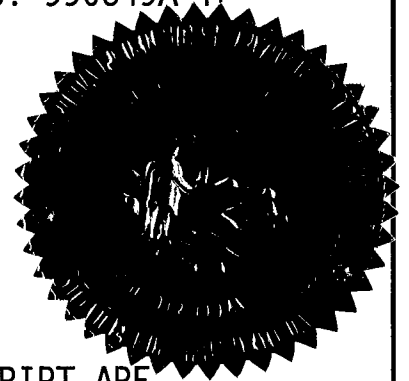


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990649A-TP

In the Matter of

INVESTIGATION INTO PRICING OF
UNBUNDLED NETWORK ELEMENTS
(BELLSOUTH TRACK).



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PROCEEDINGS: SPECIAL AGENDA CONFERENCE

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER MICHAEL A. PALECKI

DATE: Thursday, June 13, 2002

TIME: Commenced at 9:30 a.m.
Concluded at 10:32 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

DOCUMENT NUMBER - DATE

06295 JUN 18 02

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 HAROLD McLEAN, FPSC General Counsel, BETH
3 KEATING, General Counsel's Office, representing the
4 Commission Staff.

5 WALTER, D'HAESELEER, ANNE MARSH, KEVIN
6 BLOOM and DAVID DOWDS, FPSC Division of Competitive
7 Markets and Enforcement.

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P R O C E E D I N G S

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2 CHAIRMAN JABER: Good morning. Staff, let's go
3 ahead and get started. This is a special agenda conference for
4 Docket 990649A-TP. It's a panel. Staff, you want to do your
5 introduction?

6 MS. MARSH: Yes, ma'am. This recommendation
7 primarily addresses issues that arose from the initial phase of
8 BellSouth's UNE rate setting. BellSouth was ordered to file a
9 bottoms-up loop cost study that explicitly modeled engineering
10 structures and cable installation. BellSouth was also ordered
11 to file a cost study revising the NID costs as well as a study
12 for hybrid copper fiber xDSL capable loops, which it addressed
13 in its proposed rate for UCL-ND.

14 Subsequent to that order, BellSouth determined that
15 the daily usage file, or DUF rates also needed revision. Staff
16 is not recommending adoption of the bottoms-up loop cost study
17 that has been filed or the resultant rates. While the
18 bottoms-up approach may have merit, the rates show anomalies
19 that none of the parties have been able to explain. Our
20 concern with the model is with this specific filing and not
21 with the concept.

22 As we will discuss at the appropriate time, staff
23 does recommend that adjustments be made to the DUF rates and to
24 the NIDs. The Commission should also establish a UCL-ND rate.
25 It is important to keep in mind as you vote on the issues that

1 some issues do stand alone. In particular, Issues 2 and 4 are
2 not impacted by your decision on other issues. Issue 3 is a
3 stand alone issue, but the rate itself is impacted by your vote
4 on other issues.

5 If you approve staff on Issue IB, Issues 1A and 6
6 become moot. Issue 5 has a decision tree on Page 138 which
7 shows the impact of your vote on other issues. You should also
8 keep in mind that any adjustments you vote for in Issue 1A are
9 adjustments to the current filing in which a portion of the
10 model has been revised. For that reason the adjustments are
11 not applicable to the rates that are already in effect.

12 Before we proceed, we have a few corrections. Page
13 160 in the rate tables, the footnote should be deleted. Page
14 35, the last sentence on the page where it says 33 percent
15 suburban and rural, the word "rural" should be changed to
16 "urban," so that it reads, "33 percent suburban and urban."
17 Page 45, the first sentence should say "Witness Pitkin," not
18 "Witness Donovan."

19 CHAIRMAN JABER: Where?

20 MS. MARSH: That is Page 45 the first sentence.

21 Excuse me, I may have the wrong page here. Page 43, I'm sorry.

22 CHAIRMAN JABER: So Witness Pitkin --

23 MS. MARSH: Instead of Witness Donovan.

24 CHAIRMAN JABER: The recommended 20 percent cap?

25 MS. MARSH: Yes. And the final change --

1 COMMISSIONER PALECKI: Let's go back to that. I have
2 Witness Donovan on both first sentences on Pages 43 and 45. Is
3 it Mr. Donovan's method is inappropriate, which I have on Page
4 43, or Witness Donovan also takes issue?

5 CHAIRMAN JABER: Neither, I think.

6 COMMISSIONER PALECKI: Maybe we have different
7 numbering on our --

8 MS. MARSH: It's actually on Page 43, the second to
9 the last paragraph where it says -- at the very beginning of
10 that paragraph it says, "AT&T/MCI Witness Donovan attempts to
11 solidify the assertion," that should be Witness Pitkin. I
12 apologize for that.

13 The final change, the recommendation does not
14 explicitly state when rates should go into effect as we did not
15 have an issue for that. As with the earlier part of the
16 docket, the rates should become effective when existing
17 interconnection agreements are amended to incorporate the
18 approved rates and those agreements become effective. And that
19 is as it was in the early part of the docket.

20 At this time we are prepared to proceed
21 issue-by-issue or to begin with specific issues, if you wish.

22 CHAIRMAN JABER: Commissioners, just as a heads-up to
23 you, I have a number of questions, but I also have sort of
24 philosophically where I would like us to be at the end of the
25 day. What is your pleasure, do you sort of want to hear my

1 thoughts as of this moment and we could all do that, or do you
2 want to go issue-by-issue and address staff with specific
3 questions?

