure if there's an  
8 industry-wide standard on that. Dave can correct me with his  
9 vast institutional knowledge. But, yeah, it may be more  
10 subject to the interconnection agreements that are presently  
11 out there. But I know that one option was that intercarrier  
12 compensation should be based upon the originating caller's  
13 local calling plan.

14 COMMISSIONER DEASON: Uh-huh. What is your  
15 recommendation?

16 MR. HINTON: My recommendation is let the parties  
17 negotiate however they want to.

18 COMMISSIONER DEASON: Yes.

19 MR. HINTON: However, if you come to us having not  
20 agreed, then a default mechanism of LATA-wide local calling --

21 COMMISSIONER DEASON: Why don't you just define it  
22 that whatever local calling area that the ALEC establishes for  
23 their customers and advertise to their customers, this is what  
24 your local calling area is, that's what we apply for reciprocal  
25 comp, and the same for the ILEC, whatever local calling area

1 there is established for their customers and that's what their  
2 customers -- see, I have difficulty if, if an ALEC defines for  
3 reciprocal comp purpose LATA-wide local area but their  
4 customers, an ALEC calling another ALEC customer, has to pay  
5 toll charges. I mean, that's almost like having your cake and  
6 eating it, too.

7 MR. HINTON: Well, with, in a competitive market  
8 you're going to have multiple calling plans that are available  
9 to people and you can have customers from one ALEC with  
10 different calling plans. One customer may have LATA-wide  
11 because they've purchased this LATA-wide local calling plan.  
12 One customer may have just one city or however it goes. That's  
13 why staff wanted to go with a broader definition as a default  
14 because there is such a proliferation of different local  
15 calling plans in the market that if, if just, if for no other  
16 reason administrative ease than to, okay, we're going to base  
17 it on each individual carrier's local calling plan that they  
18 offer to that particular customer. Since there are so many  
19 plans that are out there, we felt that, staff felt that a  
20 broader default would bring some administrative ease and some  
21 certainty to the situation.

22 COMMISSIONER JABER: But would the default discourage  
23 the parties from agreeing to establish the local calling area  
24 based on whatever their definition of LATA is?

25 MR. HINTON: No. They --



1           COMMISSIONER JABER: I said that backwards. By  
2 defining LATA by how they designate the local calling area?

3           MR. HINTON: I don't think they're going to be  
4 motivated -- I think the motivation will still be towards  
5 negotiation. It adds a little more give and take to this  
6 situation because perhaps the ALEC may have a little more  
7 leverage going in since, you know, we, we may be able to  
8 assume, maybe not, that the ALEC would prefer LATA-wide local  
9 calling. So they may have a little leverage going in and may  
10 be willing to give that up to take something else.

11           COMMISSIONER DEASON: Why, explain to me why they  
12 would, you make that assumption. Why is that a good assumption  
13 to make that they would prefer LATA-wide?

14           MR. HINTON: It may not be, but ALECs seem to be  
15 promoting -- I don't want to go beyond the record and evidence  
16 that's, that's not in there and getting into the specifics.

17           It seems to be the trend that, that ALECs go towards  
18 larger local calling areas.

19           COMMISSIONER DEASON: For recip comp purposes, not  
20 necessarily for the service they provide to customers?

21           MR. HINTON: Well, that's, that's the sticking point.  
22 They establish larger local calling areas for their customers  
23 perhaps, but we have to establish in this what we're going to  
24 establish for intercarrier compensation purposes. And that's  
25 where they argue back and forth; no, it should be based on

1 mine, no, it should be based on yours.

2 And instead of -- you know, basically we're presented  
3 with, with, you know, two options. We can base, for  
4 intercarrier compensation purposes we can base it on the ILEC's  
5 local calling area or we can base it on the ALEC's local  
6 calling area.

7 Well, we've, we've recommended a third option. Let's  
8 base it on the LATA.

9 COMMISSIONER JABER: Does, and obviously we don't  
10 want you to go beyond the record, I understand that, that's  
11 fine, but does it, are they establishing, the ALECs  
12 establishing the greater calling area because somehow that  
13 helps them minimize the access charges they pay the ILEC?  
14 That's in the record, Witness Selwyn, whatever, Selwyn  
15 testified to that.

16 MR. HINTON: Can you refer me to --

17 COMMISSIONER JABER: I'm looking at Page 43. It's in  
18 the record because your recommendation cites to Page 43.  
19 "Witness Selwyn suggests that it would be preferable if ALECs  
20 did not have to pay access charges for any intraLATA calls."

21 MR. HINTON: Yeah. I think he states that would be  
22 preferable. I don't know if he's, he's, you know, stating that  
23 they're motivated by that or that's how they're constructing  
24 their network or designating local calling areas to avoid  
25 access charges. I don't know if that's the case. Of course it

1 would be preferable not to pay access charges. I think that's  
2 his position. I don't know if they're necessarily doing  
3 anything.

4 COMMISSIONER DEASON: But they, don't they also give  
5 up the potential of receiving access charges in the reverse  
6 direction by defining the LATA as the local calling area?

7 MR. HINTON: It would appear so, unless they've,  
8 unless they have already established it that way.

9 COMMISSIONER DEASON: I'm sorry. Unless they've  
10 already established it that way?

11 MR. HINTON: Unless they've already established their  
12 local calling area for other retail purposes as LATA-wide.

13 But, yeah, every, you know, I, like I said, this is  
14 sort of a third option that I don't, I don't believe anybody  
15 directly proposed, even AT&T when they said that, that, yes,  
16 they've already got this agreement in place with BellSouth; he  
17 said the company should still be free to negotiate whatever  
18 they want. They weren't proposing that as a solution.

19 COMMISSIONER DEASON: Oh, I agree that they should be  
20 able to negotiate. That's a given. We're talking about what's  
21 appropriate default.

22 MR. HINTON: Right. And this is, and this is a third  
23 option that we've stated. Instead of basing it on, you know,  
24 instead of siding with the ALECs or siding with the ILECs,  
25 we've presented a third option that's a broader local calling

1 area for reciprocal comp, for intercarrier compensation  
2 purposes, which would be LATA-wide as a default.

3 COMMISSIONER DEASON: Well, what's wrong with the  
4 option of defining it as the, the originating carrier defines  
5 their local calling area?

6 MR. HINTON: The only reason staff didn't go with  
7 that, didn't recommend that is, is the, like I said before, the  
8 proliferation of local calling areas that are in the market  
9 right now. For, you know, for administrative ease, if for no  
10 other reason.

11 COMMISSIONER DEASON: Administrative ease.

12 MR. HINTON: Yeah. You know, each, each carrier  
13 offers several local calling plans.

14 COMMISSIONER DEASON: Are you saying for  
15 administrative ease that it needs to be one or the other, it  
16 either needs to be -- well, you're saying that administrative  
17 ease is LATA only, I mean, LATA-wide.

18 MR. HINTON: LATA-wide. That way you're not, you  
19 know, each call you're not determining, well, what was that  
20 caller's local calling plan?

21 COMMISSIONER BAEZ: You've lost me.

22 MR. HINTON: I may have lost myself.

23 COMMISSIONER BAEZ: You may have lost more. Who  
24 knows?

25 You've made a lot of comments or I think, you know,

1 have made some distinctions as to what local calling areas are  
2 for retail purposes, meaning, and I'm assuming it's what a  
3 company will establish as a local calling area in terms of its  
4 relationship with its customer, and what we're discussing here,  
5 which is local calling areas as to, as to intercarrier  
6 compensation, relationships between the carriers.

7           Are there any instances in which an ALEC, for  
8 example, could establish for intercarrier compensation a local  
9 calling area that, for instance, is LATA-wide, it offers the  
10 greatest advantage in terms of avoiding access charges and  
11 still define retail local calling areas in a way that they  
12 could charge toll to the customer?

13           MR. HINTON: I think it would be subject, excuse me,  
14 I think it would be subject to the interconnection agreement  
15 that they have with the ILEC. They have to have, you know,  
16 they have to come to an agreement as to what the local calling  
17 areas are going to be for intercarrier compensation purposes.  
18 It may not reflect their retail local calling areas and it, but  
19 it may. But the, the area established for intercarrier  
20 compensation purposes will have to be agreed to by the parties.

21           COMMISSIONER BAEZ: Well, and I, and I guess that's  
22 where I'm having some confusion is what the relationship, what  
23 the relationship between the two are.

24           If you, if you give, if you give a certain amount of  
25 discretion or if you give discretion to any one side, I mean,

1 it really doesn't matter whether it's an incumbent or a CLEC or  
2 an ALEC rather to establish local calling areas when you're  
3 talking about intercarrier compensation, then by our allowing  
4 that kind of discretion are we creating a situation where that  
5 can be used to gain, to avoid access charges, to gain the  
6 retail side?

7 MR. HINTON: To avoid access charges?

8 COMMISSIONER BAEZ: Well, avoiding access charges, I  
9 think any, you know, that's as much as been admitted. I mean,  
10 it's a good thing to avoid access charges. I think that's been  
11 established by one of the witnesses.

12 But I guess the point is we have, you know, we can be  
13 creating a situation where an ALEC can take advantage of  
14 whatever benefits avoiding access charges allows it on the  
15 carrier-to-carrier side and yet still mirror what are probably,  
16 still exists on, on the ILEC side in terms of local calling  
17 areas for the retail customer so that you're creating a revenue  
18 stream or you're creating some incentive to have that.

19 MR. HINTON: I think I see -- you're saying assuming  
20 that the ALEC and the ILEC may have the same local calling  
21 areas on a retail basis but the ALEC then say, but, no, we're  
22 going to hold out so the default will kick in, is that what  
23 you're --

24 COMMISSIONER BAEZ: Well, I explained, I guess I, I  
25 need to understand better how, for instance, on the ILEC side

1 for an incumbent what the relationship between their local  
2 calling areas that they're trying to support the adoption of  
3 for intercarrier compensation, what the relationship is between  
4 those local calling areas and, and how they rate their calls to  
5 their own customers. Are they, are we talking the same, are  
6 those, is that apples to apples even though they're two  
7 different things?

8 MR. HINTON: Can you ask that question one more time?  
9 I'm not sure.

10 COMMISSIONER BAEZ: Okay. If, if I, say I'm an  
11 incumbent and I'm dealing with you, the CLEC, and I'm saying,  
12 well, this is a toll call under my, under, under the scheme  
13 that I've established as a local calling area, you take that as  
14 a given, it's a, it's a toll call. What, how does that  
15 correspond to what I'm saying to the customer side? I mean, is  
16 it the same thing? Am I saying it's a toll call to them?

17 Conversely, if I'm saying, if we've agreed to  
18 LATA-wide, for instance, and say everything is local, if I'm  
19 saying to the carrier, yes, this is a local call, can I still  
20 be saying it's a toll call to the customer?

21 MR. HINTON: Yeah. Intercarrier compensation does  
22 not necessarily have to reflect the retail rates that you  
23 charge.

24 COMMISSIONER BAEZ: They don't? All right. And I  
25 guess trying to clarify my question I'm trying to understand

1 what the relationship or what the, what a possible practical  
2 effect of establishing a LATA-wide calling area for  
3 intercarrier purposes, what that relationship or what a  
4 possible outcome of that, what kind of situation you may be  
5 establishing in terms of a CLEC's relationship with the end  
6 customer. Can that situation exist? I mean, can they  
7 establish toll calls even though they're not paying access  
8 charges on either carrier side?

9 MR. HINTON: They can establish their retail calling  
10 plans however they want. This is merely dealing with the  
11 intercarrier compensation.

12 If they want to have a, if, if -- I don't know. I  
13 guess there could be motivation in trying to avoid access  
14 charges. I don't, I don't know if Witness Selwyn really  
15 represented that it was a good thing to avoid. You know,  
16 Chapter 364.16(3)(a) or (1)(a) says that you can't avoid access  
17 charges but through local interconnection agreements.

18 COMMISSIONER JABER: And if Florida was a state where  
19 the Commission had jurisdiction to deal with that, I think I  
20 would care about that issue a little bit more.

21 COMMISSIONER BAEZ: That might actually make sense.

22 COMMISSIONER JABER: Yeah. I mean, yeah, I'd care  
23 about that issue more because I could do something about it.  
24 But the state of the law is that we don't have that issue  
25 before us. So I hope someone deals with that real soon.



1 MR. HINTON: But I hope to answer your question.

2 COMMISSIONER BAEZ: If I'm off the subject, just let  
3 me know.

4 MR. HINTON: Well, no. I --

5 COMMISSIONER BAEZ: I guess what my concern, let me  
6 just tell you what my concern is, you know. Part of -- I  
7 understand that we're dealing with relationships between  
8 carriers here, but I think ultimately you've got to keep an eye  
9 on what kind of situation you're creating for the end customer.

10 And one thing, you know, we've talked about a  
11 philosophy of the Act even to kind of hamstring the ILEC so  
12 that competition, so that a competitive carrier can have some  
13 leverage, I think you've mentioned here, you know, in  
14 negotiating certainly and getting into the market because we  
15 agree that many competitors is better than just one. But you  
16 always have to keep your eye on the consumer.

17 And when we're making decisions that on the face of  
18 it look like we're following those principles, however, we're  
19 creating a situation where the consumer can get taken advantage  
20 of -- I'll tell you what the situation has to exist. The only  
21 thing that has to exist is that the local calling areas for an  
22 ILEC, for intercarrier and for consumers don't match up. I  
23 don't know whether that's the case. But in the event that that  
24 is the case, then a CLEC assuming a LATA-wide default only has  
25 to hang on and, and then just match the local calling areas on

1 the retail side to whatever BellSouth or Verizon has and  
2 they've got themselves a pretty neat situation.

3 MR. HINTON: Well, I don't -- to suggest one thing  
4 you had mentioned, I don't think an end user is going to be  
5 taken advantage of by establishing one intercarrier  
6 compensation method over another. If an end user was going to  
7 be charged for a toll call based on their retail, the local  
8 calling area of an ALEC, they're still going to be charged for  
9 a toll call under the retail offering of the ALEC.

10 One other way of looking at this is, you know, an  
11 ALEC looking to achieve market share or to obtain market share  
12 wants to differentiate its product, offer a better product,  
13 possibly a cheaper product. LATA-wide local calling perhaps  
14 could, you know, facilitate larger local calling areas for end  
15 users, lower rates for making calls to larger areas. So  
16 there's, there's that other side, too.

17 COMMISSIONER BAEZ: I have another question and,  
18 again, this may not be relevant, I'm afraid. But does, what,  
19 what does the existing extended calling plans that the ILECs  
20 may employ, I don't know to what extent Verizon does versus,  
21 versus BellSouth, but in a practical sense to what extent are  
22 all these calls local on the retail side anyway?

23 MR. HINTON: I'm afraid there's not a lot of  
24 information in the record dealing with that and I really, I  
25 don't know if I could really give you a good answer on that

1 one.

2 COMMISSIONER BAEZ: Thanks.

3 MS. SIMMONS: Commissioner Baez, let me just try to  
4 reiterate something I think Mr. Hinton alluded to, and that is  
5 a while back he mentioned the fact that there's, you have such  
6 a proliferation of local calling plans both by the incumbent  
7 LEC and by the, and by the ALECs. I really think a lot of that  
8 is driving our recommendation here that there is so much  
9 variability at the retail level that perhaps it would make the  
10 most since for default purposes at the wholesale level to have  
11 something that is fixed. And that is LATA-wide is what he's  
12 recommending.

13 COMMISSIONER JABER: As it relates to the  
14 administrative ease, the concern to provide administrative  
15 ease, that provides administrative ease to whom?

