

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 020119-TP - Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.

COPY

BEFORE:

CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI
COMMISSIONER RUDOLPH BRADLEY

PROCEEDINGS:

AGENDA CONFERENCE

ITEM NUMBER:

11

DATE:

Tuesday, June 18, 2002

PLACE:

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Tallahassee, Florida

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MATTHEW FIEL and MIKE GALLAGHER, on behalf of Florida Digital network, Inc.

PATRICK TURNER, on behalf of BellSouth Telecommunications, Inc.

JOSEPH MCGLOTHLIN, on behalf of Access Integrated Networks.

VICKI GORDON KAUFMAN, on behalf of Florida Competitive Carriers Association.

MARGARET RING, on behalf of Network Telephone Corporation.

HAROLD MCLEAN, MICHAEL BARRETT, PATTY CHRISTENSEN, BOB CASEY, and CHERYL BULECZA-BANKS, on behalf of the Commission Staff.

STAFF RECOMMENDATION

ISSUE 1: Should BellSouth's 2002 Key Customer tariff filing (T-020035) be canceled?

RECOMMENDATION: No. BellSouth's 2002 Key Customer tariff filing (T-020035) should not be canceled.

ISSUE 2: Should any restrictions be placed on BellSouth's marketing practices used for BellSouth's "win-back" promotions?

RECOMMENDATION: Yes. BellSouth should be prohibited from initiating any "win-back" activities to regain a customer for 30 days after the conversion to an Alternate Local Exchange Company (ALEC) is complete. The Commission should also prohibit BellSouth from including any marketing information in its final bill sent to customers who have switched providers, and prohibit BellSouth's wholesale division from sharing information with its retail division, such as informing the retail division when a customer is switching.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If no person whose substantial interests are affected protests the Commission's PAA decision within 21 days of the issuance of the order from this recommendation, the order will become final upon issuance of a consummating order.

If, however, a timely protest of the Commission's PAA order is filed, this matter should be set for hearing to address the issues in dispute. The issues set forth herein should be considered

severable, and any issue not specifically protested should be deemed stipulated in accordance with Section 120.80(13)(b), Florida Statutes. The docket should remain open pending the outcome of the hearing. Pending the resolution of the hearing process, staff believes that BellSouth should be precluded from filing any tariff that extends, mirror, or builds upon the 2002 Key Customer Tariff provisions addressed in the proceeding until the Commission resolves the matters addressed at hearing. Staff notes that pending the outcome of the hearing there would be no need to address revenues collected under the tariff since the tariff will terminate prior to the anticipated close of the protest period.

PROCEEDINGS

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CHAIRMAN JABER: That takes us to Item 11.

All right. Staff, I understand there is an oral modification to Item 11.

MR. BARRETT: Commissioners, that is correct. Good morning. Our correction is on page 21. The second sentence of the second paragraph ends with the word "ILEC," I-L-E-C. The sentence should end with the word "ALEC," A-L-E-C.

COMMISSIONER BRADLEY: Would you repeat that, please?

MR. BARRETT: Yes. Page 21, the second sentence of the second paragraph ends with the word "ILEC." The sentence should end with the word "ALEC."

CHAIRMAN JABER: Do you have an introduction to make?

MR. BARRETT: Yes.

Commissioners, Item 11 is a recommendation that came about based upon a complaint filed by Florida Digital Network, Inc., FDN, against a BellSouth Telecommunications tariff. The tariff was a promotional tariff. And two principal issues came out in the FDN petition. The first

1 issue was the tariff itself, and the second
2 issue was the marketing practices, and staff's
3 recommendation essentially follows that outline.
4 Issue 1 addresses the tariff itself. Issue 2
5 looks at the marketing practices.

6 I would also note that representatives from
7 the parties are here, and also I believe there
8 are intervenors here that may wish to
9 participate.

10 CHAIRMAN JABER: Thank you, Mr. Barrett.

11 This was initially started, staff, based
12 upon FDN's petition, so it would be appropriate
13 to let them make their presentation first.

14 MS. BANKS: Madam Chair, I think that would
15 be an appropriate manner to address this.

16 CHAIRMAN JABER: Mr. Feil.

17 MR. FEIL: Thank you, Madam Chair.

18 My name is Matt Feil. I'm here on behalf
19 of Florida Digital Network. With me here is
20 Mike Gallagher, who is Florida Digital's CEO.

21 In the way of background, there are
22 basically three high level issues we're dealing
23 with in this complaint, all pertaining to
24 BellSouth's win-back programs. One is whether
25 or not they're anticompetitive; two, whether

1 they're discriminatory; and three, whether or
2 not there's any inappropriate cross-subsidies.

3 As Mr. Barrett said, FDN petitioned the
4 Commission sometime around Valentine's Day to
5 halt a new BellSouth win-back tariff known as
6 the 2002 Key Customer Program, and to
7 investigate all BellSouth win-back programs and
8 practices.

9 The new tariff and the features of that new
10 tariff are summarized on pages 4 and 5 of the
11 recommendation. Some of the key features of
12 that you'll hear us referring to are as follows:

13 One is that it is available only to
14 business customers and only to business
15 customers in competitive wire centers know as
16 hot wire centers.

17 Second is that the discounts are of up to
18 25% of total billed revenue, plus there is an
19 additional discount of up to 100% of a feature
20 known as hunting, which is a common feature
21 purchased by business customers that have
22 multiple lines.

23 The other feature that we'll be referring
24 to of the win-back program is the termination
25 liability. Under the pending -- excuse me.

1 Under the existing tariff, BellSouth structured
2 the termination liability such that customers,
3 if they chose to leave the program early, would
4 have to repay BellSouth all the discounts.
5 Under a tariff that BellSouth filed last week,
6 what I'll refer to as the pending tariff, they
7 altered the termination liability somewhat, and
8 I'll discuss that momentarily.

9 The points that we want to address relative
10 to the staff recommendation are basically points
11 that we think that the staff recommendation
12 doesn't address adequately, or arguments that
13 the staff overlooked, or things where we have
14 questions about what the intent of the
15 recommendation is, to make sure that we're clear
16 on what the Commission's decision will cover.

17 The first point of discussion is that
18 staff's focus seems to be on whether or not
19 BellSouth is charging compensatory rates after
20 application of the two discounts, the discount
21 to total billed revenue and the discount to
22 hunting, in a typical customer example. While I
23 accept that there is a specific test stated for
24 compensatory rates on an issue of
25 cross-subsidies, in stark contrast, relative to

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a Commission determination of anticompetitive pricing, there's no test stated in the statute whether or not they have to be compensatory or not. There's no baseline stated in the statute by which the Commission has to judge. The test is simply whether or not the pricing is anticompetitive.

With this in mind, to cover some of the anticompetitive aspects of the win-back program, Mr. Gallagher would like to address the Commission, and then after he finishes speaking, there are four or five other points I wanted to cover, with your permission.

CHAIRMAN JABER: Mr. Gallagher.

MR. GALLAGHER: Thank you. Thank you for this time today.

I wanted to make basically four points to illustrate what's really happening from our perspective on the market level as far as this issue. First of all --

MR. TURNER: Madam Chair, I apologize. I wanted to just raise a concern I have.

CHAIRMAN JABER: Identify yourself.

MR. TURNER: I'm sorry. Thank you. I'm Patrick Turner representing BellSouth

1 Telecommunications.

2 At this stage, there certainly has been
3 discovery conducted. But I'm concerned that
4 what this amounts to now is testimony that
5 cannot be cross-examined regarding a petition
6 there's before the Commission, and I would
7 object to Mr. Gallagher's speaking. I think to
8 the extent there is a record before the
9 Commission, it is certainly fair game to talk
10 about that record. But at this point, in
11 effect, I'm faced with a person, who frankly has
12 been a witness for FDN in several proceedings,
13 giving testimony that I can't cross-examine on,
14 and I think that's inappropriate.

15 CHAIRMAN JABER: Mr. Feil, your response?

16 MR. FEIL: Commissioner, this is a PAA
17 proceeding. Interested persons may participate.
18 The public may participate. To me, Mr. Turner's
19 argument really has no validity.