4 COMMISSIONER PALECKI: I would like to hear your
5 thoughts.

6 CHAIRMAN JABER: My thoughts are this -- Commissioner
7 Deason is that --

8 COMMISSIONER DEASON: No, I echo Commissioner
9 Palecki's comments. I think we need to go ahead and lay out
10 any philosophical framework in which you think we need to work.

11 CHAIRMAN JABER: Okay. And hopefully, you know, at
12 the end of the day it will actually streamline the discussion
13 and the questions for staff. I'm not sure. I'm interested in
14 feedback. I am troubled by the notion and the allegation and
15 it has been reinforced in the briefs filed in this case and
16 again in staff's recommendation that fundamentally there is an
17 issue with respect to whether BellSouth complied with our order
18 requesting the 120-day filing.

19 And specifically, Commissioners, when we asked for
20 certain issues to be reviewed again, we made clear we were
21 troubled with including linear loadings in the study because we
22 were -- we knew that that may give us disparities between rural
23 and urban areas, and that is why we asked for the bottoms-up
24 approach.

25 Staff -- that was thoroughly discussed in the briefs

1 that were filed by the ALECs, but if you look at Issue 1A,
2 staff throughout that issue acknowledges that, too. And they
3 even mention if you look at the staff recommendation in 1A,
4 BellSouth complied with the 120-day filing to the degree that
5 they filed something. But staff really had to struggle with
6 the nature of the cost study. Having been prehearing officer
7 in this case, I can tell you there were a couple of cost
8 studies filed, one of which created a delay in the case. But
9 staff says, you know, there were a few places where linear
10 loadings were included. And it made me question at the end of
11 my review of this recommendation the cost study period in the
12 model. I really have gotten to the point where I am completely
13 uncomfortable with this new filing.

14 The other thing that makes me completely
15 uncomfortable is if we decide to apply the factors in the
16 120-day filing in the bottoms-up approach that it actually
17 results in some areas in UNE pricing that is higher than what
18 we approved in October and in May. And I think philosophically
19 if I ever expect to have competition in the local
20 telecommunications market, then I've got to recognize that UNE
21 prices cannot be higher in some areas than BellSouth's retail
22 offerings.

23 Now, we know there is only so much the Public Service
24 Commission can do. I know I've got jurisdiction over the UNE
25 pricing issue, and I would like to be able to address what we

1 have got jurisdiction over. To the degree that the rest of the
2 comprehensive approach that might ensure an environment where
3 competition can occur, that being approval of 271, or rate
4 rebalancing, or a decrease in access charges are not within our
5 purview, there is nothing I can do about that.

6 The other thought I had philosophically is I don't
7 really want to continue to have UNE proceedings. I think it is
8 a burden on this agency and on staff. And I'm not sure if I
9 acknowledge that there are problems with the BellSouth filing
10 and ignore it and go to 1B and just decide no changes should be
11 made, that is status quo, that is not bringing UNE pricing
12 down.

13 Asking BellSouth to refile the cost study may get us
14 exactly where we are today. I'm not sure that that is where
15 this agency wants to be. I would much rather craft a decision
16 today that will incent all of the parties to negotiate UNE
17 pricing. I want to establish as a goal and give them direction
18 that UNE pricing where they are today are completely
19 unacceptable and they have got to come down. And I want to
20 acknowledge that this agency isn't the best entity for
21 determining what the UNE prices are, or what UNEs are more
22 appropriate for ALECs, more necessary for ALECs, or where that
23 comfort cushion is for BellSouth. I think the parties can.
24 Don't get me wrong, I'm willing to do it. If we have to do it,
25 we will do it, but I would really like to incent the parties to

1 sit down and negotiate on their own.

2 So, in lieu of accepting staff's recommendation in 1B
3 and not doing anything, I would much rather accept lower UNE
4 prices and do something creative like holding them in abeyance
5 for a certain period of time with the requirement that the
6 entire industry sit down and negotiate UNE prices in a fashion
7 that is acceptable to all companies.

8 I'm rambling. I'm really throw this out for
9 discussion. I'm not sure that is the best approach,
10 Commissioners. But I know what we have, and I know that I
11 don't think what we have is necessarily the best approach,
12 either.

13 COMMISSIONER DEASON: Well, you have kind of thrown a
14 lot at us in a short period of time, Madam Chairman.

15 CHAIRMAN JABER: I'm sorry.

16 COMMISSIONER DEASON: No, no, don't apologize. It is
17 the subject matter we are having to deal with, and the issues
18 are complex and there are a lot of long-term policy
19 considerations which are wound up within the decisions, the
20 more specific decisions which are in front of us. And I guess
21 I am probably going to be talking kind of off the top of my
22 head here, also. So if I ramble, please excuse me.

23 One thing that you indicated that you would like to
24 achieve is something that I think is preferable to the process
25 which we have been engaged in for some period of time and that

1 is for the parties to negotiate what are fair UNE rates. In
2 fact, I believe that those usually are the best outcomes. But
3 you also mentioned an incentive to negotiate, and I think for
4 there to be fruitful and productive and meaningful negotiations
5 there has to be something, a give and take, and there has to
6 be -- both parties need to be negotiating from a position of
7 strength, and hopefully the best outcome could be achieved.

8 I guess that's where I have a question for you is
9 have you given any more thought into how you would structure
10 there to be an appropriate negotiation period, and what do you
11 see being the give and take in this process? I mean, not
12 necessarily the outcome, but what are the subject matters that
13 would be discussed?