16 MR. HINTON: I would think anybody involved with  
17 intercarrier compensation.

18 COMMISSIONER JABER: So the companies then?

19 MR. HINTON: Yeah, the companies. Yes.

20 MS. SIMMONS: I mean, if you, if you really want to  
21 go down this path and start looking at all these different  
22 retail local calling scopes, I mean, it strikes me as a  
23 nightmare to try to get the wholesale, local calling area for  
24 wholesale purposes somehow lined up with retail when there is  
25 so many different ones.

1 COMMISSIONER JABER: To match up retail. But what if  
2 --

3 MS. SIMMONS: I think that would be very difficult.

4 COMMISSIONER JABER: Okay. But if you make a finding  
5 that, if we made a finding that it was appropriate to let  
6 everyone establish their own calling area, it's their  
7 responsibility, it's each individual company's responsibility  
8 to think about the administrative ease concerns.

9 MS. SIMMONS: Right. You're talking about the option  
10 at the wholesale level, letting the carriers negotiate this  
11 issue.

12 COMMISSIONER BAEZ: But even at, but even at the  
13 wholesale level you're not insulating yourself from a lack of  
14 administrative ease since you can negotiate different,  
15 different calling areas altogether in any, in any given  
16 instance.

17 MS. SIMMONS: Oh, sure you could. I mean, I think  
18 Mr. Hinton just sees this as, this default of LATA-wide as  
19 something that's simple. This is a very contentious matter and  
20 I think he was looking for something that would be  
21 straightforward as a default.

22 COMMISSIONER JABER: Yeah. And I'm not, my question  
23 didn't go to the default, but rather than just saying parties  
24 should negotiate, why not go the extra step in saying because  
25 there are concerns related to administrative ease and maybe

1 concerns we haven't even identified and that the record didn't  
2 reflect, it seems, it seems more appropriate to let each  
3 individual company define its local calling area based on the  
4 considerations they've got to make. And perhaps as a default  
5 we use this default but --

6 MS. SIMMONS: Well, I think you have to be a little  
7 bit careful. What you just said kind of sounded like maybe  
8 you're thinking that the carriers could negotiate and have  
9 different areas, you know.

10 COMMISSIONER JABER: Yes. That's --

11 MS. SIMMONS: One area for the ALEC, a different area  
12 for the ILEC. I think that's problematic.

13 To me at the wholesale level I think it needs to be  
14 reciprocal whatever it is in terms of the area.

15 COMMISSIONER JABER: It's problematic because of the  
16 cost recovery issue? How is it problematic?

17 MR. DOWDS: Because otherwise they'd be in direct  
18 conflict.

19 COMMISSIONER JABER: I'm sorry?

20 MR. DOWDS: If you, if you literally mirror for  
21 wholesale purposes retail local calling areas, you readily  
22 allow that you have explicit conflicts because you have one  
23 carrier saying the call is toll, you have another one saying  
24 it's local. So you've, you've got to make -- another, another  
25 problem with mirroring for wholesale purposes retail local

1 calling areas is you have an issue of competitive, that it's  
2 not competitively neutral.

3 COMMISSIONER JABER: Yeah.

4 MR. DOWDS: So somebody is going to win, somebody is  
5 going to lose. You can't pick both because you'll have,  
6 they're in conflict. That's why we're here. So it's either  
7 one or the other or a third option basically because they don't  
8 agree as to what the form of compensation is.

9 COMMISSIONER PALECKI: What third options are you  
10 referring to?

11 MR. DOWDS: The third option is, is not the ALECs,  
12 not the ILECs, it's, Mr. Hinton is supporting a third option  
13 which is by definition competitively neutral and he's saying  
14 LATA-wide.

15 COMMISSIONER DEASON: Why isn't it competitively  
16 neutral for the originating entity to, whatever the local  
17 calling area as they define it, that's what rules as to how  
18 that call is compensated for at the wholesale level between  
19 carriers?

20 In other words, there's an ALEC and they define, they  
21 have a local calling area and that call, if it were between  
22 two, the two ALEC customers, it would be no question it's just  
23 local and that's it. If that same call though is to an ILEC  
24 customer and the ALEC defines it as local, why can't it just be  
25 treated as local for intercarrier compensation? And vice

1    versa, if the incumbent LEC has a different, if their customer  
2    calls an ALEC customer, if the incumbent LEC defines that as a  
3    local, it's local, and if they define that as a toll, it's  
4    toll.

5            MS. SIMMONS: Commissioner Deason, I'm struggling  
6    with that just because, I mean, we're talking about reciprocal  
7    compensation. We're supposed to have a reciprocal arrangement  
8    and I think geographically we've got to have one definition. I  
9    don't see how there can be multiples, you know, one for the  
10   LEC, one for the ALEC, because we're at the wholesale level.

11           COMMISSIONER DEASON: So you're just saying we just  
12   totally ignore what they do at retail?

13           MS. SIMMONS: I, I quite honestly think that's about  
14   what it boils down to.

15           COMMISSIONER JABER: But, Sally, I'm confused by what  
16   you just said because I've been reading the briefs on this  
17   issue just as we've been talking and I have read the ALEC  
18   briefs and I've read the ILEC briefs and this is right out of  
19   BellSouth.

20           "However, the originating carrier's local calling  
21   area should be used to determine whether reciprocal  
22   compensation, toll or access is due for any particular call."

23           MS. SIMMONS: I guess from --

24           COMMISSIONER JABER: If they're not concerned and the  
25   ALECs are not concerned, why, why are we concerned?

1 MS. SIMMONS: I guess this does, intuitively does not  
2 make, make sense to me. I think Mr. Dowds is more familiar  
3 with the governing rules than, than I am and I believe he  
4 believes that there is a problem with respect to the FCC rules.  
5 I'll let him interject at this point.

6 COMMISSIONER JABER: David, I'm looking at Page 9 of  
7 BellSouth's brief, and similar language is in the ALEC briefs  
8 about letting each company choose the local calling area, and  
9 they all emphasize negotiation obviously, but.

10 MR. DOWDS: I guess what I -- I have to defer to  
11 Mr. Hinton on these details, but I guess what I struggle with  
12 is it just strikes me as highly anomalous that the form of  
13 compensation will differ based upon the direction of the call,  
14 which is really what you're, you're allowing for here. It  
15 seems to me that you've encouraged gaming.

16 COMMISSIONER DEASON: How do you encourage gaming if  
17 for intercarrier compensation what is defined as local for  
18 retail has got to be the same; what you get on one you may have  
19 to give up on the other?

20 MR. DOWDS: Hypothetically if I'm a CLEC, I want to  
21 get as much money from my competitor as possible. So under  
22 this proposal it sounds to me as though I would be incented to  
23 have very, very small local calling areas quite possibly  
24 because I want to get money from Bell and I don't really care  
25 about my customers. As long -- or, or I end up mirroring --



1           COMMISSIONER DEASON: See, that's is whole thing  
2 about reciprocal compensation. That's the, you know, if  
3 everybody just completed everybody's calls and didn't worry  
4 about this, we wouldn't have these problems.

5           MR. DOWDS: I don't, I don't disagree.

6           COMMISSIONER DEASON: Okay.

7           MR. DOWDS: But what I'm saying is that in all  
8 likelihood when things, when the dust settles, you may end up  
9 with strange situations where customers don't benefit because  
10 the calling area may actually be smaller than the incumbent's  
11 but the ALEC may not care short-term because it's getting,  
12 making money classifying everything as toll for intercarrier  
13 purposes.

14           Conversely, it may equilibrate for all we know, and I  
15 don't have a crystal ball, that you basically, the net money  
16 flow is such that --

17           COMMISSIONER DEASON: Well, if they have --

18           (Simultaneous conversation.)

19           MR. DOWDS: -- mirroring the incumbent's local  
20 calling areas, which doesn't really --

21           COMMISSIONER DEASON: If they have extremely small  
22 local calling areas, an ALEC, then they, and a call is made to  
23 the incumbent LEC, they don't have to pay reciprocal comp but  
24 they've got to pay access charges; correct?

25           MR. DOWDS: No. They charge them access charges

1 under your proposal.

2 COMMISSIONER DEASON: If you originate, if your  
3 customer originates that call and you classify it as toll,  
4 don't you have to pay terminating access to the ILEC?

5 MR. DOWDS: My understanding and, again, I have to  
6 defer to Mr. Hinton, Mr. Bloom on this, I thought it was the  
7 ILEC, ILEC's position that when they take a call outside their  
8 local calling area that they will, will or should be assessing  
9 originating access on the other CLEC. Is that correct?

10 MR. BLOOM: Yes, sir. The record would reflect  
11 that -- and I want to be careful how I frame this -- the ILECs  
12 in this docket advocated similar but different positions, but  
13 at least two of the three said, we want to be compensated if we  
14 take a call outside of our local calling area to a point of  
15 interconnection within the LATA. You have to pay us some  
16 originating costs in order to, for us to take that call to that  
17 agreed upon interconnection point.

18 COMMISSIONER DEASON: Well, now you've got me  
19 confused. How would they be collecting originating access if  
20 all they do is to take the call and terminate it? That's  
21 terminating access.

22 MR. BLOOM: I'm sorry. I misunderstood the question.  
23 I was saying if the originating entity is an ILEC --

24 COMMISSIONER DEASON: No. The originating entity --  
25 Mr. Dowds indicated that it may be an incentive for ALECs to

1 have extremely small local calling areas. Okay?

2 My question is, well, where's the incentive to that  
3 because if one of their customers, just about all of the calls  
4 that are made to an ILEC are going to be toll and they're going  
5 to be paying terminating access to the ILEC. So where's the  
6 incentive there?

7 MR. HINTON: Commissioner, going back to the  
8 recommendation for a LATA-wide local calling, address a couple  
9 of things. One is we've seen the complexity that can apply  
10 when we're talking about who establishes what local calling  
11 area, originates what and terminates what and charges who what.

12 But you had also made a comment about why can't we  
13 just say, you know, I'll terminate your calls, you terminate my  
14 calls? Well, I think that's what the LATA-wide local calling  
15 area adds that simplicity where it says, I'm going to terminate  
16 your calls and I'll charge you for terminating it. You  
17 terminate my calls and charge me for terminating it.  
18 Reciprocal compensation.

19 COMMISSIONER DEASON: Oh, I agree with that and I  
20 think it has a great deal of merit. I'm just trying to  
21 understand the full policy ramifications of what you're  
22 recommending. And I agree that that's closer to bill and keep  
23 than just about anything I've seen in this recommendation.

24 MS. SIMMONS: Commissioners, I --

25 CHAIRMAN JACOBS: Sock you in another home run.

1 MS. SIMMONS: Commissioners, Mr. Dowds made a comment  
2 about how he didn't understand how you could have different  
3 compensation, intercarrier compensation depending on the  
4 direction of the route, whether it's ILEC to ALEC or ALEC to  
5 ILEC, and I would agree with that. It just seems to me we're,  
6 we're talking about a reciprocal arrangement. In order for it  
7 to be reciprocal I think the governing intercarrier  
8 compensation would need to be the same regardless of the  
9 direction of the call. That would be the only thing that would  
10 make sense to me.

11 COMMISSIONER JABER: And maybe that's a policy  
12 concern we need to have and I need to fully understand, but I'm  
13 telling you, I keep focusing on the briefs. That's not the  
14 concern the ILECs are raising. This is right out of Verizon's  
15 brief. Of course, they want the default to be their tariff,  
16 their arrangement. But they say using the ILEC's local calling  
17 area as the basis for assessing reciprocal comp does not force  
18 the ALEC to adopt the ILEC's local calling scopes for retail  
19 purposes. That's in the first paragraph.

20 What the ALEC cannot do, this is the concern, what  
21 the ALEC cannot do, however, is circumvent the existing access  
22 charge regime through its unilateral definition of local  
23 calling area.

24 If that's the one concern, I'm not going to be  
25 concerned with that. Reciprocal compensation is paid for local

1 calls and access rates apply to toll calls. Because access  
2 rates are generally higher than reciprocal compensation rates,  
3 the ALECs seek to avoid paying access charges by defining away  
4 toll calling. Oh, well.

5 CHAIRMAN JACOBS: If -- walk me, walk me through  
6 this. If an ALEC's customer places, given the concept of a  
7 LATA-wide calling area, if an ALEC customer places what it will  
8 be under retail, retail purposes a toll call, the IXC is going  
9 to pay the access charges; correct?

10 MR. HINTON: If there's an IXC involved, the IXC will  
11 pay originating access to the ALEC and would pay terminating  
12 access to whoever terminated that call on a local basis.

13 COMMISSIONER DEASON: Okay. And what if there's,  
14 there is no IXC involved, it's just a handoff from one local  
15 company to another local company, it's just, it's a toll call?

16 MR. HINTON: And that's, and that's what we're  
17 addressing here. This, this LATA-wide local calling as a  
18 default does not involve calls that an IXC takes part in. This  
19 is just one local company handing --

20 COMMISSIONER DEASON: How did the incumbent LECs  
21 before there was competition, you had incumbent LECs which had  
22 local calling areas which was from one company to another, we  
23 instituted a lot of those as EAS, how did they compensate each  
24 other? Ancient history, huh?

25 MR. HINTON: A little before my time.

1 MR. D'HAESELEER: Commissioner, they negotiated  
2 contracts.

3 COMMISSIONER DEASON: Negotiated contracts. And  
4 they, we didn't, they didn't come to us with arguments, did  
5 they?

6 MR. D'HAESELEER: No.

7 COMMISSIONER DEASON: They were more agreeable, huh?

8 MR. D'HAESELEER: Yeah. They were one big, happy  
9 family.

10 COMMISSIONER DEASON: Did they actually compensate  
11 each other or did they just agree to terminate each other's  
12 traffic?

13 MR. D'HAESELEER: There were, they were unique  
14 contracts because there'd be more pressure on one side than the  
15 other to have two-way non-optional VAS. So the contracts in  
16 many cases reflected traffic volumes. And I suspect, I didn't  
17 see a whole lot of them, where there was a little company and a  
18 big company, the big company probably did all the compensation.

19 COMMISSIONER DEASON: Compensated the small company?

20 MR. D'HAESELEER: For toll revenue loss.

21 COMMISSIONER DEASON: Uh-huh. Well, let me ask you  
22 this. Why can't we have a default that if they can't agree on  
23 what local calling areas are, it's just bill and keep? What's  
24 wrong with that?

25 MR. HINTON: I don't know if we can mandate that

1 without taking into account traffic balances.

2 COMMISSIONER DEASON: I know. The FCC rules again;  
3 right?

4 When are we going to do something contrary to the FCC  
5 rule and see what they do?

6 COMMISSIONER JABER: Anytime you want.

7 COMMISSIONER DEASON: I'm not -- you know, if they  
8 want us to be down here doing all this work, we've got to have  
9 some ability to think for ourselves and what makes sense for  
10 our situation, seems to me. Maybe this is a good example to do  
11 it.

12 MR. HINTON: Either that or I think LATA-wide is  
13 going beyond what the FCC has mandated thus far.

14 CHAIRMAN JACOBS: Further discussion, Commissioners?  
15 Motion?

16 COMMISSIONER JABER: I can't craft one.

17 COMMISSIONER DEASON: I believe that it should be  
18 incumbent upon the companies to agree. This is compensation  
19 between themselves and it really doesn't, should not affect the  
20 end use customer.