20 CHAIRMAN JABER: Yes. Mr. Turner, it's
21 longstanding practice at the Commission that
22 agenda items that are noticed as parties may
23 participate are fair game. With respect to your
24 proceedings, your cross-examination
25 opportunities exists there.

1 MR. GALLAGHER: And I'm going to speak
2 specifically to the staff recommendation as
3 well, so I --

4 CHAIRMAN JABER: Go ahead, Mr. Gallagher.

5 MR. GALLAGHER: Thank you.

6 Again, the staff recommendation implies
7 this is a promotion. To me, a promotion is
8 something with a sunset. This tariff has been
9 effectively renewed as of the end of this
10 month. So it went on for six months, and it's
11 going to go on for another six months. So from
12 our perspective, this isn't a promotion. This
13 is a perpetual predatory pricing vehicle.

14 Second of all, the Key Customer discount as
15 is talked about in the staff recommendation
16 currently says 25% off the retail rates of your
17 business, you can get 25% off the retail rack
18 rate, if you will, plus free hunting. And this
19 sort of sounds benign, but the point I want to
20 make is, our typical small business customer is
21 a three- or four-line customer. A typical
22 business with four lines will have three lines
23 with their main number published on them, and
24 they will buy this feature called hunting.

25 Hunting allows -- when the first line is

1 busy, the call rolls to the second line, or
2 third, et cetera. The fourth line is typically
3 kept separate for a modem or a fax line. But
4 almost all of our customers buy hunting, and
5 hunting is the most expensive feature out there.
6 It's a \$10 feature.

7 So if you take a look at a \$36 rack rate
8 for what is BellSouth's, give or take a dollar
9 in a rate zone, a \$36 rate plus a \$10 hunting
10 charge, if you take the \$36 and discount by 25%,
11 you get \$27, and then you take the hunting and
12 discount from \$10 down to zero, you have
13 effectively a \$46 comparison to a \$27 comparable
14 line. So it's not a 25% discount. I calculate
15 that to be a 41 percent discount. So taken at
16 its face value, the staff recommendation does
17 talk about the 100 percent hunting discount.
18 But what's really happening in the market, from
19 a customer standpoint, it looks to them like a
20 41% discount, and that's what we have to compete
21 with.

22 With high UNE rates in Florida and now a
23 41% discount coming down on us, we feel a big
24 squeeze now. We're starting to feel a squeeze
25 in between, and we believe this has just gone

1 too far in terms of pricing.

2 To me, they shouldn't be able to raise
3 their prices 4%, whatever they just did, you
4 know, 34 -- the \$36 charge was \$34 at the
5 beginning of the year, but it just raised up.
6 So if you're not subject to competition, you get
7 a price increase. That's just --

8 CHAIRMAN JABER: What charge was just --

9 MR. GALLAGHER: The basic line rate bumped
10 up by about 4% at the beginning of the year, and
11 certain features went up as well. That happened
12 last year as well. It has happened every year
13 since FDN has been in business. That basic line
14 rate has crept up.

15 The third point that I wanted to make is
16 that the staff recommendation seems to imply
17 that this discount is available to everyone. I
18 would hold out that it is not available to
19 everyone. It is specifically targeted at
20 customers who have switched over to a CLEC, and
21 it's not marketed. It may be available to
22 everyone, but you really have to know how to get
23 it. You have to call a certain number, and you
24 have to really be in a competitive situation.

25 Remember, the ILEC has an inherent

1 advantage, in that they know who has left their
2 service. The wholesale side can say, "Here's
3 all the folks that have disconnected, retail
4 guys. Why don't you give these guys a call and
5 offer them the Key Customer discount." So
6 that's an advantage that we'll never have.

7 The fourth point that I wanted to make is
8 that I believe that there's a precedent for this
9 Commission to regulate a nascent communications
10 industry such as local. In the early days of
11 long distance competition when MCI was just
12 getting started and AT&T would attempt some sort
13 of -- the then dominant carrier would attempt
14 some sort of predatory pricing, the FCC would
15 stand behind and make sure that there was a
16 fair playing field and that the dominant carrier
17 had to price on tariff up until a point when it
18 became nondominant.

19 As soon as there's enough market that has
20 been gained by the competitors, then this debate
21 is irrelevant, because the market power will
22 have shifted. But right now we have a dominant
23 provider with 80 plus percent market share
24 selectively targeting lower prices, while
25 raising prices for everyone else, and that is a

1 recipe for disaster for our industry.

2 Thank you very much.

3 CHAIRMAN JABER: Mr. Feil.

4 MR. FEIL: Thank you, Madam Chair. A few
5 other quick points I wanted to make.

6 First, relative to timing, similar to what
7 Mr. Gallagher said, these are not promotions of
8 temporary duration. There is an enrollment
9 period of six months for the last two tariff
10 filings that BellSouth has made, but there has
11 been a sequence of such tariff filings where
12 those periods keep rolling over and rolling
13 over.

14 Moreover, once a customer signs up, it
15 signs up for a term commitment under those
16 programs, one years, two years, three years. So
17 if the pending tariff goes into effect and
18 customers sign up three-year commitments, you're
19 talking about customers tied up for four years
20 down the road.

21 The second point concerns resale.
22 BellSouth has argued that one of the things that
23 saves the win-back programs from being
24 anticompetitive is that the pricing is available
25 for resale to ALECs. I have two points to make

1 with regard to that.

2 One is the accuracy of the statement. When
3 a customer signs up for a win-back deal with
4 BellSouth, can the customer go to an ALEC
5 reseller, who in turn resells the win-back
6 promotion to the customer without termination
7 liability issues? In other words, is the resale
8 opportunity only available to customers not
9 already enrolled in the program? If that is not
10 the case, then I question whether or not it's
11 accurate to say that ALECs have an equal
12 opportunity to resell the promotional programs.
13 Although BellSouth has said and staff
14 acknowledges that the programs are available for
15 resale, the details of that opportunity have not
16 been provided yet.

17 The second point relative to resale is
18 policy. The Commission has to ask itself a
19 question. Does it want Florida to be a reseller
20 state? Because of the high percentage of these
21 discounts and the enduring nature of the
22 discounts, do you want to drive facility-based
23 carriers to a reseller environment just in order
24 to compete and have them abandon their
25 infrastructure just so they can compete on a

1 reseller basis?

2 FDN submits that you should not be
3 encouraging resale in that manner, you should be
4 encouraging facility-based competition. And I
5 think one of the things you're going to be
6 seeing and have seen as recently as the agenda
7 item before this, Item 10, is Allegiance
8 abandoning its resale customers. That's what
9 that item was -- was it Adelphia? Excuse me. I
10 said Allegiance. I stand corrected. Adelphia
11 abandoning its resale customer base and turning
12 that over to BellSouth. They did the same thing
13 in the Sprint footprint. The resale customers
14 they abandoned. Intermedia just did the same
15 thing, sent out a notice to its resale
16 customers, we're not going to provide you
17 service anymore.

18 And the next point concerns discrimination.
19 I made two arguments in the petition relative to
20 discrimination. One is whether or not the
21 win-back programs were discriminatory in
22 principle because they were available only to
23 business customers served by certain wire
24 centers. In other words, the price was not
25 available to all customers in the business

1 class.

2 A second argument which Mr. Gallagher
3 referred to is whether or not it was
4 discriminatory in practice because, although
5 it's ostensibly available to a certain defined
6 group of customers, whether or not it was
7 marketed and made available to those customers
8 in the same manner.

9 The staff recommendation doesn't seem to me
10 to address the first argument regarding
11 discriminatory in principle other than on page 7
12 where it refers to a statutory cite. But what
13 has confused me about this is, the statutory
14 cite on page 7 refers to specific geographic
15 market targeting for nonbasic services. The
16 win-back discounts apply to basic and nonbasic
17 services, not just to nonbasic services.

18 And the other argument relative to
19 discrimination that you should be aware of is
20 that the discriminatory character of the program
21 is part of what makes it anticompetitive.