14 And I ask that for this reason. And let me be very
15 clear about this from the very beginning, I think that while we
16 have jurisdiction over UNE rates, it is a very restricted
17 jurisdiction. We don't have the authority to say what UNE
18 rates are necessary to foster competition. That is not within
19 our authority. That has not been given to us. We have to set
20 rates based upon a very narrow interpretation of what TELRIC
21 is, and it has to be based upon those costs, and that is
22 something we can't deviate from. No matter what our personal
23 preference is, we can't do that.

24 CHAIRMAN JABER: Yes. And thank you for the
25 question. Absolutely we are bound by TELRIC. As a matter of

1 fact, the Supreme Court just affirmed that. So absolutely we
2 are bound by TELRIC. But so are the parties. And, yes, in
3 crafting the incentive plan, it needs to be balanced. And my
4 thought is that not wanting to prejudge the outcome, because
5 frankly I don't know what the appropriate outcome is, but it
6 seems to me that the incentive the ALECs have to sit down and
7 play in good faith is you don't know what would happen after a
8 time certain at the end of the settlement process. The fact
9 that we are not -- that in my proposal we wouldn't be
10 implementing lower rates effective today should give the ALECs
11 the incentive to sit down and negotiate in good faith. Because
12 at the end of two months we may be right where we are today.

13 In terms of what is fair game, you know, approval of
14 a 271 application is fair game, and the ALECs conceding their
15 involvement in some of those issues, I think is fair game.
16 And, again, I'm speaking off the top of my head because,
17 Commissioners, we are not sitting here able to know what issues
18 are most important to the players, they are. So I would think
19 everything is fair game. Some UNEs being more important than
20 others and some prices being able to be higher than others, you
21 know, that is fair game. Expediting the 271 process is fair
22 game. From the BellSouth perspective the same is true. You
23 don't know what is going to happen at the end of 60 days.

24 Here is what I do know, though. The FCC has to look
25 at the adequacy of Florida's UNE rates in deciding 271, so

1 while our jurisdiction and our purview may be limited to some
2 degree, the UNE pricing in Florida has to withstand the
3 scrutiny of the FCC for BellSouth to get its 271 approval. So,
4 the way I look at it we are all trying to get to the same
5 place. I have gone on record it is just a matter of time. At
6 least from my perspective, it is a matter of time before
7 BellSouth achieves 271 approval in Florida.

8 I have always looked at the competition issues as
9 having two real markets, one in long distance and one in local.
10 So we are all trying to get to the same place. What I am tired
11 of doing, however, is using our staff resources and Commission
12 time to guess what the parties are willing to live with.

13 You know, the parties can sit there and be critical
14 of PSC decisions or you can take charge of your destiny. And
15 that is what my preference is. So, yes, it has to be balanced,
16 and I think the fact that the companies may not know what would
17 happen at the end of a 60-day period should incent both sides.

18 The other thing, Commissioner, we can talk about
19 under my proposal is having staff take another look at the
20 factors and in their numbers and within a 60-day period, you
21 know, do some of their own modeling and some of their own
22 running with respect to the cost study and see what we get at
23 the end of the 60-day period.

24 One of the things I didn't talk about, Commissioner
25 Deason, was the possibility of taking the Donovan/Pitkin

1 factors and instead of relying on the AT&T fallout numbers,
2 having BellSouth take those factors and run it themselves
3 through the model and see if the same numbers are achieved.

4 COMMISSIONER DEASON: I'm sorry, I didn't follow you
5 on that last one, if you could explain.

6 CHAIRMAN JABER: Sure. Appendix A, if you look at
7 staff's schedule. See where it says AT&T/MCI proposed? As I
8 understand it, and staff would have to correct me if I'm wrong,
9 that column is a result of Donovan and Pitkin's factors, but
10 those numbers were run by AT&T/WorldCom. One of the options I
11 thought of was having BellSouth take the same factors and
12 Donovan and Pitkin's testimonies, and running it themselves
13 through the model to see if they get the same numbers,
14 because --

15 COMMISSIONER DEASON: You're talking about taking the
16 same inputs?

17 CHAIRMAN JABER: Inputs, yes. Factors, inputs, and
18 running it through the BellSouth model to see if the same
19 numbers result.

20 COMMISSIONER PALECKI: And those would be provided to
21 the staff as a late-filed exhibit?

22 CHAIRMAN JABER: No, I'm thinking within 60 days at
23 the end of some settlement negotiation process, you know, that
24 BellSouth will have an opportunity to present a new study using
25 the inputs that were testified to by Donovan and Pitkin.

1 Commissioner Palecki, I am hoping that at the end of 60 days
2 what we really are presented with is a negotiated agreement.

3 COMMISSIONER PALECKI: Well, Chairman Jaber, I agree
4 with you completely. I think that the parties in these
5 proceedings are much more knowledgeable as to, one, where the
6 UNE rates should be set; two, what is important. What is
7 important to the CLEC community as far as UNE rates. And that
8 is something that I don't think through these proceedings we
9 ever really learned. The record didn't really show me what was
10 really -- what they felt they needed, which were significant
11 and which were not. And I certainly think the parties are in a
12 much better position than this Commission to come up with a
13 result that is fair and that will result in greater competition
14 in the State of Florida. So I support your suggestion.