21 But what we're doing here is we're really, it's --  
22 companies are incented to do certain things because of what  
23 they pay each other, not how successful they are in the local  
24 market and that's what bothers me. And it just seems to me  
25 that a bill and keep regime, you go out and you compete for

1 those customers and it doesn't matter how many you sign up, you  
2 know that if they call a neighboring LEC or a competing LEC,  
3 they've got an obligation to complete your calls and you've got  
4 an obligation to complete theirs. And everybody then should be  
5 concentrating on the customer. It just seems so evident to me.  
6 I just don't, I can't understand why there's so much reluctance  
7 just -- and that's why I feel like that if -- there may be some  
8 unique circumstances out there. As Walter indicated, back in  
9 the days when we didn't have competing LECs but we had  
10 companies with service territories which meshed and we had  
11 local calling between companies that, you know, they negotiated  
12 something, if it was unique, they negotiated it. And absent  
13 that, it just seems to me like bill and keep is fair enough,  
14 and to allow them to negotiate it to address those unique  
15 circumstances, let them do it. You know --

16 MS. SIMMONS: Commissioner Deason, I was going to say  
17 with your, with the bill and keep idea though it seems to me  
18 there still is this geographic question. You know, over what  
19 area are we talking?

20 COMMISSIONER DEASON: Well, I --

21 COMMISSIONER JABER: You still have to define calling  
22 area.

23 COMMISSIONER DEASON: Yeah. You're right. You've  
24 still got to define the calling area.

25 COMMISSIONER JABER: Yeah.



1           COMMISSIONER DEASON: And I guess that's where I'm  
2 more comfortable with if we go to LATA-wide instead of trying  
3 to gain that, you know, if the recip comp rate is this, well,  
4 then I'm more, I'm better off with having this geographic area  
5 as opposed to this geographic area, that if it's just you  
6 complete my calls, I complete your calls, I think the  
7 significance of geographic area the seems to go away. I may be  
8 looking at it wrong. I don't see any heads shaking yes or no  
9 or sideways.

10           MR. HINTON: Staff felt that LATA-wide was the  
11 simplest. Like, you know, Dave said, competitively neutral.  
12 It doesn't matter, you know, it's not restricting or, you know,  
13 you know, it's not restricting how you're doing business on a  
14 retail basis, it's not promoting anything on a retail basis,  
15 but as far as intercarrier compensation it seems to be the  
16 simplest manner of approaching an issue where there are a lot  
17 of local calling areas out there for, on a retail basis. So on  
18 a LATA-wide basis I'll complete yours, you complete mine, and  
19 we'll pay each other reciprocal compensation.

20           COMMISSIONER JABER: And that's supported by the  
21 record LATA-wide?

22           MR. HINTON: LATA-wide, well, it's mentioned, it is,  
23 it is out there right now. I mean, like I said, it is the  
24 third option that we're presenting but it's out there right  
25 now. Now AT&T and BellSouth both acknowledged that they do

1 have that in agreement.

2 COMMISSIONER JABER: That would be my concern,  
3 Commissioner Deason. It's not that the bill and keep is not  
4 where we need to be eventually. But in terms of the strength  
5 of the record we might have a problem here with bill and keep.

6 MR. HINTON: Bill and keep is not really supported in  
7 the record that I can say.

8 COMMISSIONER DEASON: Well, Verizon addressed it.

9 COMMISSIONER BAEZ: Commissioners, can I shift gears  
10 for a second?

11 COMMISSIONER DEASON: I'm looking for somebody to  
12 shift gears.

13 Right now might be a good time for a break, too, but  
14 anyway.

15 COMMISSIONER BAEZ: Well, that's fine with me. I  
16 mean, I can ask my question later.

17 COMMISSIONER DEASON: No. Go ahead. I'm just,  
18 before we take a vote, I'd like to --

19 COMMISSIONER BAEZ: It's actually a legal question  
20 because Commissioner Jaber's comments about not having  
21 jurisdiction over access charges keeps ringing in my head.

22 True, we don't have jurisdiction to address access  
23 charges. However, what legally is our -- should we be  
24 concerned about a decision that has, that has the effect  
25 potentially of circumventing access charges or of undermining

1 access charges? Is that something that we should be legally  
2 concerned with?

3 MS. BANKS: Commissioner Baez --

4 COMMISSIONER BAEZ: And I'm not saying it does, but  
5 that it may.

6 MS. BANKS: I believe that that should be a  
7 consideration when making a decision. Of course, I hear  
8 Commissioner Deason's concern about exactly what our role is  
9 and we've been given directives by the FCC. And the general  
10 rule is the State can implement rules as long as they're not  
11 inconsistent with the Act. And to the extent, Act or rules or  
12 orders, to the extent that it might be inconsistent or go  
13 beyond the boundaries of the rules that the FCC has  
14 established, then I would say that would be a viable concern.

15 COMMISSIONER BAEZ: Okay. And I guess I'm more  
16 concerned about being in conflict with state law.

17 I see Beth nodding her head.

18 MS. SIMMONS: Commissioners, would you like me to  
19 read the relevant portion of the state law? Would that help?

20 COMMISSIONER BAEZ: You've got it.

21 MS. SIMMONS: Okay. It's Section 364.16(3)(a) and it  
22 states, "No local exchange telecommunications company or  
23 alternative local exchange telecommunications company shall  
24 knowingly deliver traffic for which terminating access service  
25 charges would otherwise apply through a local interconnection

1 arrangement without paying the appropriate charges for such  
2 terminating access service."

3 I would --

4 COMMISSIONER BAEZ: What does that mean to you?

5 MS. SIMMONS: I would comment that this is a little  
6 bit in the eyes of the beholder, it seems to me.

7 COMMISSIONER JABER: Right. You could take the view  
8 that --

9 COMMISSIONER BAEZ: My question exactly.

10 COMMISSIONER JABER: Yeah. You could take the view  
11 that they're being compensated through reciprocal compensation.

12 See, I, I mean, it's hard for me not to put in my  
13 philosophical concern in here with access charges. I hope at  
14 the end of the day this decision does affect access charges  
15 because maybe that'll provide the appropriate incentive to keep  
16 people on track on that issue in the Legislature.

17 COMMISSIONER BAEZ: I don't disagree with you on  
18 that. I guess I'm concerned near term about what our actions,  
19 you know, what kind of affect our actions have in light of, in  
20 light of what our prescriptions and jurisdictions are. And I  
21 guess --

22 MR. HINTON: Commissioner Baez, on Page 46 of my  
23 recommendation, I don't know if this will address your concerns  
24 at all, but I quote Paragraph 1035 of the FCC's  
25 interconnection, local interconnection agreement where it

1 states that, "State commissions have the authority to determine  
2 what geographic area should be considered local areas for the  
3 purpose of applying reciprocal compensation obligations under  
4 Section 251(b)(5) consistent with the State Commission's  
5 historical practice of defining local service areas for wire  
6 line, wire line LECs. We expect the states to determine  
7 whether intrastate transport and termination of traffic between  
8 competing LECs where a portion of their local service areas are  
9 not the same should be governed by Section 251(b)(5)'s  
10 reciprocal compensation obligations or whether intrastate  
11 access charges should apply to the portions of their local  
12 service areas that are different."

13           So I believe this gives us the discretion to decide  
14 where their local, where their local retail, you know, plans  
15 don't match up, we can decide whether they should pay recip  
16 comp or access charges. Staff has gone in the direction of  
17 recip comp and expanded that to LATA-wide. But I just wanted  
18 to bring that to your attention.

19           MS. SIMMONS: Commissioners, I also just wanted to  
20 make a brief comment on the provision in state law that I read  
21 to you.

22           I think the passage which reads, you know, "for which  
23 terminating access service charges would otherwise apply" is  
24 really subject to interpretation because it all revolves around  
25 your paradigm of what's local versus toll. So I think that's

1 really subject to interpretation.

2 CHAIRMAN JACOBS: We still don't have a motion, I  
3 assume.

4 COMMISSIONER DEASON: I move we break. Really, I'd  
5 like a short recess.

6 COMMISSIONER BAEZ: Move to break.

7 CHAIRMAN JACOBS: Let's take a break for 15 minutes  
8 and come back.

9 (Recess taken.)

10 CHAIRMAN JACOBS: We're back on the record. And if I  
11 --

12 COMMISSIONER DEASON: Let me ask staff a question and  
13 I believe it's been answered before. I just want to make sure  
14 there's not other things that I'm not aware of at this point.

15 I think when I asked earlier about the approach of  
16 simply defining the default, we got to remember this is  
17 default, we're not prescribing what it's going to be in all the  
18 cases, and maybe there even needs to be an incentive for the  
19 companies to negotiate it themselves, but for the default  
20 position I asked the question, what is wrong with defining the  
21 local calling area to be the originating carrier's local  
22 calling area for retail purposes? And I think the response  
23 was, well, there's a myriad of calling plans out there and  
24 you'd have, one direction would be local and another direction  
25 would be toll and it's an administrative nightmare.

1           Is that the only problem or are there other problems  
2 with defining the default as the originating carrier's retail  
3 local area?

4           MR. HINTON: There wasn't anything beyond what you've  
5 just mentioned that, that gave rise to concern about that  
6 particular method of approaching this issue, administrative  
7 ease and the fact that there's a --

8           COMMISSIONER DEASON: Obviously the local company  
9 which is originating the call, they know how they rate that,  
10 they know, you know, when they tell their retail customer, you  
11 know, a call from point A to point B is local or is toll. How  
12 do they communicate that if that call has to be terminated with  
13 a competing carrier's local company, how do they communicate  
14 that we've rated this local or we've rated this toll? So  
15 that -- and the reason I ask is if they rate it as local, they  
16 have an obligation to pay reciprocal comp. If they rate it as  
17 toll, they have an obligation to pay terminating access. So do  
18 they just agree with each other that, you know, you designate  
19 it and you tell me what it is and I'll audit you, I'll trust  
20 you until I audit you, and then the audit will verify that  
21 trust or how do they do that?

22           MR. HINTON: I'm not really sure. There's nothing in  
23 the record indicating a, you know, a, an industry-wide approach  
24 to dealing with that, so I'm not really sure I can give you a  
25 very definitive answer to that question. It may just, it may

1 be just pursuant to the terms of their agreement. You bill me  
2 and I'll verify that what you billed me was correct. Beyond  
3 that --

4           COMMISSIONER DEASON: Well, it's not only billing but  
5 it's sending -- if it's defined as the originating carrier's  
6 local calling area, that determines whether the call from point  
7 A to point B is local or toll. And it's their customer  
8 originating it, they know where it came from and where they're  
9 sending it to. They're the ones that know whether, in their  
10 definition whether it's local or toll. It seems like they have  
11 an obligation then to tell the competing, the completing  
12 carrier, the carrier that completes the call, terminates the  
13 call whether they rated that to their end use customer as a  
14 local call or as a toll call.

15           MR. HINTON: That would seem to be the way it would  
16 need to take place. If you based, if you based intercarrier  
17 compensation upon the originating caller's local calling plan,  
18 then I would think it would be incumbent upon the originating  
19 carrier to inform --

20           COMMISSIONER DEASON: And if they collect toll  
21 charges from their customer, they'd have an obligation to  
22 inform the terminating company that it's a toll call and to pay  
23 terminating access.

24           MR. HINTON: Or however they had agreed to swap --  
25 yeah, that would seem to be the method that would take place.



1 The originating carrier would have the obligation to inform the  
2 terminating carrier how that should be handled.

3 COMMISSIONER DEASON: And if that's too much of an  
4 administrative nightmare, then they probably would be able to  
5 come to terms on some other definition of what local calling  
6 area would be. We would hope.

7 MR. HINTON: Perhaps. We would hope.

8 CHAIRMAN JACOBS: Well, let's be clear about that  
9 because, again, the incentive here will be to shift some of  
10 that traffic to access; correct?

11 MR. HINTON: I don't know whether it would be an  
12 incentive for the carriers to switch it.

13 CHAIRMAN JACOBS: No. I'm not -- sure, not the ALEC.  
14 But I'm sure that in those negotiations that would be an  
15 underlying theme here. So let's be clear about whether or not  
16 there will be sufficient leverage on both ends to avoid that  
17 impact.

18 MR. HINTON: Well, if you do have concerns about  
19 whether a company is designing their network or their retail  
20 plans based, you know, based on what intercarrier compensation  
21 they'll receive doing the more, basing it on the originating  
22 carrier's local calling area, that would seem to be, you'd run  
23 into that problem more than if you did a generic, broad-based,  
24 you know, LATA-wide.

25 COMMISSIONER DEASON: But the whole name of this game

1 is to sign up customers. I mean, we shouldn't lose focus on --  
2 you don't get into the business or you shouldn't get in the  
3 telephone business to see how much reciprocal comp you can get  
4 from the incumbent LEC. It should be sign up customers,  
5 provide them with good service, they tell their neighbors what  
6 a good calling plan they've got and they get more and more  
7 business, that's what should drive this market. And if they  
8 don't get the first customer, they're not going to get any  
9 reciprocal comp or anything. They've got to sign up the  
10 customers, so they've got to have an attractive calling plan to  
11 begin with to even be in business; correct?

12 MR. HINTON: Yeah. I mean, I would think that the  
13 market would drive that.

14 COMMISSIONER DEASON: I don't really, at this point I  
15 don't see there is an incentive really -- I want the incentive  
16 to be respond to customer demand. If there's a customer, if  
17 the market says we want a larger calling area, then somebody  
18 should come in and address that and it shouldn't be dictated by  
19 how much reciprocal comp or how much terminating access can I  
20 get? It should be what do customers want and how can I design  
21 a package which best serves customers?

22 MR. HINTON: I agree, and I felt that and staff felt  
23 that in framing this we would be taking a lot of the  
24 consideration of what intercarrier compensation I'm going to  
25 get for what, how I design this and that, we'd take that out of

1 the mix by saying the default LATA-wide, you know. Anywhere  
2 within the LATA loc it's, you know, going to be reciprocal  
3 comp.

4 COMMISSIONER DEASON: I'm having some problems  
5 divorcing -- go head.

6 COMMISSIONER BAEZ: No, I'm sorry.

7 COMMISSIONER DEASON: Well, it's just that I'm having  
8 some problem divorcing the concept of you define something for  
9 reciprocal comp different from what you tell your customers is  
10 local. I know there's two different concepts, but to me I  
11 think there's some advantages, I think there's some proconsumer  
12 advantages for meshing the two, tying the two together.

13 MR. DOWDS: Commissioner, may I ask a question?

14 COMMISSIONER DEASON: Sure.

15 MR. DOWDS: Under your proposal --

16 COMMISSIONER DEASON: It's not a proposal. It's just  
17 a thought at this point.

18 MR. DOWDS: I'm sorry. I didn't mean to put words in  
19 your mouth. Would toll be usage sensitively priced always?

20 What I'm, what I'm thinking about is let's assume you  
21 have flat-rated bundles. How do you tell what's toll versus  
22 not at the retail level?

23 COMMISSIONER DEASON: I'm sorry. Repeat that.

24 MR. DOWDS: Well, the concept you were throwing out  
25 for discussion was base intercarrier compensation on the nature

1 of the charges assessed by the given carrier to its retail  
2 customers.

3 COMMISSIONER DEASON: Uh-huh.

4 MR. DOWDS: And presumably it's either local or it's  
5 toll. And what I was struggling with is if I offer for \$59 a  
6 month a state-wide flat-rated package, is that toll or is that  
7 local?

8 COMMISSIONER BAEZ: Well, David --

9 MR. DOWDS: In terms of tracking what the  
10 compensation is.

11 COMMISSIONER BAEZ: I'm, I guess you raise a question  
12 and I'm trying to understand what Commissioner Deason has said.  
13 But my understanding is that it's not, it's, we're into  
14 semantics, we're not into rating them, and that's a, that's a  
15 reality that exists today.

16 I can be paying access charges to the carrier for  
17 toll and still be charging a flat rate fee. I think the key is  
18 whether it's toll or it's local.