22 Termination liability. As I mentioned,
23 under the current tariff, the customers who left
24 the BellSouth program before the expiration of
25 the term had to repay all the discounts that

1 they had received up to the point in time that
2 they left the program. So it was, in effect, a
3 back end loaded penalty if the customer left,
4 because the more time they spent on the program,
5 the greater their termination liability.

6 Under the pending tariff, the tariff filed
7 just last week, the termination liability is
8 just the opposite. It's now front end loaded,
9 such that customers will pay a higher
10 termination liability charge for the shorter
11 duration that they are on the program. They may
12 -- as I understand the tariff, the customers are
13 responsible for paying for between \$25 and \$40 a
14 month times the number of months left on their
15 contract. So if a customer's typical bill is,
16 say, \$100 a month, and he signed a three-year
17 agreement, if he wants to leave after one year
18 and he has to pay 24 months left on the contract
19 times \$25 for \$600, to me, that's just punitive
20 and is designed for no purpose other than to
21 impede migration and to impede competition.

22 Relative to Issue 2, one comment I wanted
23 to make concerning the staff recommendation
24 pertains to retail information. One of the
25 items mentioned in the petition pertained to the

1 question of whether or not it's appropriate for
2 an ILEC to have contact with a customer and then
3 use that customer initiated -- excuse me. Use
4 that contact initiated by the customer for the
5 sole purpose of setting up a migration as a
6 win-back retention opportunity.

7 For example, a customer wants to port to
8 FDN, and he has, according to his customer
9 service record with BellSouth, some sort of
10 pending service order. BellSouth will delay the
11 migration when we submit the order until that
12 pending order against his retail account is
13 clarified. So if the customers calls to have
14 that pending order removed or to find out what
15 it is, or calls BellSouth to have a local
16 service freeze lifted, for example, the issue is
17 whether or not that contact is an adequate --
18 excuse me, an appropriate opportunity for a
19 win-back contact. The staff recommendation
20 doesn't address those scenarios specifically.
21 It was referenced in the petition, so I would
22 like clarification on that point.

23 In conclusion, aside from the questions and
24 clarifications that we have raised, since the
25 tariff that initiated the filing is set to

1 expire I believe next week, it's not necessarily
2 practical for you to suspend it at this time.
3 But since BellSouth has renewed -- or has filed
4 a tariff to renew that program, essentially,
5 with terms and conditions similar in almost all
6 respects, other than termination liability, with
7 the tariff it filed last week, we would ask that
8 you at least suspend that tariff.

9 In a prior case which FDN referred to in
10 its petition involving Arrow Telecommunications
11 --

12 MR. TURNER: Excuse me. Madam Chairman, I
13 hate to interrupt again, but this new tariff is
14 absolutely not before the Commission in any way,
15 shape, or form. It's not mentioned in the
16 petition. It's not mentioned in anything that
17 was sent out regarding the agenda session. And
18 I --

19 CHAIRMAN JABER: It's mentioned in Issue 3,
20 Mr. Turner. The --

21 MR. FEIL: It's addressed in --

22 CHAIRMAN JABER: -- possibility of a new
23 tariff is mentioned in Issue 3.

24 MR. TURNER: I believe, Madam Chairman, to
25 the extent that he is simply going to argue in

1 support of Issue 3, I don't disagree. To the
2 extent that he is trying to argue the merits of
3 a tariff that is not before the Commission, I do
4 disagree.

5 CHAIRMAN JABER: Mr. Feil.

6 MR. FEIL: It is mentioned in the staff
7 recommendation. The petition asked the
8 Commission to investigate BellSouth's win-back
9 practices and promotions.

10 CHAIRMAN JABER: I'll allow it.

11 Mr. Turner, I would note this. At agenda
12 conferences, we get through the presentation,
13 and I'm going to afford you every opportunity to
14 respond. Let's get through it.

15 Mr. Feil, you need to finish up.

16 MR. FEIL: This is my last point. In a
17 prior case involving Arrow Telecom, the
18 Commission voted to suspend a tariff where
19 BellSouth offered a 16-1/2% discount with an
20 enrollment period of three months for customers
21 signing contracts for 18 months.

22 Now, no order was issued from that
23 proceeding. I acknowledge that. But the reason
24 no order was issued is because BellSouth
25 withdrew the tariff. And I would submit to you

1 that the win-back programs that BellSouth has
2 offered over the last year are significantly
3 more anticompetitive than the one in the Arrow
4 Telecom case.

5 Thank you.

6 CHAIRMAN JABER: Ms. -- do you have a
7 question of Mr. Feil?

8 COMMISSIONER BRADLEY: Yes. As it relates
9 to the issue of anticompetitive, would it be
10 anticompetitive if the ALECs did what you're
11 saying that BellSouth is also doing? It would
12 seem to me that in a free market that ALECs as
13 well as CLECs should have equal ability to
14 advertise with the intent of informing customers
15 as to what the nature of the product is and why
16 a customer should choose one company over
17 another for a service that's being offered. I'm
18 just --

19 MR. FEIL: while ostensibly --

20 COMMISSIONER BRADLEY: what's the other
21 side of this argument?

22 MR. FEIL: while in theory -- I can't
23 anticipate what Mr. Turner is going to say, but
24 I will say this. while in theory competitors
25 may be on equal footing, in practice that is

1 absolutely not the case. BellSouth is the
2 dominant market provider. By ALEC estimates
3 provided in the 271 proceeding, as I recall,
4 BellSouth has 95% market share. And if
5 anything, that's -- I don't see how that could
6 have gotten any better in light of some of the
7 items that you've seen before you relative to
8 ALECs having to file bankruptcy or abandon
9 market share. So we're not in actuality on
10 equal footing.

11 COMMISSIONER BRADLEY: Follow-up. But my
12 concern is that we have well-informed customers
13 who are informed to the extent that they can
14 choose between -- choose the best product that's
15 available for their dollar. And I would be very
16 concerned if the ratepayers or the customers
17 didn't have adequate information in order to
18 make a good decision between two competing
19 entities. That's my concern as it relates to
20 your statement of anticompetitiveness.

21 I acknowledge that BellSouth does have a
22 large share of the market. But I think that
23 customers need to have the opportunity to be
24 presented with the information to choose between
25 competing entities, and I'm just trying to

1 figure out how providing information is
2 anticompetitive.

3 MR. GALLAGHER: At Florida Digital, we have
4 enough sales budget to either advertise or sell
5 via a direct sales force. We choose to spend it
6 on a direct sales force. So we have people who
7 make telephone solicitations and knock on doors
8 to advise customers of what our products are.
9 So we -- that's the way we get the word out.

10 BellSouth, I would position, is only
11 offering these products in a predatory manner,
12 and that should they be able to price us out of
13 business, that ultimately we'll see higher
14 prices for the consumers and businesses in the
15 state of Florida. Why not lower their prices
16 all the way across the board? I understand that
17 you all are in a political position of where
18 lower rates are better. And what I'm saying is,
19 these are temporary lower rates. These won't
20 last if competition doesn't last.

21 CHAIRMAN JABER: I think Commissioner
22 Bradley's question goes more toward how do you
23 reconcile the anticompetitive behavior argument
24 with a company, in this case, BellSouth's desire
25 to get information out on the win-back program,

1 sort of communicating on a product offering and
2 a discount program, if that results in
3 anticompetitive behavior.

4 MR. GALLAGHER: Right. I would say until
5 the market is mature enough and until the
6 competitors have some sort of market share
7 that's significant, that Bellsouth's pricing
8 option should be available to everyone. In
9 other words, lower the \$36 rate by 5% for
10 everybody. That's effectively making it harder
11 for FDN to compete, because a Bell customer just
12 got a price discount. "I'm sorry, I'm not going
13 to switch right now. I just got a discount."
14 Instead of the target, let's just -- you know,
15 if they really want to lower prices, lower them
16 for everybody.