15 CHAIRMAN JABER: Do you want to go through some
16 questions and revisit --

17 COMMISSIONER DEASON: Well, let me say this. First
18 of all, I think that staff has done a very thoughtful analysis
19 given the time frames and the record upon which they had to
20 work with. The fact of the matter is this is an extremely
21 complex area. And when you are dealing with models, even
22 though intuitively you think that if you would change certain
23 inputs a certain direction that there would be certain outputs
24 that would also change in a certain direction, there should be
25 some pattern. Reading the staff recommendation and discussing

1 it further with staff in person, that is not the case.

2 Intuition is not a good basis to determine what the
3 outcomes of the model are going to be, but you get confidence
4 from your intuition. If you feel like you have changed an
5 input a certain direction and you know how it generally impacts
6 a system and where it comes into play in providing services,
7 you would think that if you changed it up or down, well, then
8 you would have a like effect on certain rates which are
9 associated with that particular element or input that you
10 changed.

11 And, staff, I'm not trying to put words in your
12 mouth, but that intuition did not play through the model and
13 there is some doubt as to whether there may be some
14 inconsistencies within the model. Is that a fair
15 characterization? And if it is not, please correct me.

16 MR. BLOOM: I couldn't put it better myself. Yes,
17 sir. That is certainly one of the concerns that staff has
18 identified.

19 COMMISSIONER DEASON: Okay. But do we have anything
20 better?

21 MR. BLOOM: I would have to say at the present time,
22 no.

23 CHAIRMAN JABER: Do we have anything equally bad?

24 MR. BLOOM: I don't want to comment on the cost
25 models in the other phase of this proceeding because I haven't

1 been familiar with those.

2 CHAIRMAN JABER: No, I was referring to this
3 proceeding.

4 COMMISSIONER DEASON: Well, I guess at this point we
5 have to make a decision based upon the evidence in the record.
6 You know, you can view that as complete or incomplete or
7 questionable or not, but that is our job. If we were to --
8 Madam Chairman, I assume you are talking about holding this in
9 some type of an abeyance for there to be a period of
10 negotiation, and in the meantime directing staff to do some
11 further analysis and some different runs, or maybe even
12 directing BellSouth to put different inputs within the model
13 and see what those outcomes are.

14 CHAIRMAN JABER: Actually, Commissioner, if I could
15 make a motion, or if I gave the gavel up and made the motion, I
16 think I would be even more drastic than that. Let me tell you
17 what my motion would be. It would be to go ahead and vote on
18 the factors that were included in Donovan and Pitkin's
19 testimony, including those factors, those numbers as shown in
20 Appendix A. That would be my vote today. But to hold the
21 implementation of those UNE prices for a period of 60 days.
22 And during that 60-day period I would want all of the
23 stakeholders to negotiate the UNE prices.

24 You know, asking staff to run any new numbers,
25 Commissioner, that really isn't part of it. We can do that

1 internally. That is not necessarily part of my request. My
2 request is really to have the stakeholders negotiate during a
3 60-day period. And the reason I would want the Donovan/Pitkin
4 numbers to go ahead and be voted out today is because I want to
5 provide that as some sort of direction. I recognize that the
6 \$6.83 -- whatever it is, \$6.53 may not be logical and may be
7 too low, but UNE pricing should be moving toward that
8 direction.

9 Now, what would happen at the end of the 60-day
10 period? Hopefully we get a negotiated agreement. And if we
11 don't, we need to come back and revisit this decision.

12 COMMISSIONER DEASON: Madam Chairman, that gives me
13 some concern. I'm not so sure that it is appropriate to vote
14 out anything if you want parties to negotiate. It seems to me
15 that sometimes parties being in a state of, I don't know,
16 fearing the unknown as to what this Commission may do may be
17 the strength that each party needs to negotiate, so that I
18 would not be comfortable voting out anything if you want
19 negotiations to take place. That would be my preference.

20 COMMISSIONER PALECKI: Chairman Jaber, I would be
21 concerned with the finality of our vote if we did vote out the
22 Donovan and Pitkin factors today. I'm not real clear -- and
23 perhaps this is something General Counsel could help with,
24 where we would be in 60 days if we did want to withdraw from
25 that vote. As you stated, some of the factors do seem low,

1 some of them weren't strongly supported in the record. As long
2 as I had a comfort factor that I could revisit and in 60 days
3 vote out what I felt were the correct factors, I wouldn't have
4 a problem. But otherwise, I would have to say I agree with
5 Commissioner Deason that maybe we -- I am just concerned about
6 the finality of what our actions may be today if we voted out
7 those factors.

8 CHAIRMAN JABER: Yes. And certainly General Counsel
9 needs to answer that question for you and give you whatever
10 comfort level you desire. It was my intent, Commissioner
11 Palecki, to build into the proposal that we ultimately end up
12 agreeing on some sort of mechanism that allows us to revisit
13 it. So it's not that I don't share your collective concerns, I
14 do. I just also want to be able to reconcile it with giving
15 the parties direction. You know, I want to give them
16 something, a goal to work toward. And maybe we can do that
17 informally without actually approving factors.

18 But the reverse is true. Your concern also exists if
19 we just vote on 1B and keep everything status quo. So I was
20 trying to find that middle ground. And I don't pretend to
21 believe that this is the best approach. I just don't know.

22 Mr. McLean.

23 MR. McLEAN: Yes, ma'am. Finality is a concern, but
24 I hear you say that we can employ a procedural device to
25 perhaps include in your judgment today that we will revisit it.

1 So I think the finality issue is one which we can accommodate.

2 CHAIRMAN JABER: It would be a procedural order? If
3 you hold something in abeyance or suspend it, it's just a
4 procedural order.