19 MR. DOWDS: Right. That's my question.

20 COMMISSIONER BAEZ: But let the semantics -- not,  
21 not -- I don't know, Commissioner Deason, and I may be  
22 misunderstanding what you're talking about, but, you know, how,  
23 the charges and the rating are, probably have less to do with  
24 the fact that the calling areas are going to be defined.  
25 There's a set, there's some honesty or some agreement between

1 what you're telling the customer and what you're telling, and,  
2 and, and the agreement that you're cutting on, on the, on the  
3 carrier side that those two be in agreement, that those two be  
4 consistent.

5           Whether you make a marketing decision to charge flat  
6 rate toll, you know, bundle toll calls into a flat rate, that's  
7 part of your discretion as a company and that's part of a  
8 business decision that you make in order to get customers.

9           You know, what, what your advantage is in terms of  
10 what kind of, you know, how much money goes out and how much  
11 money comes in as a result of that decision, that's part of the  
12 business side of it. That's where you live or die by how, how  
13 well you manage your risk in that regard. It's not -- I guess  
14 in answer, and I don't want to answer the question for you,  
15 Commissioner, I just --

16           COMMISSIONER DEASON: No. Go ahead because I don't  
17 have an answer right now. It seems to me -- okay.

18           COMMISSIONER BAEZ: It doesn't have to be usage  
19 sensitive. I don't think that that's the point.

20           MR. DOWDS: My point was how do you identify a retail  
21 offering as being toll versus local?

22           COMMISSIONER DEASON: It seems to me that --

23           MR. DOWDS: There are situations where you may not,  
24 you may have, may have problems. That's all.

25           MS. SIMMONS: I would agree with Mr. Dowds. I think

1 it's rather problematic trying to figure out which retail plans  
2 might classify as local versus toll.

3 COMMISSIONER DEASON: And let the companies figure  
4 that out. They have an opportunity to negotiate it themselves.

5 MS. SIMMONS: I know. But I do think it would add an  
6 element of confusion.

7 COMMISSIONER BAEZ: It seems to me if you, if you  
8 bundle, if you bundle LATA-wide calling into a flat rate,  
9 you're not calling it toll.

10 COMMISSIONER DEASON: That seems like a local calling  
11 plan.

12 COMMISSIONER BAEZ: That sounds like a local call to  
13 me.

14 MS. SIMMONS: I don't know. I just wanted to point  
15 out it does strike me as something that gets rather gray.

16 COMMISSIONER PALECKI: I'm trying to understand the  
17 practical effect of Commissioner Deason's thought as compared  
18 to the staff's recommendation. I mean, what would be the  
19 practical effect of making the definition as the staff has  
20 stated that originate and terminate in the same LATA versus  
21 calls that originate and terminate in the originating caller's  
22 local calling area? What for practical purposes are we talking  
23 about?

24 MR. HINTON: One thing that comes to mind is the, if  
25 you base intercarrier compensation upon the calling plan of the

1 originating carrier, which I believe is the thought that,  
2 Commissioner Deason's suggestion.

3 COMMISSIONER DEASON: It's a thought.

4 MR. HINTON: Say you have caller A and caller B,  
5 they're served by two different companies, they each have two  
6 different local calling areas. Caller A dials, calls caller B  
7 or end user A calls end user B, it's a local call according to  
8 end user A's carrier. Caller B, end user B calls caller, end  
9 user A; according to end user B's carrier that's a toll call.  
10 The same call is treated differently.

11 COMMISSIONER DEASON: It's not the same call. It's  
12 going in a different direction.

13 MR. HINTON: Right. But it's between the same two,  
14 same two end users, just going in different directions --  
15 (Simultaneous conversation.)

16 COMMISSIONER DEASON: Yeah. But the person, the  
17 person initiating that call, who makes the decision to initiate  
18 that call, they know whether it's part of their local calling  
19 plan or they're paying toll for it. That to me has a big  
20 impact on whether that call is ever even made. Wouldn't you  
21 agree?

22 MR. HINTON: I would agree. I mean, I don't, I  
23 don't -- what, your thought doesn't seem beyond the, you know,  
24 to me beyond the realm of reasonableness, that, you know, at  
25 this point. Whatever.

1           COMMISSIONER DEASON: Walter, you could learn a lot  
2 from him.

3           MR. HINTON: But one thing, you know --

4           COMMISSIONER DEASON: See, Walter would say it's just  
5 out from left field. You know, he'd be right upfront about it.  
6 But go ahead.

7           MR. HINTON: One thing I want to stress though is  
8 that the primary part of staff's recommendation is that parties  
9 negotiate what it's going to be. That is the primary part.

10           Of course, you can delete the second sentence that  
11 says, "If they don't agree, then the default is LATA-wide."  
12 Staff believes that that gives rise to problems down the road.

13           COMMISSIONER JABER: You know, Commissioners, that's,  
14 LATA-wide may be the way to go as the default. I think we're  
15 missing that analysis and I offer this as a suggestion because  
16 we've identified so many questions here that I could benefit  
17 from having an analysis in the recommendation.

18           Let me throw this out as an idea. I'm not wed to it,  
19 but is there some benefit to be gained by deferring just this  
20 issue until the agenda, the regular agenda, and letting staff  
21 come back with additional analysis on the questions we've  
22 asked, the legal analysis associated with the statute, Sally,  
23 related to access charges?

24           COMMISSIONER PALECKI: Commissioners --

25           COMMISSIONER JABER: I'll -- go ahead. I'm sorry.



1           COMMISSIONER PALECKI: Oh, I'm sorry. I was going to  
2 say that I would welcome that, especially I would welcome an  
3 analysis that would compare Commissioner Deason's suggestion to  
4 the staff's recommendation, what are the positives and, and  
5 negatives of each?

6           COMMISSIONER JABER: But not just on Commissioner  
7 Deason's suggestion because I don't want -- sometimes the  
8 inclination, it's human nature, from, on staff when they  
9 rewrite a recommendation is they will only focus on, on that  
10 thought and what they've already brought us. To the degree the  
11 questions give you any other ideas that can be based on the  
12 record, we'd want that, too.

13           COMMISSIONER PALECKI: Yes.

14           COMMISSIONER DEASON: Well, I think you raise a good  
15 question based upon -- is this something that we need to take  
16 additional evidence on? Is staff comfortable with the record  
17 as it exists?

18           MR. HINTON: This isn't, you know, I don't know how,  
19 I don't know if the record is extensive enough to go into much  
20 further analysis on this.

21           We can start throwing in our opinions on how we, you  
22 know, what we think is best and what, what isn't.

23           CHAIRMAN JACOBS: If I may interject, it strikes me,  
24 however, that the best evidence on this would be to let staff's  
25 recommendation go forward; i.e., to let the parties negotiate

1 this thing and see how many times they can't come up with  
2 something and they have to begin to look at LATA-wide because  
3 in that way we get some indication of what the bounds are.

4 COMMISSIONER DEASON: Well, my concern is does that  
5 unduly influence, does that give a, more power to one  
6 negotiating side as opposed to the other?

7 CHAIRMAN JACOBS: If the ALECs have, has the leverage  
8 that we ascribe to them in that analysis, then I think this  
9 would be a non-issue. If the ALECs had the leverage to sit  
10 back and basically wait out negotiations to get a final point,  
11 then this, this point, this whole analysis would be moot.

12 COMMISSIONER JABER: Yeah. But my concern is not  
13 solely on the leverage issue one way or the other because that,  
14 you know, that provides guidance. I would like to think that  
15 people, when they come to a negotiating table, they know what  
16 it is they're going to lose, the potential loss, and they know  
17 the potential win.

18 My concern from a policy standpoint goes more to the  
19 unintended consequences of our decision. I don't know what  
20 affect -- you seem to make a link with this to retail  
21 offerings.

22 It's like on the one hand we say you can establish a  
23 local calling area, not mirroring what happens on the retail  
24 side, but I also got out of staff's recommendation is you  
25 recognize there might be effects related to the retail

1 offerings that you just, you don't know. Whether that's  
2 because it's not in the record or you hadn't thought about it  
3 in terms of this issue, I'd like the benefit of that analysis.  
4 I want the complete picture.

5 So it's not just the leverage issue, Chairman Jacobs.  
6 It's that I don't know what the unintended consequences are.

7 COMMISSIONER DEASON: And I share that. I don't know  
8 what the unintended consequences are and that's why I asked the  
9 question. Is this something we really should take more  
10 evidence on, hear from the parties? And all the parties may  
11 agree it's the worst idea ever for good reason, and that's  
12 fine. You know, I want to hear that.

13 Right now I'm not sure -- you just indicated you're  
14 not so sure there's a whole lot more analysis you can do given  
15 the current state of the record. I wish that I had had the  
16 forethought to have asked a lot of these questions I'm asking  
17 staff now, I'm putting them on the spot probably unfairly and  
18 that's not my intent, you've done a great job, except for  
19 Walter you've done a great job. I wish I had had the  
20 forethought to ask these very same questions to the people that  
21 were on the witness stand, but I didn't. And it really didn't  
22 come to me until the, the issues got clarified and focused to  
23 the extent, which staff did a very good job of clarifying and  
24 focusing these issues in the form of your recommendation, did  
25 these questions start coming into my head. And I'm just really

1 wondering if we don't need more evidence on some of these  
2 questions.

3 MR. HINTON: And staff does acknowledge that a lot of  
4 the unintended ramifications or results of this aren't in the  
5 record. We recognize and I tried to allude a couple of places,  
6 yeah, there may be some other, may be some results of this that  
7 we don't foresee right now but it's not in the record. You  
8 know, I don't think we can go any further into those based on  
9 the record that we have.

10 COMMISSIONER PALECKI: Well, based on the existing  
11 record could staff do an analysis that would give us a very  
12 general picture, not specific but very general picture of  
13 dollars in compensation going back and forth and in  
14 administrative problems and costs? Because I think those are  
15 the two things that we're, you know, we're looking at  
16 without -- I don't think I really need specifics. I just want  
17 a general picture.

18 MS. SIMMONS: Commissioner Palecki, I don't believe,  
19 Mr. Hinton can correct me if I'm wrong, but I don't think we  
20 have anything concerning dollar amounts.

21 MR. HINTON: Yeah.

22 MS. SIMMONS: Whatsoever.

23 MR. HINTON: The record doesn't give enough detail to  
24 really address the things that you're referring to. We can  
25 speculate. That's the best we can do. And, you know, which is

1 what we're doing here today, we're speculating about what the  
2 ramifications would be.

3           However, the record doesn't give the detail needed to  
4 really give you a thoughtful analysis of defects of  
5 administration, costs, prices, that type of thing. It's just  
6 not there.

7           COMMISSIONER JABER: Well, I would just note that  
8 this is not a case that's driven by a statutory deadline. This  
9 is not a case that holds up our current arbitration proceedings  
10 or would, you know, wishful thinking, prevent future ones from  
11 coming our way. So a one-day hearing in a case like this is  
12 not, is not out of the question.

13           You know, if we're going to provide guidance, if the  
14 whole purpose of the docket was to provide guidance and  
15 direction and internally look at making the arbitration process  
16 more administratively efficient, then doing it right is the way  
17 to go.

18           COMMISSIONER DEASON: I've noticed there's a lot of  
19 people in this room right now with pens at paper making notes,  
20 and I'm sure that they're probably going to be able to relay  
21 our concerns and our questions to their in-house experts and  
22 they probably will, hopefully will be able to address in the  
23 form of testimony and then through questions from the bench  
24 maybe we can further, further this record to the extent we're  
25 more comfortable with making a definitive decision one way or

1 the other.

2 I'm not really comfortable right now. I appreciate  
3 staff's analysis and their position. I'm just, I think that  
4 there may be some unintended consequences from that as well  
5 that maybe need to be explored.

6 COMMISSIONER JABER: Who is the prehearing officer?  
7 That would be me, wouldn't it?

8 MS. BANKS: You are, Commissioner Jaber.

9 COMMISSIONER JABER: A one-day hearing.

10 COMMISSIONER BAEZ: In June maybe.

11 COMMISSIONER JABER: I'm thinking, you know.

12 COMMISSIONER BAEZ: I'm kidding.

13 CHAIRMAN JACOBS: I would like to note that and I  
14 agree we have had, in my mind, a fairly thorough statement from  
15 the parties on the pros and cons as to this issue and I think  
16 staff has done a very professional job of evaluating those  
17 opinions. And where we are now is to determine why we wish to  
18 choose this policy and if we wish to go back and engage in an  
19 additional hearing on this. I think it's going to be, it's  
20 going to be important for us to understand what it is and why  
21 it is that we're looking to enunciate a more, a deeper and  
22 clearer statement with regard to this.

23 For instance, if it is the idea that we're concerned  
24 with the distinction between local and toll as it relates to  
25 retail issues, then that's one thing. If it pertains to how

1 we're going to ensure equity amongst the parties, equilibrium  
2 amongst parties with regard to the reciprocal compensation  
3 issue, then that's another thing. Are we going to attempt to  
4 address and reconcile all those issues with this policy?  
5 Because I'm of the opinion that you can't. I don't think you  
6 can.

7 And so if we're going to engage in a further review,  
8 I think it's really important to be clear about why.

9 COMMISSIONER JABER: Yeah. We'd have -- yeah. We  
10 need to refine the issue and sort of in a notice identify  
11 exactly what we expect testimony on.

12 I just had an idea. Beth, we have Phase I hearing --  
13 is this Phase I or Phase II?

14 MR. HINTON: This is Phase II.

15 COMMISSIONER JABER: We have the Phase I hearing  
16 coming up; right?

17 MR. HINTON: Phase I is, all that's left for that is  
18 we're going to file a recommendation and we were going to  
19 dispose of this docket, but --

20 COMMISSIONER JABER: Is that what I'm looking at?  
21 March 7th through 9th, what was that?

22 MS. BANKS: Phase I.

23 COMMISSIONER JABER: Oh, okay. I'm looking at the  
24 CASR and I saw a hearing and I thought that would be an  
25 opportunity to just add an issue.

1 MR. HINTON: That, I think the hearing in this was  
2 March of this year, not of 2000 -- 2002. I don't know.  
3 Nothing in this docket is scheduled beyond 2001.

4 COMMISSIONER JABER: Well, we can work through all of  
5 that.

6 MS. SIMMONS: Commissioners, I was just wondering if  
7 I could make one brief comment, and I know that you perhaps  
8 want to try to take this to an additional hearing.

9 But I did want to mention briefly, go back to  
10 something that Commissioner Baez said, and I think,  
11 Commissioner Baez, you were trying to characterize the  
12 situation as perhaps we need an independent view of the local  
13 calling area for wholesale. That's kind of the sense I was  
14 getting.

15 COMMISSIONER BAEZ: That we needed an independent  
16 view or that we needed something that was a little bit more  
17 consistent with --

18 MS. SIMMONS: Something more consistent. You were  
19 alluding to the fact that perhaps carriers need to make  
20 decisions subsequently about how they want to handle retail but  
21 that we need something consistent for wholesale. I believe you  
22 made comments along those lines.

23 COMMISSIONER BAEZ: I think my main problem has been  
24 how do you, what the relationship between the two is. And I'm  
25 not sure that I like the relationship between the two.



1 MS. SIMMONS: Okay.

2 COMMISSIONER BAEZ: The fact that they are  
3 independent. That's why Commissioner Deason's thought was, you  
4 know, somewhat attractive. I don't know what kind of, I don't  
5 know what kind of problems that may create as well. And I  
6 guess I should say now I'd appreciate a little bit more time or  
7 certainly a little bit more information on it. But my main  
8 concern is that there is no relationship or there doesn't seem  
9 to be a relationship between the two.

10 MS. SIMMONS: Okay. And I was sensing, was it, was  
11 it your view that maybe there isn't a relationship and maybe  
12 there shouldn't be one or you weren't sure on that point?