17 COMMISSIONER BRADLEY: Madam Chair, I guess
18 what I'm struggling with is this. I mean,
19 customers are naturally going to gravitate to
20 the company that provides the highest quality
21 service at the fairest amount in terms of the
22 dollar that's being charged for the service.
23 And I'm just trying to figure out how customers
24 are going to be able to make well-informed
25 decisions if we prohibit their ability to

1 interface with information.

2 Having been a businessman, I recognize that
3 -- you know, I had to spend a large amount of my
4 budget on advertising to inform customers as to
5 what my product is and why they should choose me
6 rather than my competitors. And that's what I'm
7 struggling with.

8 MR. GALLAGHER: Right. That's a very good
9 question, and I don't know what the answer is to
10 that specific question. I just don't see how,
11 until a -- when you still have a dominant
12 provider, there is a leveraging effect that's
13 happening here. While the folks that aren't
14 subject to competition are getting a price
15 raise, while the people that are subject to
16 competition are getting a decrease, I don't know
17 how that -- other than just an across-the-board
18 discount, I don't know how you would spell that
19 out.

20 COMMISSIONER BRADLEY: Okay.

21 CHAIRMAN JABER: Okay. Let's keep moving
22 on. Mr. McGlothlin, had a you presentation?

23 MR. MCGLOTHLIN: A short one. My name is
24 Joe McGlothlin. I'm here on behalf of Access
25 Integrated Networks, an intervenor in this case.

1 In my remarks, I will support or reinforce the
2 very thorough comments made by FDN, and
3 hopefully at the same time not belabor them, and
4 then offer a few in addition.

5 Commissioners, my basic appeal to you
6 today is, when you consider the issues presented
7 by the complaint in this case, look at the
8 totality of circumstances. It is possible to
9 look only at the question does the general rate
10 increase exceed the parameters of the statute
11 and come away with a conclusion that says,
12 "well, this seems to fit, and so there's nothing
13 wrong there." It's possible to look only at the
14 question is the geographical approach to the
15 application of a discount permitted by the
16 statute and parse the statute and say, "well,
17 yes, it says that a limited geographical
18 offering is contemplated by the statute, and
19 there's nothing wrong there."

20 But the same statute on which the staff
21 relies in support of its recommendation that the
22 limited offering is not violative of the statute
23 also says that the company shall not engage in
24 anticompetitive behavior. So that statute, I
25 argue, recognizes that you can have a limited

1 offering that is yet anticompetitive in its
2 nature.

3 And by the totality of the circumstances,
4 this is what I mean. As FDN pointed out, and as
5 the staff recommendation acknowledges, we're now
6 looking at the third in a series of ongoing
7 discount programs that have been marketed to
8 those wire centers which BellSouth acknowledges
9 are selected on the basis of a perceived
10 possible competitive presence.

11 So when you consider the nature of the
12 discount which, based upon long-run incremental
13 cost, undercuts anything that the new entrants
14 can possibly hope to match in terms of their
15 incremental cost, which is basically the UNE
16 rate, when you consider that it's targeted at
17 only those wire centers where competition is
18 perceived to be a possibility, and when you
19 recognize that these discounts for practical
20 purposes are in place on a permanent basis, on a
21 rolling, continuing basis as long as that
22 competitive possibility is perceived to exist,
23 what you have is anticompetitive conduct. What
24 you have is a price that is predatory in nature,
25 being applied to not compete, but to prohibit

1 competition. It's designed to keep competitors
2 from ever getting a toe-hold.

3 And in terms of whether that's good for the
4 ratepayers, Commissioner Bradley, consider that
5 the only place where these deep discounts are
6 applied are where competition is perceived to be
7 a possibility, and the other customers are
8 paying a general rate increase. You can be
9 assured that if BellSouth is successful in
10 stamping out the possibility of competition in
11 these localized areas, prices won't stay there.
12 They'll go up, and that is bad for ratepayers.

13 So again, I think it's important to look at
14 the forest and not the individual trees in
15 perceiving what is going on with respect to this
16 discount.

17 I think it's worth emphasizing that while
18 the tariffs, the promotions are measured in
19 several months' duration, they are actually, in
20 effect, sign-up opportunities for contracts that
21 last 18 months to 36 months. So that also
22 emphasizes the semipermanent nature of these
23 discounts as BellSouth's response to the
24 potential for competition.

25 For that reason, as you consider taking

1 action to monitor and regulate the types of
2 promotions that BellSouth and other ILECs may
3 engage in, we suggest that one answer to this
4 would be to, first of all, limit the duration of
5 any such promotion, and also build in a feature
6 that says once a promotion has ended, the
7 subject of that promotion cannot be the subject
8 of a replacement promotion for some reasonable
9 period of time, perhaps a year, so that
10 competition has a chance to get a toe-hold and
11 to show the customer base what competition can
12 accomplish for them without being faced with the
13 predatory ongoing discount program.

14 I would like to spend a moment to discuss
15 the fact that we're talking about a discount
16 program and a tariff when the horse is largely
17 out of the barn. And I think when you read the
18 staff recommendation, that the recommendation
19 tells a story. Staff discusses how the staff
20 engaged in discovery, received responses from
21 BellSouth, and then attempted to analyze whether
22 the discounts would serve to keep a typical
23 customer configuration from violating the
24 pricing floor.

25 I think you find yourselves in the somewhat

1 awkward position of ruling on a matter that's
2 almost over because of two factors.

3 First, the discount is applied not to
4 individual services, but to total monthly
5 revenues. And I think that's the aspect of the
6 program that obscures whether individual
7 customers would be paying a compensatory price
8 or not. I suggest that it would be more
9 reasonable and more appropriate for any such
10 discount to be required to be applied to
11 individual services and not to the total monthly
12 revenues. And those services would include the
13 hunting feature that Mr. Gallagher identified.
14 That would have to be part of the overall
15 analysis in terms of the cost of that.

16 Secondly, I think it would be important on
17 an ongoing basis in the future to adopt a
18 program that requires BellSouth or other ILECs
19 in this situation to accompany the tariff with
20 up-front documentation that will allow the staff
21 or interested parties to assess and detect
22 violations at the front end rather than when the
23 program is about to expire. I think that would
24 be an improvement in the process that might
25 prevent the Commissioners and affected parties

1 from finding ourselves in this position again.

2 Mr. Gallagher mentioned that the contracts
3 are designed to make it difficult for customers
4 who sign such contracts to exit them. And
5 whether that happens as a function of being
6 required to pay accrued discounts, which makes
7 it difficult to leave later in the contract, or
8 whether it's a function of a customer being
9 required the pay for unused services, which
10 makes it difficult to leave early on --

11 (Construction noise.)

12 CHAIRMAN JABER: Mr. Turner, I know that's
13 you.

14 MR. TURNER: I sure hope it's not.

15 MR. MCGLOTHLIN: That difficulty -- can you
16 hear me over that? I'll go on.

17 CHAIRMAN JABER: We can. I can. Yes, go
18 ahead.

19 MR. MCGLOTHLIN: That difficulty makes it
20 -- imposes a hardship on customers who may find
21 themselves unable, for instance, to take
22 advantage of a technological development, or
23 basically to take advantage of a better deal
24 made possible by competition at some point in
25 the contract. So we would recommend that the

1 Commission consider in the overall program of
2 parameters governing discounts the requirement
3 of some ability on the part of the customer to
4 exit a contract within, say, 90 days or so in
5 protection of the customer's ability to respond
6 either to the market or to technology.

7 And finally, we commend the staff's
8 suggestion that BellSouth be prohibited from
9 contacting a departing customer for some period
10 of time after the ALEC has won the customer.
11 The staff's emphasis is on preventing a
12 situation in which a customer can find himself
13 or herself receiving two bills instead of one,
14 and we think that's a laudable objective. But
15 because of the nature of the billing process in
16 which the companies bill not only back in time
17 for usage, but also in advance on a
18 forward-looking basis, when you trace it
19 through, we suspect that 30 days is not
20 sufficient to prohibit or to prevent that from
21 happening. And so we think the Commission
22 should look at the possibility of two billing
23 cycles or 60 days to protect the customer from
24 that happening.