5 MR. McLEAN: I think so. I think it is an
6 interlocutory order which would not be appropriate to be
7 reviewed at this time. I am concerned about the finality
8 thing, too, but I think we can craft an order that would answer
9 that concern.

10 COMMISSIONER DEASON: Well, Madam Chairman, you know
11 -- and I'm not trying to put words in your mouth, either, but
12 I'm just trying to better understand. If you are wanting the
13 parties to not rely on one set of numbers above another and the
14 fact that -- and you want to send a signal to all of the
15 parties that what staff is recommending may not be the final
16 outcome, I think you have already done that. So I'm not so
17 sure voting on anything is necessary at this point, whether it
18 is held in abeyance or there is language in the order that we
19 are going to revisit. You know, I'm uncomfortable voting out
20 something and then saying, well, we are going to revisit it,
21 though. I mean, if you're uncertain about it, just don't vote
22 on it at all and wait for 60 days and cast your vote.

23 CHAIRMAN JABER: I think what is different, though,
24 is the requirement for them to sit down and negotiate. That is
25 absolutely different. And because we have spent the last two

1 years requesting, encouraging, sending the signals. And, yes,
2 absolutely they all now know where I am on this issue. But the
3 difference would be with this proposal is the Commission making
4 an affirmative vote that you sit down and cut the deal or we
5 will come back in 60 days and make someone unhappy. And I
6 would like to not reach that point. I would like to not reach
7 that point.

8 COMMISSIONER PALECKI: Commissioner Deason, I think
9 the value of actually making a vote on some factors is that
10 parties often view the staff recommendation as kind of the end
11 all and be all. They think that because the Staff
12 recommendation may be favorable to their position, they are in
13 a stronger bargaining position and may try to use that to dig
14 in their heels. And my concern is if we just, for example,
15 deferred our vote on the factors, that there might be that --
16 there might not be as fruitful negotiations as there might
17 otherwise be if the parties had maybe a better indication of
18 the direction we wanted to go.

19 COMMISSIONER DEASON: Well, you know, I can respect
20 that. I just respectfully disagree. And I think that if all
21 you are going to do is read the recommendation, staff's
22 recommendation is not a glowing endorsement of BellSouth's
23 model. So I don't think BellSouth should take any particular
24 comfort by the fact that staff is recommending some defaults or
25 rather the fact that, I guess, in essence staff's primary

1 recommendation is not make changes because they are not
2 comfortable in making the changes. I'm not sure that that is
3 an endorsement that BellSouth should take a lot of confidence
4 in.

5 So I don't agree that by us doing nothing at this
6 point that that is a message that staff's recommendation is the
7 starting point or is the basis. I mean, I think that
8 negotiations are probably best when the parties are really
9 fearful as to what the outcome is going to be, and we shouldn't
10 send any messages really one way or another by voting out
11 anything. So that is my preference. But, you know, this is a
12 three-member panel, and I can count, and if there are two that
13 want to do that, that's fine. I can respect that decision.
14 It's just not what I think is best.

15 CHAIRMAN JABER: And that's fine. I'm not even
16 suggesting we call this for a vote right now. Just in reaction
17 to that, the other thing to think about is even though in 1B
18 staff is recommending that nothing change, in 1A they recognize
19 that there are some factors that were included in Donovan and
20 Pitkin's testimony that were appropriate.

21 So when you try to apply those factors, though, to
22 the current UNE prices, it still doesn't make a significant
23 difference. So the other thing about not doing anything and
24 not voting it out today and allowing a negotiation period
25 without a vote is that it doesn't bring UNE pricing down.

1 Where staff's recommendation -- and they know it is not
2 critical of staff's rec, because I have spent a significant
3 amount of time with them on this item. Where staff
4 recommendation stops short is taking that next step and
5 requiring a mechanism that brings UNE prices down.

6 Okay. Commissioners, what is your pleasure?
7 Commissioner Palecki, I heard you agree with my proposal, not
8 necessarily all of it. Honestly, we can go to questions.

9 COMMISSIONER PALECKI: Well, let me ask Commissioner
10 Deason a question. If we decided not to vote out any factors,
11 what would you suggest we do, simply defer our vote for 60 days
12 on that? Would that be a --

13 COMMISSIONER DEASON: Yes. I don't think there is
14 anything critical about making a vote today. And these factors
15 wouldn't even be effective until there is an agreement that
16 comes up for renewal. And I don't know if there are any
17 agreements that are going to be coming up for renewal within
18 the next 60 days. Maybe staff knows. But, yes, to answer your
19 question, I would just hold a vote in abeyance and see what
20 results after the 60 days.

21 CHAIRMAN JABER: So it would be hold the vote in
22 abeyance and require negotiation for 60 days?

23 COMMISSIONER DEASON: Well, yes, to the extent we can
24 require parties to negotiate. I guess, you know, if they come
25 to a room and sit down at a table and say good morning and they

1 are there, I guess they can call that negotiation. And, you
2 know, I guess it's in the eyes of the beholder, you know, how
3 engaged people are in the process. And they could sit in a
4 room for 60 days and then walk out and say we tried, but we
5 couldn't do it. Hopefully it won't be that. I'm just not so
6 sure when you say require it what you mean by requiring it. I
7 mean, we can certainly strongly suggest that it is an
8 appropriate endeavor, but --