13 COMMISSIONER BAEZ: No. I'm --

14 MS. SIMMONS: Okay.

15 COMMISSIONER BAEZ: On the contrary, I think there  
16 probably should be one.

17 MS. SIMMONS: Okay. All right. I was just curious.

18 COMMISSIONER BAEZ: I would certainly feel more  
19 comfortable, it's a very, to me at least it's a very confusing  
20 issue when we're talking about what a local calling plan is and  
21 a local calling area and what is the right hand doing and what  
22 is the left hand doing. And there has to be some consistency  
23 if we're trying to keep our eye on how the consumer is going to  
24 be impacted by these decisions.

25 I think Commissioner Jaber mentioned it earlier, I

1 think, you know, we've made, the staff has done a commendable  
2 job in trying to keep the two separate and trying to make it  
3 clear that what we're dealing with is intercarrier compensation  
4 on a wholesale level, if you will, and to try and disregard, if  
5 at all possible, the retail side of it because that's why all  
6 this confusion got started.

7           But I don't think that staff's been able to do that  
8 100 percent. You had to somehow admit, you had to acknowledge  
9 at one point, well, you know, we've been trying do this but we  
10 do acknowledge that there's some impact, it's going to have  
11 some impact on retail offerings and it's going to have some  
12 impact on retail relationships. And that's, the fact that you  
13 have to acknowledge it, the fact that even, even you all can't  
14 divorce the two completely gives me concern.

15           And so I think there should be, there is a  
16 relationship, I think. To what extent, I don't know.

17           MS. SIMMONS: Okay.

18           COMMISSIONER BAEZ: And I want to understand that a  
19 little better.

20           MS. SIMMONS: Okay. All right. Thank you.

21           COMMISSIONER JABER: Well, I would move -- question  
22 or do you want me to make a motion?

23           COMMISSIONER PALECKI: I was just going to state that  
24 I could support the staff recommendation, but I would certainly  
25 defer to the wishes of my fellow commissioners that we go ahead

1 and defer this and hear more evidence in this area. I don't  
2 have any objection to doing that.

3 COMMISSIONER JABER: Okay. I would move to defer  
4 Issue 13 and have a one-day hearing, very limited, and  
5 identified in a subsequent order that will be issued by the  
6 prehearing officer. And my request of staff would be that you  
7 work with all the commissioners. This is a little bit  
8 different. Make sure you work with all of the commissioners in  
9 adequately identifying the issue, the more refined issue based  
10 on the questions we each have asked.

11 MR. HINTON: I don't think we can do it in an issue.

12 COMMISSIONER JABER: Fine.

13 MR. HINTON: I think the different issues, the  
14 different concerns raised, this will end up being a multiple  
15 issue hearing.

16 COMMISSIONER JABER: Okay. And we'll issue a  
17 separate order on procedure that has, you know, dates and  
18 issues and --

19 COMMISSIONER DEASON: Before I second that motion,  
20 let me ask staff, do you see that there's a problem with taking  
21 this and getting more evidence? You seem to be a little  
22 concerned that you can't do anymore analysis than what, that  
23 currently exists in the record. So I assume you're comfortable  
24 going forward with this?

25 MR. HINTON: If you would like staff to provide a

1 further analysis than what we've provided so far, really  
2 there's no choice but to take more evidence in the record.

3 COMMISSIONER DEASON: Second the motion.

4 CHAIRMAN JACOBS: Motion is seconded.

5 Let me say I'm struggling with this one. I'm of the  
6 opinion that we should move forward with the recommendation. I  
7 understand and agree with many of the concerns that I think  
8 have been a legitimate, legitimately been raised about what  
9 possible ramifications there could be from adopting this. But  
10 the clear statement here is that the parties have control of  
11 their own destiny in this regard and what we're attempting to  
12 do in my mind is to say to them let us give you more direction.

13 In an area like this I think it would be absolutely  
14 appropriate for the parties to sit down. And it's continually  
15 amazing and insightful for me to see that at a time when we are  
16 striving to move towards competitive forces in these markets  
17 whereby ultimately I agree that discipline in the marketplace  
18 is going to have to work through these issues, that each step  
19 we take seems to have to be a measured step and unfortunately  
20 too often a step that we measure as opposed to the parties  
21 coming together and measuring and coming together with a  
22 solution.

23 I would love for us never to get to another hearing  
24 on here. I would love for a stipulation to walk in the door  
25 saying here's the best way to make this issue work for all

1 parties concerned and I'm hopeful that that will happen. And  
2 that's the only really reason I can see supporting this motion.  
3 Otherwise, I'd have to say that, you know, the best way to make  
4 this thing happen is for the parties to sit down, they know  
5 their businesses, they know the range of reasonableness that  
6 there is there, and I think it's well within the bounds, and  
7 they're very capable organizations, to come back and say here's  
8 a reasonable position to take, Commission, on this.

9           And let us -- and then even more appropriately to say  
10 if we don't have a clear picture yet, let us, the industry,  
11 work through this through our own collaborations and let's give  
12 you some guidance about how this works best in the marketplace,  
13 if you aren't sure. That's what I hear staff saying. We  
14 don't -- it's not clear how this is going to work through in  
15 the marketplace. There's a lot of exigencies here that we  
16 don't have grasp of or have a foresight of. I think that's a  
17 perfect collaborative opportunity for the company and this  
18 agency to work together to come to some great solutions on  
19 this.

20           Absent that I'm afraid we're going to see another  
21 round of hearings, we're going to see entrenched positions  
22 because there's a lot of money at stake. Let's be real and  
23 let's be blunt. And ultimately I'm afraid that the one who's  
24 going to pay is the consumer. Ultimately the deal here is  
25 whether or not the consumer will see the benefits of the

1 competition that we say we want to have and will those  
2 competitive pressures impose further price reductions in the  
3 local market?

4           If that is the exercise here, then this seems to be  
5 an incredibly, incredibly obtuse way of going about that. I'm  
6 sorry to critique that, but it sounds to me like if the drive  
7 here is to figure out how to drive local prices down, this gets  
8 us a bit of the way off of it.

9           COMMISSIONER JABER: You know, I'm always real  
10 careful when we say our goal in opening up competitive markets  
11 is because we're trying to drive prices down. I think there  
12 are huge benefits to a competitive market and it long-term as a  
13 goal might be that the prices go down.

14           I think, you know, I'm always real critical of the  
15 Act, I'd like to think I'm not the only one that criticizes the  
16 Act, but I think to the degree people have felt let down by the  
17 Telecommunications Act is because they were real vocal in  
18 promising lower prices. And I, you know, history would tell us  
19 that the benefits really are an advanced technology and choice  
20 and bundling services, not necessarily in lower prices.

21           COMMISSIONER DEASON: Prices should be set by the  
22 market in the ultimate situation. They may be up or down and  
23 they may be restructured, but they should be according to the  
24 market and decisions should be made by competitors based upon  
25 economics, not based upon unnecessary regulatory requirements

1 in the long-term.

2 CHAIRMAN JACOBS: In the long-term. And I don't want  
3 to even digress. Do let me say this, and this is even, I  
4 should even caveat this, but it was always my understanding  
5 that there was this something called a long run, long run  
6 average curve in a competitive marketplace and the real test is  
7 what happens to that long run average curve. Because that  
8 therein is the discipline, therein it is the overall direction  
9 of that marketplace.

10 If you see something happen where that curve  
11 continually, long run average costs continually go up, I've  
12 always understood in economic theory something is wrong,  
13 something is, somebody should look at the dynamics of that  
14 marketplace. It's my understanding that long run average costs  
15 should go down.

16 Now, true, that's not prices. But always it was  
17 assumed that the discipline in that marketplace because now  
18 people can enter that marketplace, recover their fixed costs  
19 because the costs were reducing, that they will then exercise  
20 their discipline in that marketplace to drive prices down  
21 because they want to gain market share, not necessarily to  
22 drive prices down. That is the fundamental way that it has  
23 been in theory you gain market share is by driving prices.

24 Now I digress. My point is this, if that's, let's  
25 say if that's the appropriate discussion to be having, then in

1 my mind this, we're going to further entangle that discussion  
2 by prolonging how these parties come up with a definition of  
3 what a local calling area is. In my mind I highly encourage  
4 and promote the idea that come back with a stipulation, come  
5 back with something that works for you and help us to  
6 understand how it affects public policy, how we can embrace  
7 that to proceed towards the overall public policy goals that  
8 we're striving for here, less we continue this -- I used to say  
9 I think I'm contradicting myself because when I first, when we  
10 first got off into this I always said let's at least have the  
11 discussion about what is reciprocal compensation. I may be  
12 regretting that because unfortunately I think we're going maybe  
13 too far to the other end of this spectrum.

14 But having said that, I digress way too -- but I  
15 really wanted to take this opportunity to encourage parties to  
16 do that because I think there are much more important issues --  
17 strike that. Not to you. Let me strike that. This is an  
18 important issue to the industry and I understand that. But in  
19 terms of the overall public policy goals we can do a lot more,  
20 make a lot more progress on this if we can get these issues  
21 dealt with in a fairly resolute and concise fashion and move on  
22 to some of the other issues. I didn't mean to minimize this  
23 issue. I recognize it is important. Having said that, there's  
24 a motion and a second. Any further discussion?

25 COMMISSIONER PALECKI: Yes. Just one point I'd like



1 to make. I stated earlier that I could support the existing  
2 staff recommendation. I don't want the Commission staff to  
3 take the fact that we're deferring this matter and setting it  
4 down for hearing to mean that we expect you to change your  
5 ultimate recommendation.

6 If after hearing the testimony and conducting your  
7 analysis you decide that your recommendation is the best way  
8 for this Commission to go, please don't change your  
9 recommendation. Give us the benefit of your additional  
10 analysis, but don't take this as a message that this Commission  
11 is asking you to change your recommendation.

12 COMMISSIONER DEASON: I would echo that, too.

13 COMMISSIONER BAEZ: Here, here.

14 CHAIRMAN JACOBS: Very well. Motion and a second.

15 And the, it was to defer this item and staff will come -- with  
16 a schedule.

17 COMMISSIONER JABER: Item or the issue?

18 CHAIRMAN JACOBS: I'm sorry. The issue.

19 COMMISSIONER JABER: Issue.

20 CHAIRMAN JACOBS: Defer this issue and we would  
21 schedule a --

22 COMMISSIONER JABER: One-day.

23 CHAIRMAN JACOBS -- one-day hearing.

24 COMMISSIONER JABER: One-day limited scope hearing.

25 CHAIRMAN JACOBS: And the timing of that and then we

1 will come back with a further recommendation on this issue.

2 All in favor?

3 (Simultaneous affirmative vote.)

4 CHAIRMAN JACOBS: Opposed?

5 Show it approved.

6 COMMISSIONER JABER: Now, Mr. Bloom, I think that  
7 doesn't change, it doesn't have an affect on Issue 14.

8 MR. BLOOM: Not from my perspective, Commissioner. I  
9 think when I authored the recommendation I was aware of what  
10 Issue 13 was when it was decided, but this was written as a  
11 stand-alone.

12 COMMISSIONER JABER: I didn't have questions on Issue  
13 14. I don't know if anybody else does.

14 COMMISSIONER DEASON: I have no questions.

15 COMMISSIONER JABER: I can move staff on Issue 14.

16 CHAIRMAN JACOBS: 14A and B?

17 COMMISSIONER JABER: Yes.

18 COMMISSIONER BAEZ: Second.

19 CHAIRMAN JACOBS: Moved and seconded. All in favor?

20 (Simultaneous affirmative vote.)

21 CHAIRMAN JACOBS: Opposed?

22 Show Issue 14A and B are approved.

23 Issue, I think it's 17.

24 COMMISSIONER JABER: The same would be true for 15A  
25 and B, Cayce; right?

1 MR. HINTON: Correct. Although Issue 13 as  
2 recommended would have impacted this issue, the action that you  
3 took doesn't, doesn't affect staff's recommendation.

4 COMMISSIONER JABER: Okay. My only question on this  
5 issue related to does the recommendation conflict with  
6 decisions the commissioners have made in the past with number  
7 conservation measures or rate center consolidation proceedings?  
8 Is this consistent?

9 MR. HINTON: No. The point was brought up by, I  
10 believe, Verizon's witness that the use of virtual NXX is a  
11 waste of numbering resources. However, there's no evidence in  
12 the record that that's actually taken place in Florida, that  
13 there's been a problem. They cited a problem in another state  
14 but could provide no evidence that anything like that was  
15 occurring here in Florida.

16 COMMISSIONER JABER: What about with the rate center  
17 consolidation? There was something in your recommendation  
18 which I can't find right now that referenced, you also looked  
19 at it from a rate center consolidation standpoint, I thought.  
20 There's no affect on rate centers.

21 MR. HINTON: I'm not sure.

22 COMMISSIONER JABER: Let me see if I can find it.

23 MR. HINTON: We may be just, I may be thinking of a  
24 particular wording that you're not using right now.

25 COMMISSIONER JABER: I can't find it.

1 MR. HINTON: This has no affect on retail plans, if  
2 that's what you're thinking about. On -- we, in framing this  
3 recommendation staff felt that in a competitive market, an  
4 issue like this, we needed to separate it from retail offerings  
5 and how, and what plans that the end user customer buys and  
6 also we need to separate from how it's actually provisioned  
7 because we have different networks, different ways of  
8 provisioning this.

9 COMMISSIONER JABER: Right.

10 MR. HINTON: What needed to be determined on a  
11 fundamental basis was how do we determine whether a call is  
12 local or long distance? And staff's recommendation is, as it  
13 has traditionally been done, you determine jurisdiction of a  
14 call based on the end points of the call, where the phone is  
15 picked up on one end and where it's picked up on the other end.  
16 That determines whether it's local or long distance.

17 COMMISSIONER BAEZ: And is this -- I guess I must  
18 ask, does this get impacted by a decision on 13?

19 MR. HINTON: It would if, for instance -- under  
20 staff's recommendation parties are free to negotiate whatever  
21 local calling plans they wanted to. So it would, you know, the  
22 end point, is it within --

23 COMMISSIONER BAEZ: Wherever the lines are drawn.

24 MR. HINTON: Does it start in one local calling area,  
25 end in another? If we'd have gone to the LATA-wide, this would

1 have been a moot issue provided, you know, it didn't cross LATA  
2 boundaries.

3 COMMISSIONER JABER: So in the abundance of caution  
4 should we leave this open?

5 MR. HINTON: I don't believe it's necessary. The  
6 base issue is end points determine jurisdiction. That's always  
7 going to be in the context of whatever local calling area  
8 definition there is. So we can determine what that is later.  
9 You know, it'll still have no bearing on this.

10 COMMISSIONER DEASON: But doesn't that raise the  
11 question that was contained within my thought that it's the  
12 originating carrier's designation of what call is local and  
13 toll? If they assign, regardless of the physical location, if  
14 they designate that as local, wouldn't it be local?

15 MR. HINTON: Well, the problem with this is it's not  
16 the originating carrier that's designating the call as local.  
17 What happens in this situation is a carrier takes a number  
18 that's traditionally associated with a physical location, with  
19 an exchange, and they assign it to somebody over here in a  
20 different exchange. That enables callers of other carriers to  
21 make a local call. Now that carrier --

22 COMMISSIONER DEASON: But it also means that their  
23 own, their own customers, it's local for their own customers,  
24 too.

25 MR. HINTON: In that area, yes. But for the other

1 carrier that has not designated for, say BellSouth has exchange  
2 A, ALEC one comes, assigns a number out of exchange A to a  
3 caller in exchange B. BellSouth has not designated, as their  
4 customer calls that number, BellSouth has not designated  
5 exchange B as a local calling area, they've designated that as  
6 toll. However, because of number assignment by the ALEC it's  
7 being handled as toll.