25 Those are our comments. Again, we think

1 that this is an important subject and hope that
2 the Commission considers very carefully the
3 possibility of an overall investigation of
4 promotional practices and the requirements that
5 should accompany them.

6 CHAIRMAN JABER: Thank you.

7 Mr. Turner. Oh, there's another ALEC?

8 Ms. Kaufman.

9 MS. KAUFMAN: Thank you, Chairman Jaber.
10 Vicki Gordon Kaufman. I'm here on behalf of the
11 Florida Competitive Carriers Association this
12 morning. And I'm not going to repeat what
13 Mr. Feil and Mr. McGlothlin have told you. We
14 concur in those remarks.

15 We were very involved in the Arrow case
16 that Mr. Feil mentioned earlier, and we agree
17 that that's ample precedent for you to take
18 action here this morning.

19 win-back campaigns have been an area of
20 great concern to the FCCA and I know to the
21 Commission as well, because they have an impact,
22 a tremendous impact on the ability of
23 competitors to, as I think Mr. McGlothlin said,
24 get a toe-hold in the market such as the one
25 that's at issue here. And I think you've

1 already heard about the sequencing or the
2 rolling over of these promotional programs. And
3 we urge you, as the speakers have before me, to
4 take a very hard look at these programs.

5 We commend your staff for the
6 recommendations that they have made to you in
7 Issue 2. We think you should adopt those.
8 However, we think you should go farther and
9 adopt the recommendations that Mr. McGlothlin
10 discussed with you, including the specific
11 discounting that he discussed and the extension
12 of the period of no contact between the retail
13 and wholesale side and some of the other items
14 that both the speakers have mentioned.

15 I think as Mr. Feil said to you, we are
16 certainly not seeing an increase in competition
17 in the local market. We are seeing a very rapid
18 decline. And the FCCA thinks that it's critical
19 that this Commission take action in this area if
20 we're ever going to get to a competitive local
21 market in Florida.

22 Thank you.

23 CHAIRMAN JABER: Thank you.

24 COMMISSIONER DEASON: I'm sorry. The FCC
25 said that this Commission should do something?

1 MS. KAUFMAN: No, I'm sorry if I misspoke.
2 I said the FCCA believes.

3 COMMISSIONER DEASON: Oh, I'm sorry.

4 MS. KAUFMAN: I wasn't trying to speak for
5 the FCC, certainly not.

6 COMMISSIONER DEASON: Okay. Thank you.

7 CHAIRMAN JABER: Go ahead.

8 MS. RING: I'm Margaret Ring with Network
9 Telephone Corporation, and I'm here today to
10 support FDN's petition also. I have just a few
11 brief comments to make.

12 On the issue of noncompensatory costs, we
13 do believe that the Commission and the staff
14 should look at individual customers and
15 individual products rather than just what Bell
16 represents as a typical customer.

17 We believe also that BellSouth has an issue
18 with control of the program. In the
19 recommendation, mention is made that BellSouth
20 has signed up a small number of ineligible
21 customers for the Key Customer Program. It
22 appears to us that this does happen, and even
23 that BellSouth has trouble representing the
24 program as it exists in their advertising and in
25 their information to customers, as Commissioner

1 Bradley pointed out. In BellSouth's response to
2 the FDN filing, BellSouth represented, and I
3 quote, "A single 1FB line would not satisfy the
4 program's minimum billing requirement of \$75."

5 However, I have an ad here that was given
6 to a Pensacola customer, multiline customer, and
7 it quotes the single line discounted price. And
8 if a single line customer is not eligible, then
9 the single line rate should not be what is
10 represented to the customer.

11 We do believe that BellSouth does target
12 ALEC customers. I don't think that there's a
13 lot of question about that. Although BellSouth
14 does say it's available to everyone, this
15 particular ad represents the entire way down the
16 page, "Come back to BellSouth." So it's
17 definitely targeted at ALEC customers.

18 BellSouth also appears to target potential
19 ALEC customers, in that we do repeatedly see
20 when a CSR is pulled so we can quote a customer
21 rates, BellSouth will then approach that
22 customer with the Key Customer Program.
23 BellSouth does deny that it targets customers
24 off CSR information when an ALEC pulls the CSR,
25 but we do see that.

1 In fact, I had a report last week. We had
2 pulled a CSR to make a quote to a customer.
3 BellSouth then came to the customer two days
4 later with the Key Customer Program offering.
5 The customer said he had not seen a BellSouth
6 representative for four years prior to that
7 date. So we have a hard time believing that
8 it's simple coincidence.

9 CHAIRMAN JABER: When is it the customer
10 gets this advertisement? Is it in their last
11 bill from BellSouth, or is it a, you know,
12 free-standing mail item they receive?

13 MS. RING: That was, I believe, given to a
14 customer directly by a BellSouth salesperson,
15 but BellSouth would have to answer that. I
16 don't know for certain how they market it.

17 MR. TURNER: Madam Chair, just so --

18 CHAIRMAN JABER: I will ask you,
19 Mr. Turner, once --

20 MR. TURNER: Thank you. I didn't want to
21 forget.

22 CHAIRMAN JABER: You're going to get so
23 much time to respond. Just hang tight.

24 MS. RING: I think that the new tariff as
25 it is filed is designed to -- with the change in

1 the termination liability is designed to even
2 further hinder competitive entry into the
3 marketplace. If BellSouth can put us off a year
4 or two years by changing the termination
5 penalties from any attempt to gain that
6 customer, then there's every chance that more
7 and more of the competitors will go out business
8 in the meantime.

9 We also see the Key Customer Program often
10 coupled with other incentives that we have
11 difficulty feeling are fair and equitable in a
12 competitive atmosphere. BellSouth will go in to
13 a customer with a Key Customer proposal and
14 couple it with an offer of discounted yellow
15 pages, free paging, discounted ADSL service.
16 It's very difficult, and it does seem to be
17 predatory to us.

18 We do appreciate staff's recommendation in
19 Issue 2 with regard to the 30-day win-back. We
20 would support Mr. McGlothlin's contention that
21 that should be extended to at least 60 days.

22 Network Telephone does offer our customers
23 a satisfaction guarantee when they sign up with
24 us, and we also have had reports of BellSouth
25 approaching customers during that period and

1 saying, "well, if you would like to go with the
2 Key Customer Program now, even though you've
3 signed up with Network Telephone, just tell them
4 you're dissatisfied." So a 60-day win-back
5 window would be a good thing for Network
6 Telephone and for the industry.

7 CHAIRMAN JABER: When you sign on a
8 customer to Network Telephone, is there an
9 agreement on behalf of the customer that they
10 stay with your company for a set period of time?

11 MS. RING: It depends on what service they
12 get with us. We do offer stand-alone service
13 that requires no contract. If they get our
14 bundle which includes long distance and DSL
15 service, then there is a term agreement.

16 CHAIRMAN JABER: And how does that customer
17 get out of the term agreement? Do they have to
18 show you that they're dissatisfied?

19 MS. RING: We will accept the customer's
20 word that they're dissatisfied with the
21 service. We don't require a history -- I mean,
22 we would prefer, of course, the customer to show
23 a history of poor service or poor billing. But
24 as a new entrant in the marketplace, we don't
25 like to put a lot of terms and conditions. We

1 want to be able to sell the customer, "You will
2 be happy with us, and if you're not, you can
3 leave."

4 CHAIRMAN JABER: And I will ask BellSouth
5 this, but is it your understanding that a
6 BellSouth customer who signed a term agreement
7 can get out of the BellSouth contract by
8 indicating their dissatisfaction?

9 MS. RING: I don't believe that's the case.

10 CHAIRMAN JABER: Okay. Commissioner
11 Bradley.

12 COMMISSIONER BRADLEY: Yes, a question.
13 And I'm just really concerned about this whole
14 issue of anticompetitiveness, because I am a
15 person who thoroughly believes in the free
16 market concept, and I wouldn't want the
17 Commission to promulgate a rule or make a ruling
18 that would be anticompetitive.

19 Don't ALECs -- would you also be in favor
20 of ALECs not being able to contact the customer
21 within 30 days if they switch over to BellSouth
22 and you want to win them back?