9 CHAIRMAN JABER: You know, we deal with -- the
10 industry is professional, and I don't want my comments to be an
11 indication that I don't believe they will sit down and
12 negotiate in good faith. I absolutely don't want to send
13 anyone that message. If anything this last legislative session
14 we have seen how cooperative the industry has been in its
15 willingness to sit down and negotiate. But it is that very
16 point, Commissioner Deason, that I was trying to address. I
17 don't -- I want them to get busy in 60 days. I don't want them
18 to just show up and say good morning. We tried, PSC, we tried.
19 And they have not given me a reason to believe that would
20 happen and certainly I am telling you I don't want that to
21 happen, so --

22 COMMISSIONER DEASON: Yes, and I agree with you. I
23 mean, the companies are professional, they are run by
24 professional people, and I'm sure they will make every endeavor
25 to -- I guess we can't require that there be a settlement, and

1 hopefully there will be fruitful negotiations. I guess I will
2 just leave it at that.

3 COMMISSIONER PALECKI: And I would like to make a
4 further suggestion, and that is that we make a staff mediator
5 available to the parties and encourage the parties to use the
6 services of the mediator in their negotiations. And that is
7 especially if they get together and are unable to make
8 progress, that they call in the mediator to try to help them
9 along.

10 CHAIRMAN JABER: And, Commissioners, at the end of
11 the 60 days, we will need to revisit this docket, because part
12 of your suggestion is that this be held in abeyance, right?
13 It's not an out and out deferral; it would be holding the
14 proceeding in abeyance?

15 COMMISSIONER DEASON: Well, I guess I need some
16 clarification. What is the difference between just deferring
17 this and setting aside a period of time for negotiations and
18 encouraging such negotiations and holding it in abeyance, is
19 there a difference?

20 CHAIRMAN JABER: Mr. McLean, just my own opinion
21 would be holding it officially in abeyance would require an
22 order, right? There would be an order memorializing that
23 decision. A deferral is, you know, ministerial. A deferral is
24 a deferral.

25 COMMISSIONER DEASON: Okay. So you would envision an

1 order being issued holding it in abeyance and setting forth a
2 general framework, an expectation for there to be a negotiation
3 period?

4 MR. McLEAN: Yes, sir, we can do that. But it would
5 be a procedural order in nature, and we will discuss your
6 expectations for the forthcoming 60 days in the order.

7 COMMISSIONER DEASON: That's a good clarification. I
8 think that it would be helpful to have that clarification given
9 in an order.

10 MR. McLEAN: I want to add to Commission Palecki's
11 point that, of course, our mediators are standing by to help.
12 Anything we can do to aid in the process, I'm sure the parties
13 will feel free to call us, and I invite them to do so.

14 COMMISSIONER DEASON: Well, one thing, it seems like
15 that it is looking more and more like that is going to be the
16 end result of today's decision, or lack of a decision, however
17 you want to characterize it. But if that is the result, I
18 would -- just speaking from the bench as one Commissioner, 60
19 days is relatively a short period of time. I think the
20 parties -- which I think they probably would do anyway, but
21 they need to concentrate on what is important to them. And,
22 you know, when I've got an appendix that has got as many rates
23 in here as what is in staff's recommendation, you know, I bet
24 you could poll the parties out there, and they're professionals
25 that specialize in telecommunications, I bet some of the folks

1 sitting in this room right now don't even know what some of
2 these things are that we are trying to set rates for, and they
3 are the professionals.

4 Now, this just illustrates the amount of complexity
5 that the parties are asking us to decide. You know, some
6 direction as to what is important to them and really what the
7 drivers are if we are going to see competition move, I mean
8 that would be helpful to me. If nothing else, even if they
9 can't agree on the numbers, if they could come back and say,
10 look, Items 1, 2, and 3, these are the important issues and
11 this is why they are important, and we just can't come to
12 agreement on the numbers. But if you could do something, that
13 is going to be helpful.

14 You know, some of these things we could spend hours
15 talking about some of the inputs and how it changes some of
16 these rates, and my guess is that most of the people sitting in
17 the room today wouldn't really care. There are probably a few
18 key rates out there that are important. And I may be totally
19 wrong on that. Maybe that is just my intuition and it is
20 totally incorrect.

21 But if we could get some direction as to, folks,
22 let's just concentrate on what is important and let's take the
23 Commission's time and really thoroughly review what is
24 important. And maybe every single rate that staff is
25 recommending that we said is important. And if that is the

1 case, tell us. My intuition says no, they are not. So that is
2 just -- I guess I'm venting a little frustration.

3 COMMISSIONER PALECKI: I would like to make another
4 suggestion, and that is at the end of the 60 days, that if the
5 parties have come to agreement on some of the rates, but not
6 others, that we be given those that they have come to an
7 agreement on and only be asked to decide those rates that they
8 have been unable to reach agreement on. So that if there is a
9 partial agreement by the parties at least we have the benefit
10 of that. And that we only have to decide on those issues that
11 the parties are completely at loggerheads on. So that we don't
12 have an all or nothing type of proposal here.

13 CHAIRMAN JABER: I think that is appropriate to add
14 in an order actually, don't you think?

15 MR. McLEAN: Yes, ma'am, we can do that.

16 COMMISSIONER DEASON: Well, let me just throw in a
17 word of caution and clarification. Maybe if I can get it
18 clarified maybe I don't have a caution. Is it your suggestion
19 that if there are agreements that they be clearly spelled out
20 as to what is being agreed to and then what we have to decide?
21 If that is the case, that doesn't really cause me a lot of
22 caution. But if it is a situation where we are requiring them
23 to come forward with numbers and then we start tinkering with
24 them, I think that is not going to result in any more future
25 negotiations.