8           And staff felt, you know, traditionally NXX, you  
9 could look at the NXX and determine the geographic location of  
10 a customer because carriers would assign that number within the  
11 area it was assigned to. However, when you have disassociation  
12 of the NXX from the exchange it's associated with, then we have  
13 to really get back to what the fundamental basis is is end  
14 points of call.

15           COMMISSIONER DEASON: With ISP traffic basically  
16 being taken out, how significant is this?

17           MR. HINTON: That's another point staff wants to make  
18 is with ISP-bound traffic taken out of the mix staff suspects  
19 that it's a relatively small amount of voice traffic. There  
20 are still other end users that would probably like to have this  
21 type of service. You have incoming calls, local calls from all  
22 over the place. But staff believes that it was predominantly  
23 used for ISP-bound traffic as Sprint witness pointed out in his  
24 testimony.

25           COMMISSIONER JABER: But you don't have the answer to

1 that question in the record; right?

2 MR. HINTON: We don't have a specific amount. I  
3 don't think that's been played out yet. I don't think we know  
4 how, you know, how drastic an affect that would have. But  
5 staff doesn't believe -- this isn't, this issue isn't quite as  
6 significant as it was prior to ISP-bound traffic being taken  
7 out.

8 COMMISSIONER PALECKI: Let's talk about  
9 implementation. We could vote this issue out today. But until  
10 we vote Issue 13 we really can't implement.

11 MR. HINTON: I don't think so because they have local  
12 calling areas today. And, you know, they, while we may set a  
13 default, the carriers are still going to negotiate. That's our  
14 primary goal is negotiate your local calling areas. They're,  
15 you know, they're still going to negotiate regardless of  
16 whatever default we set up. So, you know, whatever they  
17 negotiate into their interconnection agreement, the end point  
18 of the call is still going to determine whether it's local or  
19 long distance based on those local calling areas that they  
20 negotiate into the agreement.

21 COMMISSIONER JABER: I wish I could find what I was  
22 talking about, Cayce. But last night you gave me the example  
23 when I brought the question up to you on this issue about the  
24 customer who lives in New York and the customer who lives in  
25 Jacksonville. Do you remember that discussion?

1 MR. HINTON: I remember we were talking about that,  
2 but I don't remember rate center consolidation coming into it.

3 COMMISSIONER JABER: It may not be rate center  
4 consolidation. You walked me through an example with regard to  
5 what constitutes a toll call and what would not and we went  
6 through several scenarios. That would help me again if you can  
7 recall that, and it may help the other commissioners, too.

8 MR. HINTON: Okay. I looked on the LATA map, so I'm  
9 going to change my cities a little bit. Instead of using  
10 Tallahassee and Chattahoochee like I did last night --

11 COMMISSIONER JABER: That's good.

12 MR. HINTON: -- I want to use Tallahassee and  
13 Madison, and hopefully I'm correct in that Madison is a long  
14 distance call for, you know, on a normal basis out of  
15 Tallahassee, it's not within the, you know, EAS area.

16 But you take carrier one, I'm going to even remove  
17 the ILEC/ALEC, let's just say carrier one receives an NXX code  
18 for Tallahassee. They take that NXX code, they take a number  
19 out of that code and assign it to a banking institution in  
20 Madison. A call to, from a Tallahassee resident to that number  
21 will be a local call to that resident because they're dialing a  
22 Tallahassee number. However, the call actually terminates in  
23 another local calling area. It's a long distance call based on  
24 the end points. And staff believes that we need to main -- now  
25 that numbers are being disassociated from the areas, we can no



1 longer use the number as a proxy for the geographic location.  
2 So we have to once again designate that end points determine  
3 jurisdiction, end points determine whether it's local or long  
4 distance, of course, in the context of what local calling areas  
5 are established. But that's staff's primary thrust and their  
6 recommendation is just reasserting that end points establish  
7 the jurisdiction.

8           However, as Commissioner Deason pointed out, since  
9 ISP-bound traffic has been taken out of the mix, staffing, if  
10 you notice in the recommendation, left it up to the parties to  
11 decide whether they wanted to modify their billing arrangements  
12 to start charging access for calls that, you know, traverse  
13 local calling areas. Since ISP-bound traffic is taken out of  
14 the mix, it may be a relatively small amount of traffic and the  
15 parties may find it more economical just to keep paying recip  
16 comp or do bill and keep, however they want to do that. So we  
17 wanted to leave that option to them on how they compensate each  
18 other, but we wanted to establish that, you know, as a  
19 foundational matter jurisdiction is based on end points of the  
20 call.

21           COMMISSIONER JABER: Motion?

22           COMMISSIONER DEASON: Move staff.

23           COMMISSIONER JABER: Second.

24           CHAIRMAN JACOBS: This is on --

25           COMMISSIONER DEASON: 15A and B.

1 COMMISSIONER JABER: A and B.

2 CHAIRMAN JACOBS: A and B. Motion and a second on  
3 15A and B. All in favor?

4 (Simultaneous affirmative vote.)

5 CHAIRMAN JACOBS: Opposed?

6 Show 15A and B are approved.

7 16, Issue 16.

8 COMMISSIONER DEASON: Move staff on 16A and B.

9 COMMISSIONER JABER: Second.

10 COMMISSIONER PALECKI: Second.

11 CHAIRMAN JACOBS: Moved and seconded. All in favor?

12 (Simultaneous affirmative vote.)

13 CHAIRMAN JACOBS: Opposed?

14 Show 16A and B are approved.

15 And we're now on Issue 17. 18. I'm sorry.

16 COMMISSIONER JABER: 17?

17 CHAIRMAN JACOBS: Is that -- hold on. 17.

18 COMMISSIONER JABER: My fundamental question here,

19 Kevin, was early on in the jurisdiction issue AT&T in its brief

20 points out that 251 is applicable but so are the UNE rates.

21 And is that relevant to this issue?

22 MR. BLOOM: It's relevant in the sense that staff's

23 recommendation is that -- it's kind of two-part: Rate

24 structure, rate level. What we're saying, and again this is

25 purely default, this is if they can't agree to something, then

1 rather than come to us and ask us to settle it, the rate  
2 structure will be that which is present in the reciprocal  
3 compensation rules in Subpart H, 47 C.F.R. 51, forward. The  
4 rate levels would be those established by this Commission.

5 COMMISSIONER JABER: Right. And, see, that, that's  
6 what confused me.

7 MR. BLOOM: Okay.

8 COMMISSIONER JABER: I thought in the UNE rate docket  
9 the ALECs have taken the view that those prices are still too  
10 high.

11 MR. BLOOM: There's --

12 COMMISSIONER JABER: So I see an inconsistency,  
13 unless I don't understand, in their argument to say that we  
14 should use UNE rates here.

15 MR. BLOOM: Use UNE rates as a default. There are  
16 three options here. One is they can negotiate rates. Second,  
17 if they can't negotiate, there is a default to the UNE rates.  
18 And now the third option that would be available under the  
19 rules, which is contemplated in recommendation using the  
20 reciprocal compensation rules, is that they could then, if they  
21 felt those rates were not adequate to cover their costs, and I  
22 know we're going into the cost recovery issue and I apologize  
23 for that, the rules are what they are, they have the option of  
24 coming forward before this Commission and bringing their cost  
25 studies and saying, see, our costs are higher; therefore, we

1 should get these rates. So there are essentially three options  
2 on the table.

3 COMMISSIONER DEASON: What about bill and keep?

4 MR. BLOOM: Staff's position on bill and keep is that  
5 there's not sufficient evidence in the record, in the record  
6 evidence to establish a generic predilection towards bill and  
7 keep.

8 I would also point out -- and, you know, if you want,  
9 I'll just put my head on a platter and hand it up now, but the  
10 federal rules really seem to contemplate that bill and keep is  
11 a function, is an arrangement that exists between two networks.  
12 Therefore, it would appear at least, and I'm going to defer  
13 somewhat to legal staff on this, that the showing would be that  
14 it's, they would have to come forward and say this is what the  
15 costs are or this is where the traffic balances are between  
16 these two respective networks, which then again I'll defer to  
17 legal on whether that defies a generic implication.

18 Now I would say this, Commission, there's absolutely  
19 nothing that I can see that would prohibit this Commission from  
20 saying any time there's an arbitration you will all present  
21 traffic balance data as part of the record so that if we want  
22 to skip all this nonsense and go to bill and keep, we can do  
23 that. Maybe it would be the discretion of the prehearing  
24 officer. That would be up to the Commission.

25 COMMISSIONER JABER: We need to start identifying

1 that as an issue.

2 MR. BLOOM: I think staff would be happy to comply.

3 COMMISSIONER PALECKI: Isn't there a specific level  
4 of traffic balance that needs to be achieved?

5 MR. BLOOM: I believe it is. Three, three-to-one, I  
6 believe, was considered.

7 MR. DOWDS: The rule just says roughly balanced, I  
8 believe, between the networks.

9 COMMISSIONER PALECKI: But I thought we heard --

10 MR. BLOOM: I'm sorry. Three-to-one is ISP bound  
11 traffic.

12 COMMISSIONER PALECKI: I thought we heard in the  
13 record that roughly balanced has been interpreted with some  
14 mathematical --

15 MR. BLOOM: I believe you asked -- I think there was  
16 some confusion and I just evidenced that, three-to-one is, has  
17 to do with ISP traffic. I think roughly balanced would be a  
18 determination of this Commission. I believe it's rebuttable  
19 presumption.

20 It would be 51.713, which, by the way, is in the rec  
21 on, portions of which are on Page 111B and C.

22 B states, "A State Commission may impose bill and  
23 keep arrangements if the State Commission determines that the  
24 amount of telecommunications traffic from one network to the  
25 other is roughly balanced with the amount of telecommunications

1 traffic flowing in the opposite direction and is expected to  
2 remain so, and no showing has been made pursuant to 51.711(b)."

3 Part C says, "Nothing in this section precludes a  
4 State Commission from presuming that the amount of  
5 telecommunications traffic from one network to the other is  
6 roughly balanced, with the amount of telecommunications traffic  
7 flowing in the opposite direction and is expected to remain so  
8 unless a party rebuts such a presumption."

9 COMMISSIONER DEASON: Part B of that, at the end it  
10 says, "And no showing has been made pursuant to 51.711(b)."  
11 What is that?

12 MR. HINTON: That's the asymmetrical rates that we  
13 talked about earlier where an ALEC can come in and make a cost  
14 sharing.

15 COMMISSIONER DEASON: The thing that I despise so  
16 much; right? Okay. That's what I thought.

17 CHAIRMAN JACOBS: Any further discussion,  
18 Commissioners?

19 COMMISSIONER DEASON: Well, let me ask this. Why  
20 can't we presume that as a default traffic is in balance and  
21 it's incumbent upon the party to come and make a showing to the  
22 Commission that it's not?

23 MR. BLOOM: I'm going to defer to legal counsel on  
24 whether or not that would be a viable concept, sir.

25 MS. BANKS: If you could just restate your question,

1 Commissioner Deason.

2           COMMISSIONER DEASON: Yeah. I'm basically referring  
3 to the Section C which was just read to us where it indicates  
4 that the State Commission can presume that traffic is in  
5 balance absent a showing to the contrary by a party. And my  
6 question is why can't, why -- my question is can this  
7 Commission adopt as a default bill and keep with the  
8 presumption that traffic is in balance, with the understanding  
9 that if a party wishes to make a showing to the contrary, they  
10 have that option?

11           MS. BANKS: I believe that even in view of taking  
12 that presumption that traffic is roughly in balance, as you  
13 just indicated, parties, it would still be on the burden of the  
14 parties to prove exactly what the state of affairs is. So I  
15 don't know if making that determination as a default would be  
16 something that would be prohibited in the sense of what the  
17 parties would have to come to the table to show.

18           COMMISSIONER JABER: It looks like rebuttable --

19           COMMISSIONER DEASON: Well, it's just a default. If  
20 they don't object to it, that's the default, it's bill and  
21 keep.

22           COMMISSIONER JABER: But it also look likes a  
23 rebuttable presumption. So you make that finding, Beth, right,  
24 and then they have to petition us to prove something else?

25           MS. KEATING: Right. I think it's something, it's an

1 approach that you could take. Now I don't know that it's  
2 necessarily going to save you anything in the long run. You  
3 may find that ultimately you end up with a lot of parties  
4 coming in to try to show that traffic isn't in balance. But --

5 COMMISSIONER DEASON: But then once we do one or two  
6 and we determine what the criteria are, they should be able to  
7 --

8 COMMISSIONER PALECKI: I'm just concerned that we  
9 would end up with more litigation from making that presumption.  
10 I think I prefer the concept that in every  
11 negotiation that the issue of balance between the companies be  
12 explored and that that be a requirement. I'm just a little  
13 concerned at making the presumption will result in all of these  
14 cases coming right back to us to a hearing when these parties  
15 wish to rebut the presumption. And I'm thinking that it might  
16 end up that we have more litigation rather than less.

17 COMMISSIONER DEASON: Well, of course, the whole idea  
18 is that they negotiate between themselves and they don't even  
19 trigger a default.

20 MR. BLOOM: That's correct, sir.

21 COMMISSIONER DEASON: Okay. Then the question is if  
22 they cannot agree, what should the default be; correct?

23 MR. BLOOM: Yes, sir.

24 COMMISSIONER DEASON: Now you're recommending -- in  
25 all honesty, I'm having some difficulty understanding exactly



1 what it is you're recommending that default be. So if you  
2 could explain that for a moment, and then we'll explore the  
3 concept of bill and keep.

4 MR. BLOOM: The recommendation is that the default in  
5 terms of the structure would be that which is reflected in the  
6 rules under Subpart H, FCC's 51.7 report.

7 COMMISSIONER DEASON: So you're saying that we can  
8 reference an FCC rule and that's going to prevent all  
9 litigation?

10 MR. BLOOM: No, sir. I'm saying that if you create a  
11 default position that says if you can't agree, this is what you  
12 get and you --

13 COMMISSIONER DEASON: Then they're going to bring  
14 that for us to interpret what that means, that rule means,  
15 aren't they or not? Or is it crystal clear that this is it and  
16 there's no question?

17 MR. BLOOM: Sir, I don't think I would ever represent  
18 to you that anything that --

19 COMMISSIONER DEASON: See, yeah, and I'm trying to  
20 address the concern that if we adopt staff's recommendation,  
21 we're going to limit litigation. I'm not so sure that we are  
22 and that's what I'm trying to understand. Do you think that  
23 your recommendation is going to result in less litigation than  
24 a default bill and keep with a presumption of balanced traffic?

25 MR. BLOOM: I think what the recommendation

1 contemplates is it alerts the parties to what they're going to  
2 get if they can't agree.

3 COMMISSIONER DEASON: But it's probably going to  
4 result in a hearing at this Commission then to tell them.

5 MR. BLOOM: I wouldn't want to speculate, but it  
6 wouldn't surprise me.

7 COMMISSIONER DEASON: You know, if there was one  
8 clear answer that says this is the default and it's going to  
9 result in zero litigation, that would be very attractive to me.  
10 I don't see that we have that option in front of us.

11 MR. BLOOM: I tried.

12 COMMISSIONER DEASON: Oh, I'm not being critical.  
13 I'm not being critical. It's just the nature of the beast, I  
14 think.

15 MR. DOWDS: Just to clarify, Mr. Bloom's  
16 recommendation doesn't preclude bill and keep. It doesn't  
17 establish it as the default though. Because the way the rules  
18 were set up, it presumes that the carriers will compensate one  
19 another but it has the provision that he read in 711, 51.711,  
20 which allows under certain circumstances for bill and keep to  
21 be, to be ordered.