23 MS. RING: I think that BellSouth's in a
24 different position in the marketplace, and I
25 think that they have more opportunity to

1 participate and win back than the ALECs do. I
2 think certainly an argument can be made for
3 equal treatment, and on some fronts, that seems
4 reasonable, but I think in reality it is not,
5 because BellSouth really -- you know, they're
6 the 800-pound gorilla. They're the ones that
7 are holding all the cards. And I think any
8 win-back rules, if the Commission goes with
9 rulemaking, should apply to the incumbent, at
10 least until we have a more level playing field.

11 COMMISSIONER BRADLEY: At what point will
12 we have a more level playing field?

13 MS. RING: When BellSouth no longer has a
14 dominant market share, if BellSouth no longer
15 has a dominant market share.

16 COMMISSIONER BRADLEY: And these customers
17 that we're talking about, are these residential
18 customers or business customers?

19 MS. RING: That we're talking about as far
20 as Key Customer?

21 COMMISSIONER BRADLEY: Uh-huh.

22 MS. RING: The customer is business.

23 CHAIRMAN JABER: Okay. Were you done with
24 your presentation?

25 MS. RING: Yes. Thank you.

1 CHAIRMAN JABER: Okay. Mr. Turner, I don't
2 see any other ALECs standing up, so you're on.

3 MR. TURNER: Thank you, Madam Chair. I've
4 got a lot of arrows to pull out and try to throw
5 back now, so I appreciate the time.

6 what I would like to do is tell you briefly
7 how I plan to do this. The first thing is,
8 BellSouth does have two issues with the staff
9 recommendation as it's written, and what I would
10 like to do first is tell you what those are and
11 explain that. Once I do that, I have a lot of
12 ground to plow as quickly as I can. But this is
13 a very critical issue to BellSouth and to
14 consumers in Florida, because what you're being
15 asked to do today is say, in effect, "No
16 more."

17 CHAIRMAN JABER: Mr. Turner.

18 MR. TURNER: Yes, ma'am.

19 CHAIRMAN JABER: I know you've been waiting
20 to talk, but we're going to take a 10-minute
21 break, and then we won't interrupt you until
22 you're done.

23 MR. TURNER: No problem. Thank you.

24 (Short recess.)

25 CHAIRMAN JABER: Mr. Turner.

1 MR. TURNER: Thank you, Madam Chair.

2 AS I mentioned, I'm going to first speak
3 about our concerns with the order and then --
4 the proposed recommendation. And then I am
5 going to do my best to address every issue
6 broadly that was raised by the petitioners. And
7 as I was mentioning earlier, the reason I'm
8 going to do that is, this is very important to
9 BellSouth and to customers in Florida. You're
10 being asked to say BellSouth can no longer, in
11 effect, roll out promotions until some
12 unspecified type of proceeding is held or some
13 ruling is made. And throughout the course of my
14 comments, I'll try to explain why that is not
15 the appropriate course to take, especially in
16 this proceeding.

17 But one thing I need to do before I get
18 started is just to harken back. During the last
19 40 minutes, several questions were asked from
20 the Commissioners about what are the overall
21 implications of what you're asking us to do, how
22 does this affect the ALEC community, how does it
23 affect consumers? Those are exactly the kind of
24 questions that need to be asked and answered if
25 you're going to embark on the type of course

1 you're being asked to embark on, and that's why
2 it's critical to make this point.

3 This is not a rulemaking proceeding. This
4 originated as a petition by a single party in
5 which three other parties, four other parties
6 have intervened. If you are inclined to address
7 any of these broad issues that the petitioners
8 have asked you to address, BellSouth suggests
9 that the place and the time to do that is in a
10 generic ratemaking type -- I'm sorry, rulemaking
11 type proceeding where you can consider all the
12 implications that would be involved on the
13 ALECs, on CLECs, on ILECs, on customers, and on
14 everybody.

15 Having said that, let me first tell you
16 BellSouth's concerns with the proposed
17 recommendation, and there are two. One is
18 procedural, and one is substantive.
19 Procedurally, we object to the position staff
20 has taken on Issue 3, which states that if a
21 protest of the PAA is filed, BellSouth should be
22 precluded from filing any tariff that extends,
23 mirrors, or builds upon the 2002 Key Customer
24 Tariff provisions until the Commission resolves
25 the matters addressed at that hearing.

1 I have three points to make about that.
2 First, the record doesn't support that.
3 BellSouth is operating under a rule of
4 presumptive validity these days. What they are
5 asking you to do or suggesting that you do is
6 inflict a rule of conclusive invalidity on any
7 tariff that we file that arguably is similar to
8 the one that's out there now. They're asking
9 you to predetermine that any such promotion that
10 you haven't even seen yet is invalid. We
11 believe that that's not the appropriate course
12 to take as a matter of policy, and it violates
13 the Florida Statutes, the 15-day notice.

14 Moreover, there's no reason to do that.
15 This is not a proceeding that is taking place in
16 a vacuum. The staff has filed discovery
17 requests on FDN. The staff has filed either
18 three or four sets of discovery requests on
19 BellSouth, and we've answered them. And there
20 has been a lot of material put into the record,
21 and after carefully reviewing that record, the
22 staff has quite properly stated in its
23 recommendation that there's no violation of any
24 existing rule or any existing law that has been
25 shown throughout that extensive course of

1 discovery. Given that recommendation, there's
2 absolutely nothing in the record before you to
3 support what they've asked you to do, which is
4 conclusively rule in advance that any such
5 promotion in the future, although this one
6 didn't violate any statutes, would be invalid.

7 The second reason we object to that is that
8 it imposes a Hobson's choice on BellSouth.
9 You're going to hear in a second that we do have
10 one problem with the proposed recommendation.
11 Well, if you vote staff on Issue 3, we have a
12 Hobson's choice of either protesting one portion
13 of that PAA so that we can get our view on the
14 record and in a full record proceeding have you
15 rule on it. We have to choose between that or
16 else saying, "You know, we're just hog-tied. We
17 cannot put out any promotions that are similar
18 to this one that we're using in order to compete
19 with the competitive offerings that we're facing
20 every day from the ALECs."

21 The third reason we oppose it is because it
22 gives the petitioners the sole power to hobble
23 BellSouth's efforts to compete with them. What
24 petitioner at this table -- if Issue 3 is voted,
25 what petitioner at this table will not file a

1 challenge? There's no reason not to. If you
2 do, you effectively hobble BellSouth's ability
3 to compete with you for as long as you can make
4 this proceeding last, and that's just not
5 appropriate.

6 And let's not forget that it's the
7 consumers who would suffer. The staff has found
8 that these proceedings -- that this promotion
9 that they have looked at extensively complies
10 with Florida law. It does give business
11 customers who are more than capable of making
12 their own business decisions an additional
13 competitive choice in response to the
14 competitive offerings made available by numerous
15 CLECs throughout the areas of Florida that
16 they've chosen to compete in.

17 The second problem we have with the
18 proposed recommendation is the 30-day waiting
19 period. Our concerns there are, again, there's
20 no record basis for it. BellSouth has already
21 implemented voluntary efforts that will address
22 the concerns. And if the concerns that the
23 staff has raised in support of that
24 recommendation are valid, they apply equally to
25 ALECs and ILECs, so again, it should be done in

1 the form of a rulemaking that applies across the
2 board.

3 First, there's no record that there's a
4 need for it. In the FDN arbitration proceeding,
5 FDN said that at that time it had 60,000
6 customers in the State of Florida. A few months
7 later in the UNE Phase 2 proceedings, FDN
8 testified they have 80,000 customers in the
9 State of Florida. During the same time period
10 that all these anticompetitive and predatory
11 and, dare I say it, evil programs were in
12 effect, FDN has gained 20,000 customers in the
13 State of Florida. Discovery submitted in this
14 proceeding by FDN indicates that in January and
15 February of this year, that one-month time
16 period when our promotion, the 2002 promotion
17 before you today first went into effect, during
18 that time period, FDN gained eight times the
19 number of customers that it lost during that
20 time period. So this notion that the 2002 Key
21 Customer promotion dooms them to failure is
22 absolutely refuted by the record that's before
23 you today.