1 Usually it's all or none because there is give and
2 take and maybe the parties are willing to give on this because
3 they are getting something over here. And then if we approve
4 what they get over here but then we don't approve the other
5 side of the equation, well, then it's not really fair. So I
6 guess obviously they are going to have to have the ability to
7 come and say on what we agree it is all or none, Commission,
8 you know, because there was a lot of give and take. And some
9 things we gave up on but we got something over here, so we have
10 got to get the whole package or it's no deal. I think that it
11 just inherent in any negotiation.

12 CHAIRMAN JABER: Commissioner Palecki.

13 COMMISSIONER PALECKI: And I guess you are saying on
14 those factors or those rates upon which they agree.

15 COMMISSIONER DEASON: Yes.

16 COMMISSIONER PALECKI: I am just concerned -- and the
17 only reason I made my suggestion is that so often parties do
18 take an all or nothing approach, and until every rate is worked
19 out we don't have an agreement. And I'm afraid that if we go
20 in that direction, or if the parties go in that direction, we
21 could just end up exactly where we are today after 60 days.
22 And that's what I'm trying to avoid.

23 So if the parties are able to, you know, easily
24 negotiate through maybe half or two-thirds of these rates, and
25 just knock them out one after the other, at least we have the

1 advantage of those agreements rather than coming back after 60
2 days with nothing at all.

3 COMMISSIONER DEASON: Well, let me say -- and that
4 kind of goes back to what I was trying to express earlier. I
5 think the parties need to concentrate on what is important to
6 them. And, you know, I don't know how many rates are in here
7 that we are being asked to set. It looks like in the order of
8 a thousand or something. I don't know, how many are there?
9 How many rates are we actually recommending?

10 CHAIRMAN JABER: Something like 1,400.

11 MR. DOWDS: Probably hundreds here.

12 COMMISSIONER DEASON: Hundreds, yes. Anyway, there
13 is a lot. I mean, it is page after page after page. Obviously
14 some are more important than others. And, you know, 60 days is
15 a short period of time. The parties need to concentrate on
16 what is important. And if they can come up with a package that
17 maybe doesn't address every single rate, but say here is a
18 package and this is all or none for these, fine. I think we
19 can live with that.

20 COMMISSIONER PALECKI: And the one other thing I
21 would like to clarify is what our expectations will be of our
22 staff. We had talked about having staff take another look at
23 the factors and do some of their own modeling. And we have
24 also talked about asking BellSouth to take AT&T's numbers and
25 run those numbers through the models. Is that something that

1 we want to have included in our order here?

2 CHAIRMAN JABER: No. I think, Commissioner Deason's
3 point with respect to not voting out specific factors, you
4 know, I heard that. I listened to that. And he raises good
5 points. The other point, I suppose, in that regard is to some
6 degree BellSouth has got to do that anyway so that they are
7 able to better negotiate with the companies, with the ALECs.
8 So, they are big boys it seems to me. If anything, BellSouth
9 has already run those numbers. I would expect that they have
10 already run them. I don't know that I have to require it.

11 My only point, Commissioner Palecki, in even
12 suggesting it as an option from the beginning was to send them
13 the message on where the direction of UNE pricing should be, so
14 I can certainly back off of that suggestion. With respect to
15 staff, you know, I'm not prepared today to suggest publicly
16 what staff may or may not be doing in the next 60 days. Part
17 of it because I don't know.

18 COMMISSIONER DEASON: Well, let me ask, do you
19 envision that the possibility exists that after 60 days, and
20 being a pessimist, which I hope is not the outcome, we don't
21 have a settlement or some type of a direction from the parties
22 as to at least what is important, is it possible at that point
23 that we are going to find it necessary to give staff further
24 direction and go back and do further analysis, and so we are
25 further delaying. I guess that is a possibility we will have

1 to face at that time.

2 CHAIRMAN JABER: I hope there is no possibility of
3 delay, but, you know, I would be remiss in not -- it depends on
4 what happens in the 60 days, don't you think?

5 COMMISSIONER DEASON: I guess the question is, is
6 there something that we know in the back of our minds that we
7 want staff to go ahead and have in hand if we come back in 60
8 days? Because we have got a window of opportunity, staff can
9 do some further analysis if we know something already that we
10 want them to do. And I don't --

11 CHAIRMAN JABER: That's a good question.

12 COMMISSIONER DEASON: Just to see that -- hopefully
13 when we come back we don't have to delay it any longer.

14 CHAIRMAN JABER: That's a good question from my
15 perspective, and maybe collectively we can come up with a role
16 for staff in the next 60 days.

17 COMMISSIONER DEASON: And I see I have succeeded in
18 bringing Walter to the table.

19 CHAIRMAN JABER: Oh, man. I won't acknowledge him if
20 you don't want me to.

21 COMMISSIONER DEASON: That's fine. Just ignore him.

22 CHAIRMAN JABER: From my perspective I was troubled
23 by the inclusion of the linear loadings that seemed to defeat
24 the purpose of our requiring the 120-day filing. In some of
25 the issues that Anne Marsh worked on with respect to DUF, I

1 think you already caught some things that were inappropriately
2 included and you are recommending that they be taken out. You
3 know, perhaps we could ask staff to go back and look at the
4 numbers to try to make the cost study compliant. I was hoping
5 to not waste time, but I guess if nothing happens and at the
6 end of the 60 days if we don't have staff work on some of these
7 issues, then we are forced to delay it.