22 COMMISSIONER DEASON: So you're saying within that  
23 rule that bill and keep is a possible outcome?

24 MR. DOWDS: Yes, sir.

25 MR. BLOOM: Yes, sir. That is contemplated under

1 Subpart H. Bill and keep is in there.

2 COMMISSIONER DEASON: But then, I mean, still the  
3 default is really nothing other than an invitation to come and  
4 litigate it in front of us, isn't it, or not?

5 MR. BLOOM: No, sir, I would not see it as an  
6 invitation to litigation. Again, I would fall back on it tells  
7 parties what they get, if that's not what they want.

8 I would not presume to know, I guess is the way I'd  
9 frame it, what the parties actually do want. I don't know  
10 what's behind the veil.

11 COMMISSIONER DEASON: Well, what if one party, if we  
12 go to a default and one party is saying bill and keep is  
13 permissible, that's what I want, and another party says, no,  
14 well, it's not required, bill and keep is not required, I want  
15 something else?

16 MR. DOWDS: I think the onus would be on the party,  
17 in this instance the onus would probably be on the party  
18 desiring bill and keep to come before the Commission and  
19 establish that the traffic is, quote, roughly balanced.  
20 Otherwise, they don't get it.

21 COMMISSIONER DEASON: That's my bottom line. Why  
22 don't we presume it's roughly balanced and have the party that  
23 says it's not come in and carry the burden to demonstrate?

24 MR. DOWDS: Oh, that's your preference.

25 COMMISSIONER DEASON: Oh, okay.

1           COMMISSIONER PALECKI: Let me ask the staff, I guess  
2 I'm reluctant to put a default in place that ignores reality.

3           Do you have any feel at all as to whether we do have  
4 balanced, roughly balanced telecommunications traffic from one  
5 network to the other in this state anywhere?

6           MR. BLOOM: No, sir. And unfortunately there is not  
7 a shred of evidence in the record to that effect. I mean, it  
8 was not testified to. This is an issue that was largely argued  
9 in briefs because I believe at --

10          COMMISSIONER JABER: Uh-huh. At our request.

11          MR. BLOOM: I was just going to say at the request of  
12 the Commission towards the end of the hearing. So this  
13 recommendation, of course, stems from the arguments made in  
14 briefs as opposed to evidence that might be in the record.

15          COMMISSIONER PALECKI: Well, I certainly want to base  
16 my decision on the record. But as expert, experts in the area  
17 of telecommunications who deal with this, these issues every  
18 day do you have a feel as to whether there is a balance in any  
19 parts of the state? Are we looking at -- like I said earlier,  
20 I don't want to ignore reality and put a default in place that  
21 just does not take into account the situation as it actually  
22 exists.

23          MR. HINTON: Just one point to consider, as it was  
24 brought up in Issue 15, with ISP-bound traffic out of the mix,  
25 you know, that adds another wrinkle. You know, I'm not going

1 to say that things are balanced now because ISP-bound traffic  
2 is out of the mix, but that is something to consider that the  
3 nature of traffic subject to intercarrier compensation that  
4 this Commission can establish has changed. So I just wanted to  
5 throw that out as further information.

6 COMMISSIONER PALECKI: With the ISP taken out of the  
7 mix, we might have something closer to a balance is what I  
8 think I hear you saying.

9 MS. SIMMONS: Yes. Commissioner Palecki, let me just  
10 interject. I agree with that. I would also mention, however,  
11 that ALECs, I think, still have an incentive to target  
12 customers that have heavy inbound calling. Okay. And there  
13 may be other types of companies besides ISPs that might exhibit  
14 those characteristics.

15 COMMISSIONER DEASON: And a bill and keep would  
16 eliminate that incentive, would it not?

17 MS. SIMMONS: That's one, one affect, I guess. I'm  
18 sure there are different views on whether that's a good idea or  
19 not.

20 COMMISSIONER DEASON: No. The question is simple. A  
21 bill and keep would eliminate the incentive to target customers  
22 with high volumes in one direction or the other, would it not?

23 MS. SIMMONS: Well, that's true. It would. I guess  
24 I've always been a little bit more disposed to trying to get  
25 the prices right and, you know, let the balance fall however it

1 falls.

2 COMMISSIONER JABER: But sometimes the balance  
3 dictates how the prices fall out.

4 Let me ask you a question from the briefs on this  
5 issue. BellSouth makes a statement in the brief, set aside  
6 bill and keep for a minute, BellSouth makes a statement that  
7 there isn't disagreement among the parties on this issue.  
8 Could that be?

9 MR. BLOOM: Well, I think if you look at Verizon's  
10 brief, that should probably tell you that there is some  
11 disagreement.

12 Verizon's position is this Commission should not,  
13 this Commission shouldn't do anything essentially because the  
14 FCC has an NPRM about creating a unified intercarrier  
15 compensation regime. So I would say there on the surface of it  
16 that's probably not entirely accurate.

17 COMMISSIONER JABER: Okay. So what does that mean?  
18 BellSouth agrees with the ALECs, but Verizon has taken a whole  
19 different position?

20 MR. BLOOM: Well, I wish I could say it were that  
21 simple. Some of the ALECs suggested further proceedings  
22 stemming from this docket. They also suggested expedited  
23 complaint resolution. I mean, it's not as though it's right on  
24 down the line.

25 COMMISSIONER JABER: If we take Verizon's approach,

1 which is this is an FCC issue and they're still looking at it,  
2 what happens in the interim? We just, they're continuing to  
3 negotiate the mechanism in individual arrangements; right?

4 MR. BLOOM: Pretty much. And once again what we have  
5 to go on is what's in the briefs.

6 Now Verizon does advocate a predilection towards bill  
7 and keep. I mean, they suggest a bias towards bill and keep.

8 COMMISSIONER JABER: And the ALECs say we don't have  
9 a record to do bill and keep in this proceeding?

10 MR. BLOOM: Pretty much, yes.

11 COMMISSIONER JABER: Commissioners, at the hearing we  
12 toyed with the idea of actually, if we were interested in  
13 pursuing bill and keep, there was the possibility of making  
14 that part of a decision PAA. So I guess we would apply Sub C  
15 of that rule and say we'll assume traffic is in balance, but  
16 because we don't have evidence on what that balance is or even  
17 the definition of the balance, we could make it PAA and see if  
18 anyone protests.

19 COMMISSIONER DEASON: I don't understand. What would  
20 you be making PAA?

21 COMMISSIONER JABER: Well, the ALECs and I guess to  
22 some degree Verizon believe that to the degree this Commission  
23 wants to even pursue bill and keep in this case, there isn't  
24 record support for doing that because we don't have testimony  
25 on whether the traffic is balanced.

1           COMMISSIONER DEASON: Well, see, that presumes  
2 traffic balance between all ALECs and all ILECs on a state-wide  
3 basis or just balanced traffic between two people entering into  
4 an agreement? I think the appropriate standard is between the  
5 two entities entering into an agreement. That's where the  
6 balance should be. And that's more of a case-by-case  
7 determination. And what we want parties to do, companies to do  
8 is reach an agreement on their own where we don't trigger any  
9 defaults at all and they reach an agreement and they present it  
10 to us.

11           The question is if they cannot do that, well, then  
12 what is the default mechanism? I would have a bias towards  
13 bill and keep with the presumption that traffic is roughly  
14 equal. And if a party feels aggrieved by that and thinks  
15 traffic is not roughly equal, it would be incumbent upon them  
16 to make a showing to the contrary.

17           COMMISSIONER JABER: On a case-by-case basis?

18           COMMISSIONER DEASON: On a case-by-case basis.

19           COMMISSIONER JABER: And not on whether bill and keep  
20 is appropriate but how the traffic looks?

21           COMMISSIONER DEASON: Yes.

22           CHAIRMAN JACOBS: And that's essentially, that's  
23 Subsection C.

24           COMMISSIONER DEASON: Yes.

25           CHAIRMAN JACOBS: Okay.



1 COMMISSIONER DEASON: Now I do, I want to preface  
2 that by saying there's this, still this FCC rule out there that  
3 says a party can come in and demonstrate what its costs are and  
4 we can't avoid that, I suppose. But they'd have an obligation  
5 to file a cost study with us then.

6 MR. BLOOM: That's correct.

7 COMMISSIONER DEASON: Which is a costly and  
8 time-consuming, complicated, controversial, litigious process.

9 MR. BLOOM: Yes, sir.

10 COMMISSIONER DEASON: But they can do it.

11 MR. BLOOM: Yes, sir.

12 MR. DOWDS: But they wouldn't if they couldn't  
13 establish that the traffic was out of balance.

14 COMMISSIONER DEASON: If they could not establish  
15 that traffic was roughly out of balance, they would not have  
16 that option?

17 MR. DOWDS: That's correct.

18 COMMISSIONER DEASON: Okay.

19 MR. DOWDS: Because the bill and keep assumes nobody  
20 pays anybody anything and it assumes the traffic is roughly  
21 balanced. If it's not roughly balanced, it's the only  
22 situation where one party would pay the other and then they  
23 would argue what the rates would be.

24 COMMISSIONER DEASON: And then you get into whether  
25 they want to file a cost study to show their costs are higher

1 and they should be paid a higher rate.

2 MR. DOWDS: Yes.

3 COMMISSIONER DEASON: Sounds reasonable.

4 COMMISSIONER JABER: And I misspoke and, Kevin, you  
5 need to correct me if I'm wrong, Verizon actually agrees with  
6 the bill and keep methodology.

7 MR. BLOOM: Correct.

8 COMMISSIONER JABER: As a default.

9 MR. BLOOM: Yes. Correct. As a default regime.

10 CHAIRMAN JACOBS: Further discussion, Commissioners?  
11 Let me, Commissioner Deason, that proposal --

12 COMMISSIONER DEASON: No. No proposal.

13 CHAIRMAN JACOBS: Strike that.

14 COMMISSIONER DEASON: I have a predisposition towards  
15 bill and keep, which if you've not learned by now -- but, yes,  
16 I've not made a motion. I've not even made a proposal. I'm  
17 just exploring it. But based upon what I know now, that's  
18 where I probably would come down, yes.

19 CHAIRMAN JACOBS: And as I understood it, I guess I'm  
20 quibbling with the designation as a default because what I  
21 understood was a presumption.

22 COMMISSIONER DEASON: Now this is a default if the  
23 parties cannot agree between themselves; correct?

24 MR. BLOOM: Your thought or the way the  
25 recommendation is written?

1           COMMISSIONER DEASON: Well, let me understand what  
2 you're recommending first, and then I'll share with you what I  
3 think I'm talking about.

4           MR. BLOOM: What we're recommending is if the parties  
5 cannot agree among themselves of what the structure and the  
6 rates should be, the structure would be that which is contained  
7 in the reciprocal compensation rules and the rates would be  
8 those which are contained in the UNE dockets.

9           COMMISSIONER DEASON: Okay. What I'm, what my  
10 thought is is that I agree with you that a default should not  
11 be triggered unless the parties cannot agree. That should be  
12 the first, the first avenue that should be explored and  
13 hopefully the parties can agree on what their compensation  
14 mechanism is going to be.

15           Absent that, what do we look to? Well, I would be  
16 predisposed to say we would go to bill and keep with the  
17 presumption that your traffic is roughly in balance. And if  
18 your traffic is not roughly in balance, I say roughly, whatever  
19 the terminology is, then it would be incumbent upon the  
20 aggrieved party to come forward and demonstrate that the  
21 traffic is not in balance.

22           CHAIRMAN JACOBS: My concern -- excuse me. I'm  
23 sorry. My concern has to do with that the process doesn't  
24 become an additional impediment; i.e., that if, I'm assuming  
25 everybody is going to negotiate in good faith, but if this is,

1 if this is an important enough issue that a party wants to  
2 undertake that proof and they can't come to an agreement, are  
3 we essentially putting them into a disadvantageous position by  
4 having to make that showing?

5 MR. BLOOM: I don't know that they would necessarily  
6 be disadvantaged. They might be disinclined. But, again, Mr.  
7 Dowds made the point that if the traffic were not roughly  
8 balanced, they would have a hard time coming before this  
9 Commission and proving that it wasn't.

10 CHAIRMAN JACOBS: Okay.

11 MR. BLOOM: I tripped over my words there. I'm  
12 sorry.

13 CHAIRMAN JACOBS: If it was out of balance, it would  
14 be not a burdensome task to demonstrate that, is that -- that's  
15 essentially my question.

16 MR. BLOOM: I'm not sure we have enough evidence in  
17 the record to say how much of a burden it may or may not be.

18 COMMISSIONER DEASON: I think it depends on what we  
19 define as out of balance or in balance.

20 MR. BLOOM: I would think traffic volumes are  
21 something that would not be nearly, let's say, as onerous as a  
22 cost study.

23 COMMISSIONER PALECKI: Commissioners, we're already  
24 coming back on Issue 13. I would feel much more comfortable if  
25 I heard some testimony on this area.

1 My concern is I really don't believe that there's  
2 record evidence that I would feel comfortable making a fallout  
3 presumption that traffic is balanced, and I would feel a lot  
4 more comfortable if we reopened the record and took some  
5 testimony in this area. And for that reason I would ask that  
6 we go ahead and treat this issue in the same manner that we're  
7 treating Issue 13.

8 COMMISSIONER DEASON: Let me get some clarification.

9 COMMISSIONER JABER: But in a generic docket, in a  
10 generic docket what would that testimony be? If it's, if the  
11 traffic is determined on a case-by-case basis because of, and I  
12 ask because I just don't know the answer to this, if the  
13 traffic is determined on a case-by-case basis as a result of  
14 the individual agreements that are entered into, how do you  
15 take testimony on that issue? How have other states done it?

16 MR. BLOOM: We don't have any evidence in the record  
17 and I'm not familiar with anything outside of the record as to  
18 what other states may or may not have done.

19 COMMISSIONER DEASON: That's the clarification. Is  
20 your motion to take additional evidence on the policy  
21 implications of this or do you want evidence on traffic flows  
22 between entities? Because that's going to need to be done  
23 on -- because traffic between A and B may be in balance and  
24 traffic between A and C may be out of balance.

25 COMMISSIONER PALECKI: I'd really like to hear the

1 testimony on both. But I understand the problem. I don't want  
2 to hear testimony from, you know, I guess from every network in  
3 the state what our level of balance is. I think that would be  
4 just absolutely impracticable and very difficult.

5 But I guess the problem I have is I don't have a  
6 general feel. I guess I would like to hear from some of the  
7 competitors and just, and from some of the incumbents as well  
8 as to, you know, what's the state of the state in general  
9 terms?

10 CHAIRMAN JACOBS: Well, I think, what I understood  
11 your initial discussion, Commissioner Palecki, is that the  
12 predicate here is that we come to some kind of determination as  
13 to the status of traffic. And I took that to mean basically an  
14 umbrella determination as between ILECs and ALECs, is that  
15 determination that's called for in the FCC order intended to be  
16 party-to-party or is it --

17 MR. BLOOM: Yes. The way I would read it, yes, sir.  
18 And I believe it's what Commissioner Deason alluded to. It's  
19 between A and B but it could be different between A and C or --

20 CHAIRMAN JACOBS: So how can we do that in a generic  
21 docket at all?

22 MR. BLOOM: I don't know, sir.

23 MR. DEASON: Well, I think it's simple. Your default  
24 is the presumption that it's in balance for any particular --  
25 between any particular two parties our default is we will

1 presume it's in balance. If it's not, come forward and show us  
2 that it's not.