24 The second point is, BellSouth in discovery
25 stated that it takes typically three to seven

1 weeks for to us get the list together that we
2 use and make a win-back effort, and that is
3 still true today. Nothing has changed. It
4 still takes about that much time. What has
5 changed is that since we made that statement, we
6 have voluntarily in the State of Florida imposed
7 on ourselves a 10-day wait period.

8 Now, for the small business market, it
9 takes that much time to get these lists
10 together. Now, a BBS customer, a large business
11 customer that has an account executive assigned
12 to a given customer, they know the day that
13 customer leaves that they left, and it's not
14 because of wholesale information. It's because
15 of a retail relationship. But even in those
16 situations, BellSouth has voluntarily imposed a
17 10-day wait period on itself.

18 That 10-day wait period is equal to what
19 the South Carolina Commission imposed after a
20 hearing. It's three days longer than what North
21 Carolina, Louisiana, and -- I'm missing one --
22 Georgia had imposed. And aside from one order
23 cited in the staff's petition, it's longer than
24 any other period that they have cited any other
25 state commission imposes. There is one that's

1 30 days. And certainly the 60 days that you've
2 been asked to consider, I don't know of any
3 order anywhere that imposes that kind of a
4 restriction, and I certainly don't think it is
5 warranted from the record before you now.

6 And finally, on this point, the staff --
7 one of the main staff concerns for the 30-day
8 period is, they're saying, "Get one billing
9 cycle in, because if someone wins that customer
10 during the first billing cycle, you'll have some
11 billing problems. You need to let them get a
12 full billing cycle in."

13 Now, to the extent that that is a valid
14 concern, doesn't it apply when FDN wins a
15 customer from Access Integrated? Doesn't it
16 apply when FDN has won a customer from BellSouth
17 and then three days later, Access Integrated
18 knocks on the door and says, "I've got a better
19 deal for you. Come to me"? So if there is a
20 concern there, it's a global concern that needs
21 to be addressed globally and not in the context
22 of an imposition on one company on the basis of
23 this petition.

24 And finally, I would like you to keep in
25 mind one thing. The staff does cite to

1 364.01(4)(g), which says that the Commission
2 shall exercise its exclusive -- I'm sorry. The
3 staff cites to (d) in support of that rule. If
4 you go down three subsections in the same
5 statute to subsection (g), it says that the
6 Commission shall exercise its exclusive
7 jurisdiction to ensure that all providers of
8 telecommunications are treated fairly by, among
9 other things, eliminating unnecessary regulatory
10 constraint.

11 Additionally, in 364.377(5), talking about
12 the Commission's authority to regulate ALECs, it
13 says the Commission shall have continuing
14 regulatory oversight over the provision of basic
15 local exchange telecommunications provided by
16 certificated ALECs, among other things, for the
17 purposes of ensuring the fair treatment of all
18 telecommunications providers in the
19 telecommunications marketplace.

20 Fair treatment in this case means looking
21 at the entire realm of it, determining is there
22 really a reason in this instance to treat
23 BellSouth different than the ALECs, and making
24 that decision in a rulemaking proceeding and not
25 here.

1 I would like to now move to the
2 presentations of the petitioners and try to
3 address those issues. I wish I had had time to
4 organize this better, but please bear with me.
5 I'm just going to hit them as I come to them
6 based on my notes.

7 we've heard the term "predatory pricing"
8 thrown about many times during the proceedings
9 today. That term has a definition. In
10 proceeding after proceeding before state
11 commission after state commission, ILECs and
12 ALECs alike have put forth economists who have
13 testified that the way that you prevent
14 predatory pricing is to make sure that the
15 prices exceed LRIC, long-run incremental
16 cost. If you want to take it a next step and be
17 sure that you do not have cross-subsidization
18 going on, you do what the Florida Legislature
19 has done in the statutes already. You impose a
20 TSLRIC, total service long-run incremental cost
21 standard. And if you exceed TSLRIC, you
22 necessarily exceed LRIC, which is the predatory
23 pricing.

24 Bellsouth in response to discovery by the
25 staff has given exhaustive evidence to show that

1 we exceed TSLRIC. That cannot be ignored. This
2 is not a predatory pricing scheme by any stretch
3 of the imagination.

4 Mr. Gallagher says the promotion needs a
5 sunset. It has a sunset, six months. If you
6 sign up a contract under the promotion, you're
7 under the contract for 18 months or 36 months,
8 but there's a sunset. There's an end period.
9 Just like in a volume and term commitment that
10 is already in tariffs throughout BellSouth's
11 tariffs, you've heard today, they're in the
12 CLECs' tariffs, the ALECs' tariffs. Volume and
13 term commitments are nothing new. And this does
14 have a sunset provision in it.

15 There was mention about the comparison of
16 UNE rates to the rates that result from
17 BellSouth's retail offerings. First, in our
18 petition, we address that head on. We cited
19 that in a Miami wire center, for instance, a
20 business customer that has two lines under the
21 BellSouth Complete Choice of Business Program,
22 when you compare the discounted rate that
23 customer pays for just those two lines -- don't
24 even start looking at intraLATA toll, don't even
25 start looking at features, just look at those

1 two lines -- the UNE rate that the petitioners
2 would pay for the UNES necessary to provide that
3 exact same service, going from memory, and it's
4 in the petition, I think it's about \$30 below --
5 the UNE rates are \$30 below the retail rates.
6 So this idea that the UNE rates are so much
7 above the retail rates under this promotion is
8 simply not supported by the record.

9 well, then the petitioners said, "Yeah, and
10 then BellSouth says that they can resell the
11 promotion." well, you know, what do you want,
12 resale or facilities-based? well, fortunately,
13 the Commission now has guidance that up until
14 recently it has not had when faced with that
15 type of argument.

16 In the FCC's decision approving BellSouth's
17 271 application in Louisiana and Georgia, AT&T
18 said, "Look, if you look at Zone 3 in Louisiana
19 and you compare the retail rate in Zone 3 to the
20 wholesale rate of the UNES that I have to
21 purchase to do the same thing, the UNE rate is
22 above the resale rate, and that's a price
23 squeeze, and that simply cannot happen."

24 well, the FCC's order squarely addressed
25 that, and in doing so, it said, "well, first of

1 all, you have to consider that statewide, you're
2 in pretty good shape. Once you consider that,
3 let's look at the Zone 3 issue and figure out
4 how we're going to address that." Here's what
5 they say in paragraph 287. The FCC said, "The
6 Act contemplates the existence of subsidized
7 local rates in high cost areas and addresses
8 such potential price squeezes through the
9 availability of resale." The Commission said,
10 "The top-down approach to setting resale rates
11 ensures that resale provides a profit margin
12 where, as in the case here, the cost of
13 individual elements exceed the retail rate."
14 And then the Commission flat out said, "It is
15 appropriate to consider the effect of resale on
16 whether a price squeeze exists."

17 Then they went a step further. They said,
18 "AT&T claimed in this docket that it needs X
19 dollars, it costs them X dollars to provide a
20 line in Louisiana." The FCC says, "You know,
21 we're looking at the federal law, the federal
22 jurisprudence on price squeezes, and you're not
23 supposed to look at what it costs any given
24 competitor. You're supposed to look at what it
25 costs an efficient competitor." And they said,

1 "AT&T nor anyone else has put any record
2 evidence in this docket that says what an
3 efficient competitor would have to pay to get
4 that line out there. And in the absence of that
5 kind of evidence of record, AT&T," it says, "has
6 not shown that the UNE pricing at issue dooms
7 competitors to failure." That's the federal
8 standard for a price squeeze, do you doom them
9 to failure.