8 COMMISSIONER DEASON: Madam Chairman, at the peril of
9 doing so, I am going to ask Walter what he came up to the table
10 for.

11 MR. D'HAESELEER: Well, I have been listening, and I
12 remember a lot of discussions with the staff when the
13 recommendation was being written that maybe there are some
14 other things we need to look at and see what the impact of the
15 loading factors are and a few other things. And maybe if there
16 is no settlement, there might be another recommendation that
17 the staff would offer as a result of some of these studies that
18 we will conduct in the 60 days.

19 COMMISSIONER DEASON: My only concern -- my concern
20 is a simple one, Madam Chairman. And that is if we know that
21 there is some further analysis that we are going to need to
22 make an informed decision, we have got a 60-day window of
23 opportunity, why not let staff do that? In a nutshell that is
24 my concern.

25 CHAIRMAN JABER: Yes. And the areas of concern that

1 I have I have just made known, so we can certainly request that
2 our staff go back and look at removing the linear loadings
3 where you can easily find them. So, yes, Commissioner, your
4 point is well taken. And to the degree you and Commissioner
5 Palecki have some other areas you would like staff to work on,
6 please feel free.

7 COMMISSIONER DEASON: Well, I don't. Maybe I'm
8 remiss in not, but I don't have any. But my concern was that
9 we had some -- we have had a good bit of discussion about staff
10 doing some further work, further analysis, and doing some
11 things, and I was just saying that, you know, why not go ahead
12 and take advantage of the window of opportunity to do some
13 things so that when we come back -- hopefully we have, you
14 know, a nice neat package when we come back. But if we don't,
15 then we have got that further analysis that may be useful. But
16 I don't have a specific request of staff myself.

17 COMMISSIONER PALECKI: Well, Chairman Jaber, I would
18 like to make a motion, and that is I would like to make a
19 motion consistent with your suggestions as well as with
20 Commissioner Deason's suggestions, that is that we hold UNE
21 prices in abeyance for a period of 60 days.

22 CHAIRMAN JABER: I'm sorry, Commissioner, not that we
23 hold UNE prices in abeyance, right?

24 COMMISSIONER PALECKI: No, we hold this proceeding in
25 abeyance for a period of 60 days; that we not vote on the

1 factors today; and that we encourage the parties to negotiate
2 an agreement that hopefully they will present to us at the end
3 of the 60-day period.

4 COMMISSIONER DEASON: The 60 days begins from today
5 or from the issuance of the order?

6 CHAIRMAN JABER: What is today?

7 COMMISSIONER DEASON: June 13th.

8 CHAIRMAN JABER: Today is just as good as any other
9 day. Sixty days from today's vote, Commission Palecki, or from
10 the order?

11 COMMISSIONER PALECKI: Well, let us ask staff. Sixty
12 days is a very short period of time. I guess the issuance of
13 the order staff has -- is it 21 days?

14 CHAIRMAN JABER: Well, before staff answers, the
15 reason I was thinking 60 days, there is an OSS workshop in
16 July, and we are currently scheduled to vote on 271 in
17 September, if I'm not mistaken.

18 COMMISSIONER PALECKI: So time is of the essence.

19 CHAIRMAN JABER: I thought time was of the essence,
20 because, again, everything is fair game in negotiation. So 60
21 days with the 21 days for the order. And not that -- I'm sure
22 Ms. Keating can expedite the order, but that, you know, then
23 becomes 90 days and then we are --

24 COMMISSIONER PALECKI: Well, I will go ahead and make
25 the motion 60 days from today, from the date of our vote.

1 COMMISSIONER DEASON: Let me ask a question. And I
2 guess this is procedural/legal, whatever, what we are doing
3 here, and you have heard the motion, are we on sound legal
4 ground? I mean, this is something that is within our
5 discretion to do and we are not violating anybody's due process
6 rights or anything like that?

7 MS. KEATING: I believe that you are on sound legal
8 ground. You are not imposing a decision at this time, you are
9 just requiring the parties to go back and talk a little bit
10 more. I don't see any problem with that at all.

11 CHAIRMAN JABER: A lot more.

12 MS. KEATING: I stand corrected.

13 COMMISSIONER DEASON: And so we are making no
14 decision today at all, not even making a decision and holding
15 that decision in abeyance as far as any particular rate, that
16 is your motion?

17 COMMISSIONER PALECKI: Yes, it is.

18 COMMISSIONER DEASON: Okay. I second that.

19 CHAIRMAN JABER: And just to clarify further, that is
20 why I corrected Commissioner Palecki, the current rates are the
21 current rates, we are not going anything that affects that.
22 Okay. There has been a motion and a second to hold this
23 proceeding in abeyance for 60 days from today and the parties
24 are required to negotiate in that 60-day period. All those in
25 favor say aye.

1 (Simultaneous affirmative vote.)

2 CHAIRMAN JABER: Show that motion approved
3 unanimously.

4 Is there anything else we need to do for today? You
5 will be expediting the order?

6 MS. KEATING: Yes, Madam Chairman.

7 CHAIRMAN JABER: Anything, staff, we need to do?
8 Okay. That concludes this agenda.

9 (The agenda concluded at 10:32 a.m.)

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STATE OF FLORIDA)

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COUNTY OF LEON)

CERTIFICATE OF REPORTER

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

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

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

DATED THIS 18TH DAY OF JUNE, 2002.



JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732