3 MR. BLOOM: I would agree, sir, that's a policy issue  
4 for y'all to determine. But I don't --

5 COMMISSIONER BAEZ: I had a question. I'm sorry to  
6 interject. I think we're talking two different things. I  
7 mean, presuming imbalance, I think the Act or the rules give us  
8 that, give us that authority. I'm not sure that we can presume  
9 bill and keep. I mean, is that your understanding or --

10 COMMISSIONER DEASON: No. No.

11 COMMISSIONER BAEZ: Then what's the purpose --

12 COMMISSIONER DEASON: If it's in balance, that is the  
13 very reason why you can then go to bill and keep.

14 CHAIRMAN JACOBS: That was, but that was my --

15 COMMISSIONER BAEZ: But the rule, the rule says may,  
16 may impose bill and keep. And I would assume that that means  
17 you've got to have some record basis since it is between  
18 specific networks. If you want to, if you want to presume that  
19 traffic is balanced, I don't think that presuming or not  
20 presuming is going to -- I mean, I think our concerns about are  
21 we creating an issue for litigation or not, I think we're at  
22 the same place whether we presume it or not. Because if I  
23 understood Commissioner Jaber's comments originally and  
24 certainly staff's agreement with those comments, maybe that's  
25 something that, maybe that traffic information is something

1 that we have to start requesting so that we can deal with these  
2 during the arbitration. So I think you wind up at the same  
3 point whether you presume balance or not.

4 I'm not confident that the rules allow us to presume  
5 bill and keep right out of the gate. Bill and keep is an  
6 alternative that's available to the Commission to impose based  
7 on some, you know, based on specifics or based on, or in the  
8 context of a specific arbitration. I'm not sure that we can  
9 make a decision generically to say bill and keep, bill and keep  
10 is it.

11 COMMISSIONER DEASON: Well --

12 COMMISSIONER BAEZ: The presumption is not, the  
13 rebuttable presumption is not to bill and keep. I'm just  
14 trying to read, I'm trying to read the rule here or understand  
15 it exactly.

16 COMMISSIONER DEASON: Well, maybe I'm  
17 misinterpreting. But I thought that the reason that you would  
18 presume that traffic is in balance is so that you could  
19 implement bill and keep.

20 The reason you do not -- I think everyone basically  
21 agrees, everyone is maybe stretching it, but generally most  
22 folks agree that bill and keep is a reasonable, cost-effective  
23 way to provide for compensation if traffic is in balance. And  
24 so if you presume that it is, the logical reason for doing that  
25 is so that you can impose bill and keep.



1           COMMISSIONER BAEZ: That's, I think that's a fair  
2 progression. I'm just not sure from reading the rule that  
3 that's, in fact, the authority that we're getting because we're  
4 getting authority to presume that traffic is in balance. But,  
5 and perhaps you're right, perhaps the only reason for presuming  
6 balanced traffic is in order to impose bill and keep. I'm just  
7 not, I'm not feeling the same amount of comfort in presuming  
8 the imposition of a --

9           COMMISSIONER JABER: Well, but, Commissioner Baez,  
10 the whole idea of the FCC creating a rebuttable presumption and  
11 even identifying that Subsection C I think is to give the State  
12 Commission the latitude to do it.

13           So I think from a legal standpoint you could presume,  
14 to use their words, presume that the amount of traffic from one  
15 network to the other is roughly balanced unless a party rebuts  
16 such a presumption.

17           I think the only issue we have is one of notice, and  
18 that's why I was going toward identifying the issues in  
19 arbitration, individual arbitration proceedings where you sort  
20 of put them on notice that the Commission might go to a bill  
21 and keep methodology, the State Commission will do it unless  
22 you come in and show us that the traffic is not roughly  
23 balanced.

24           COMMISSIONER BAEZ: Well, and I don't disagree with  
25 you. I think the more efficient way is to hold it, is to take

1 it on an arbitration-by-arbitration basis with that  
2 understanding.

3 For purposes, for generic purposes I don't have a  
4 problem saying we can go ahead and presume balance. I think  
5 where we get into issues of notice is that you're being, you're  
6 walking in with an imposition of -- I mean, presuming balance  
7 has no affect whatsoever.

8 COMMISSIONER JABER: Right.

9 COMMISSIONER BAEZ: You're not creating, you're not  
10 disadvantaging or advantaging anyone in any way.

11 COMMISSIONER JABER: Right.

12 COMMISSIONER BAEZ: But once you say I'm going to  
13 impose bill and keep, that's where you get into, that's where  
14 you get into noticing problems. It seems that --

15 COMMISSIONER JABER: Okay. But as a default, if we  
16 keep in the spirit of the entire decision, which is we're  
17 trying to provide guidance and direction and perhaps motivation  
18 towards negotiation in lieu of arbitration, you know, a basic  
19 default statement like the Commission will, will use bill and  
20 keep does provide that notice, I think. Maybe I'm looking at  
21 it too simplistically.

22 But my problems related to whether we take that step  
23 identifying as a default mechanism bill and keep, go more  
24 toward the policy issues, again, not knowing, not having an  
25 accurate picture of the environment out there.

1           For example, a local, a new company just starting to  
2 penetrate the local market will not have traffic that's roughly  
3 balanced just because they've only been, you know, in existence  
4 for, let's say, a few months. So when they go to the  
5 negotiation table, if we come back to the leverage idea, they  
6 don't have any leverage, you know.

7           So that's my hesitancy. It's not that at the end of  
8 the day I don't believe bill and keep may be the way to go.  
9 When you have a truly developed competitive market without  
10 blinking an eye you can say I can presume the traffic is  
11 balanced. How do I stifle, be careful not to stifle the new  
12 entrants that are just coming to the table to negotiate with  
13 BellSouth if BellSouth in the back of its mind knows that it  
14 may have an advantage with bill and keep?

15           COMMISSIONER BAEZ: By not wedding the concept of  
16 balanced traffic or a presumption of balanced traffic to an  
17 automatic imposition of bill and keep. I know that that  
18 probably doesn't serve any other purpose than to impose it.  
19 But if you haven't gone the extra step -- if you've made the  
20 suggestion that you like bill and keep, and that's all right,  
21 but if you haven't gone the extra step of imposing it, then I  
22 think that you've tempered whatever, whatever adverse leverage  
23 is created for an ALEC because you're always keeping --

24           COMMISSIONER JABER: And those may be anomalies. I  
25 don't know.

1           COMMISSIONER BAEZ: You're always keeping in your  
2 hand the ability to impose it or not regardless of what your  
3 rebuttable presumption, you know, regardless of what the  
4 balance may be.

5           COMMISSIONER JABER: Staff, am I missing anything  
6 there in that --

7           COMMISSIONER DEASON: Let me make one point. I think  
8 that if traffic is roughly in balance, no party is advantaged  
9 or disadvantaged by bill and keep by definition.

10          COMMISSIONER BAEZ: Absolutely right. That's true.

11          COMMISSIONER JABER: Right.

12          COMMISSIONER DEASON: And so the only, so what we  
13 would be saying as a default is if you can't agree between  
14 yourselves, well, then just know that we're going to presume,  
15 presume that traffic is in balance and require bill and keep,  
16 fully realizing that if traffic is not in balance, a party can  
17 come and demonstrate that and indicate that bill and keep is  
18 not the appropriate compensation mechanism.

19          COMMISSIONER PALECKI: Commissioner Deason, I may  
20 well ultimately agree that that is the direction we should go.

21                 The reason I would like to reopen the docket on this  
22 issue is I'd like to hear from the existing competitors, I'd  
23 like to find out if, you know, if we hear from each one of them  
24 and they say that we're not in balance and bill and keep is  
25 going to put us out of business and we're going to see that our

1 level of competition is going to fall off because we lose  
2 competitors that simply aren't at balance or perhaps we'll hear  
3 that things are in balance. But if we hear from all of the  
4 competitors and they all say we're simply going to have to  
5 litigate this at the end of each arbitration, it just means  
6 we're going to have more litigation. I don't know. It may  
7 well be that we hear that, you know, that there are situations  
8 where we do have balanced traffic. And if I heard that at an  
9 evidentiary proceeding, I would jump at the opportunity to make  
10 that a presumption because there's just a beautiful  
11 administrative simplicity of the bill and keep mechanism, which  
12 is no mechanism at all. It certainly beats the horrendously  
13 complicated system that we're looking at as far as reciprocal  
14 compensation is concerned.

15           But I would just feel so much more comfortable if we  
16 heard from the parties, both the incumbents and the  
17 competitors.

18           COMMISSIONER DEASON: And let me be clear, I don't  
19 object to that. I'm perfectly fine with that. And in the  
20 spirit of what was done in Issue 13, I think that you had a  
21 predisposition to do something else but agreed to hear further  
22 evidence, and I would be the same on this issue. I would like  
23 it to be addressed more at a policy level though as opposed to  
24 trying to get reams of paper indicating traffic flows between  
25 different companies.

1           COMMISSIONER PALECKI: I don't want to see reams of  
2 traffic flow analysis. I don't understand it, first of all.  
3 But I do want to get a general feel if a lot of the competitors  
4 feel that this would put them out of business, that's what I  
5 want to know.

6           COMMISSIONER DEASON: And don't get me wrong, if  
7 there are, you know, examples that parties can point to, that  
8 may be fine to try to get some feel for what may be in or out  
9 of balance. I'm not opposed to that.

10           I just don't think that we as an agency, as an entity  
11 can say traffic in the State of Florida between ALECs and ILECs  
12 is roughly balanced. It's an individual two-company situation.  
13 Every two companies have to make that determination between  
14 themselves whether it's in or out of balance or we may make it  
15 for them, but it's based upon their traffic flows.

16           MS. SIMMONS: Commissioners, I just wanted to address  
17 one thing. I have a little bit of a concern. I think it was  
18 alluded to, Commissioner Deason's idea about the bill and keep  
19 with the rebuttable presumption. The only thing I would  
20 observe is if the traffic flows are not in balance, it would  
21 seem to me that the LEC would benefit from the bill and keep  
22 regime and would not have any incentive to try to attack the  
23 rebuttable presumption and then that burden would fall to the  
24 ALEC and the ALEC would have to overcome the rebuttable  
25 presumption. And that concerns me a little bit. I just --

1           COMMISSIONER DEASON: Well, I don't know how you can  
2 say that one party -- it depends on the traffic flows and what  
3 rate is attached to that traffic flow as to whether one party  
4 would think it would be more advantageous to have some  
5 mechanism other than bill and keep.

6           MS. SIMMONS: I guess my presumption, and I guess  
7 that's a bad word to use, my assumption, my assumption would be  
8 that if you do have a traffic imbalance, it's likely to be in  
9 the direction of the ALEC having more incoming than outgoing  
10 traffic.

11           COMMISSIONER DEASON: Why is that? ISP is off the  
12 table.

13           MS. SIMMONS: I understand. But there are other  
14 types of customers that might have those same kinds of  
15 characteristics.

16           COMMISSIONER DEASON: Okay. And then you're saying  
17 maybe they're targeting those kind of customers and if you went  
18 to bill and keep, well, then they wouldn't have that incentive,  
19 you would have an incentive for them to try to market to every  
20 customer.

21           MS. SIMMONS: Yeah. I understand. It depends on  
22 what you're trying to accomplish. I just mentioned that that's  
23 a concern I have that the ALEC might end up with the burden of  
24 overcoming the rebuttable presumption.

25           COMMISSIONER PALECKI: Well, let me try to make a

1 motion. I would move that we defer this matter for a further  
2 evidentiary proceeding to take place at the same time our  
3 evidentiary proceeding in Issue 13 takes place to, one, address  
4 the policy ramifications of presuming balance from one network  
5 to the other or rough, roughly balanced traffic, and this  
6 Commission adopting a rebuttable presumption of balance that  
7 would then result in the imposition of a bill and keep  
8 arrangement.

9           And I guess the second thing I would like to see  
10 addressed is general, without detailed flow analyses and, you  
11 know, without going into extreme technical detail, generally  
12 what financial affect that will have on the competitors and the  
13 incumbents.

14           COMMISSIONER DEASON: Second the motion.

15           CHAIRMAN JACOBS: Moved and seconded. Further  
16 discussion? All in favor?

17           (Simultaneous affirmative vote.)

18           CHAIRMAN JACOBS: All right. Opposed?

19           Show Issue 17 modified, I'm sorry, is deferred as  
20 stated.

21           We're now on Issue 18.

22           COMMISSIONER JABER: I'd move staff on Issue 18  
23 because I don't think that's affected.

24           Now the order resulting from our vote, legal, isn't  
25 coming out until we're done with the entire process. We need



1 to go to hearing and resolve Issues 13 and 17 before you issue  
2 a final order, don't you think?

3 COMMISSIONER BAEZ: Not necessarily.

4 COMMISSIONER JABER: Really?

5 MS. KEATING: Because the other issues, the other  
6 issues you've decided aren't really tied to the ones that  
7 you're setting for hearing, so you might as well go ahead and  
8 issue an order. But it's totally up to y'all.

9 COMMISSIONER JABER: I'm just looking for efficiency.  
10 So if you all --

11 COMMISSIONER DEASON: Well, maybe, maybe we should  
12 just wait, unless there's some compelling reason to get an  
13 order out quickly.

14 MS. KEATING: My only thought was it might depend on  
15 how soon you could get that hearing. If it was real close,  
16 then efficiencies might weigh in the interest of waiting to do  
17 an order. But if it was going to be later, you might want to  
18 go ahead and issue an order.

19 COMMISSIONER JABER: I think there are a lot of  
20 efficiencies to be gained by holding off on the order. We'll  
21 find one day for a hearing.

22 MS. SIMMONS: Commissioners, I've just got to ask  
23 something and it's really a legal question, and that is will  
24 the decisions you have made today have force and effect if an  
25 order is not issued? I have that question in my mind.

1           COMMISSIONER JABER: Well, just talking about the  
2 issues has, you know, publicly has given a lot of guidance and  
3 direction. But I would imagine, Beth, that it's not effective  
4 until the order goes out.

5           MS. KEATING: That's my understanding of the law,  
6 that it's not actually an order until it's rendered by the  
7 Commission and rendering is the issuance of the order.

8           COMMISSIONER DEASON: But you've got people sitting  
9 out there, they've listened to everything. They're reasonable  
10 people, they can go back and --

11          MS. KEATING: I think most of them could take a hint.

12          COMMISSIONER JABER: I certainly hope so. I moved  
13 Issue 18.

14          CHAIRMAN JACOBS: Second? Moved and seconded. All  
15 in favor?

16                 (Simultaneous affirmative vote.)

17          CHAIRMAN JACOBS: Issue 19.

18          MS. BANKS: Commissioner, Chairman Jacobs, if I  
19 could, in view of what has been decided regarding Issues 13 and  
20 17, make a suggestion of a modification to the Issue 19. And  
21 the modification that I would suggest is that on the  
22 recommendation statement to read as follows: "This docket  
23 shall remain open pending the outcome of the proceedings in  
24 this docket," and just to delete the Phase I.

25          COMMISSIONER DEASON: Move as modified.

1 COMMISSIONER BAEZ: Second.

2 CHAIRMAN JACOBS: Moved and seconded as modified.

3 All in favor?

4 (Simultaneous affirmative vote.)

5 Show it approved. Thank you very much. We're  
6 adjourned.

7 (Special Agenda concluded at 1:10 p.m.)

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

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5 I, LINDA BOLES, RPR, Official Commission  
 6 Reporter, do hereby certify that the foregoing proceeding was  
 heard at the time and place herein stated.

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

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

13 DATED THIS 10th DAY OF DECEMBER, 2001.

14

15

*Linda Boles*  
 \_\_\_\_\_  
 LINDA BOLES, RPR  
 FPSC Official Commissioner Reporter  
 (850) 413-6734

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