10 Well, given that FDN itself has gone from
11 60,000 to 80,000, I hardly think the evidence in
12 this case shows anything about dooming about
13 anyone to failure. In fact, BellSouth has
14 submitted evidence or records in the price
15 regulation filings and in the 271 filings to
16 show that statewide, CLECs have gained about 30%
17 of this market we're talking about. When you
18 take that to -- when you consider the fact that
19 CLECs are not, nor are they required to offer
20 service at a statewide level, they do what we
21 all know they do. They go to the highest
22 concentration of customers in the lowest cost
23 zones, and they compete like everything to get
24 them. So it makes sense that our filings show
25 that in some wire centers, we're at 60%, 50 to

1 60% market share.

2 The evidence before this Commission simply
3 does not support any of the predatory price
4 arguments or any arguments that the pricing is
5 in any way hindering competition in Florida.

6 FDN then says, "well, the discounts are
7 specifically targeted to customers of a CLEC."
8 Staff asked us about that, and what we did is,
9 we gave them discovery responses that flat out
10 say BellSouth extensively markets this promotion
11 to potentially eligible customers, including
12 existing BellSouth customers. The discovery
13 responses say we do it through outbound calling,
14 through direct mail campaigns. And when a
15 potentially eligible customer calls inbound to
16 us, we tell them about it too. We market this
17 to everyone.

18 Now, you were shown -- that's not it. You
19 were shown the fish bowl that BellSouth sent
20 out. Madam Chairman, that's a direct mailing
21 piece that we sent out. And, you know, we do
22 send this one out to our customers that we
23 believe have gone to a competitor. But before I
24 leave this one, though, let me point out that
25 there's an asterisk that appears up here on that

1 \$19.30 rate. None of the footnotes that are
2 associated with the asterisk are on this page.
3 I don't know why that is.

4 But if you look at our filings, and
5 specifically if you look at what we're going to
6 file in a couple of days to address the informal
7 complaint that was filed about this promotion,
8 you're going to see that those footnotes explain
9 in very clear and unequivocal language that that
10 \$19.30 rate is only for single wire customers.
11 That one line alone, \$19.30 is not going to get
12 you into the program, but if you have that line
13 and you have some other services, vertical
14 features, if you have an area-plus plan, if you
15 have intraLATA toll, any of the other features
16 other than just the line, you can easily get to
17 that amount. So I think when you see the answer
18 that we're going to file to the informal
19 complaint, that will address most of the issues
20 that were presented about this ad.

21 One other thing I want to point out,
22 though. If you look at our discovery responses,
23 we gave representative samples of this ad. We
24 also gave representative samples of another ad
25 that goes out to potentially eligible customers

1 who are still with us. We market through direct
2 mail, through direct contact, telephone. We
3 market this to our own customers as well as
4 customers that have left us. And the evidence
5 of record to suggest otherwise is nothing but
6 conclusory allegations that we don't think
7 that's happening. We've conclusively refuted
8 that.

9 The next argument that I recall hearing
10 was, "Well, you're stringing these promotions
11 one after another." Well, as far as I know,
12 there is exactly one piece of law or
13 administrative order that has any concerns about
14 that. In its local competition order, the FCC
15 says, "We don't want you to string sequentially
16 a series of short-term promotions together."
17 And you know why they said that? Because
18 short-term promotions are available for resale,
19 but not at the wholesale discount rate -- I'm
20 sorry, the resale discount rate. So, in other
21 words, if I have a short-term promotion that's
22 priced at \$15, an ALEC can resell it, but
23 they're got to pay me \$15 for it. If it's a
24 long-term promotion, they pay me \$15 less -- I
25 think it's about 16% in Florida.

1 So the reason that the FCC said, "We don't
2 want you stringing short-term promotions
3 around," is, they expressly say, in order to
4 evade your duty to resell it at the resale
5 discount rate. We say throughout this thing,
6 and we have done it in practice, this is
7 available for resale, and you get the resale
8 discount rate. So the only concern that is
9 expressed about sequentially filing promotions
10 has been squarely addressed by the fact that we
11 make this available at the resale discount rate.

12 Another interesting thing was, on the one
13 hand you've got some petitioners here saying,
14 "You're filing the same thing one after
15 another. You can't do that," and then other
16 petitioners are saying, "Look at the termination
17 charges. They changed. You can't do that."
18 Well, you know, they're getting us coming and
19 going. But the bottom line is, we can do that.
20 There's no prohibition in federal or state law
21 against it.

22 CHAIRMAN JABER: Mr. Turner, I also asked
23 about the term agreements, how a BellSouth
24 customers gets out of the term agreements.

25 MR. TURNER: Yes, ma'am. Let me address

1 those. I appreciate you reminding me.

2 First of all, let's talk about term
3 agreements generally. And what I would like to
4 do is set out the Florida analysis under Florida
5 law of when you can and cannot liquidate a
6 damage. Then I want to show what we do and what
7 the CLECs do, because I think you'll find that
8 it's an interesting comparison.

9 Under Florida law, you can liquidate a
10 damage, in other words, agree on the front end
11 that if you violate this contract or breach this
12 contract, I'll pay X dollars. You can do that
13 under Florida law, unless it's a penalty. And
14 the test is, a clause for liquidated damages is
15 enforceable if the amount is not grossly
16 disproportionate to the damages that might
17 reasonably be expected to flow from the breach.

18 Now, let's look at what would happen if
19 neither BellSouth's tariffs nor BellSouth's
20 promotions nor the ALEC promotion had any
21 termination liability in it at all, and a
22 customer breached the contract, because, don't
23 forget, the customer still has signed a
24 contract, a commitment to stay for three years,
25 two years, whatever the term is. If the

1 customer leaves early, that's a breach of
2 contract.

3 If there were no liquidated damage
4 provision, what happens? Well, you've got to go
5 somewhere to enforce your right to seek
6 damages. And since this Commission cannot award
7 monetary damages, that means you go to court and
8 you sue your customer for damages. And if that
9 happens, not only do you get the full amount of
10 damages you would be entitled to under law, but
11 your customer has to go to court, has to hire an
12 attorney, has to go through a lot of expense to
13 defend that lawsuit.

14 It makes good public policy sense to
15 liquidate a damage in a contract on the front
16 end so the business customer can say, "Okay. I
17 know there are competitors out there, just like
18 when I sign up for my wireless service, I know
19 there's a lot of them out there. I also know
20 that every time I think about signing with one,
21 I'm always worried, well, heck, what happens
22 next week if a better offer comes up and I'm
23 stuck with this one."

24 CHAIRMAN JABER: Mr. Turner, all I want to
25 know is how your existing customers get out of

1 the term agreements. I don't want to be
2 educated on liquidated damages.

3 MR. TURNER: Well, I --

4 CHAIRMAN JABER: I just want to know, can
5 they leave BellSouth for dissatisfaction? How
6 do they get out of that contract?

7 MR. TURNER: To answer the question, if
8 there has been a -- if they're dissatisfied just
9 because they wish they had made a different
10 deal, then, no, ma'am, that does not get them
11 out. If they're dissatisfied because the
12 service was not good or for something of that
13 nature, and it's documented, and we look, and we
14 say, "You know, we did not do you right," then
15 that's a breach on our part, and they can get
16 out.

17 If I may, I would like to go back and
18 finish my discussion, though, because
19 termination liability was -- yes, sir.

20 COMMISSIONER BRADLEY: I have a
21 question before you go back and get into your
22 discussion. Should ALECs be prohibited from
23 initiating any win-back activities to regain a
24 customer? Is that BellSouth's position?

25 MR. TURNER: No, sir. We think that

1 competition should be full and fair, and
2 everybody should be able to compete equally. An
3 ALEC should try to win our customers back, we
4 should try to win their customers back, and the
5 same rules should apply to everybody. Our
6 position is simply that if there is going to be
7 a restraint on BellSouth's ability to do so, the
8 restraint should be equal to all parties and
9 make it a level playing field.

10 COMMISSIONER BRADLEY: One other question,
11 Madam Chair.

12 Should the Commission also prohibit ALECs
13 from including any marketing information in its
14 final bill sent to customers who have switched
15 to BellSouth or any other -- or another --

16 MR. TURNER: I think it's the same answer,
17 Commissioner Bradley. I think that in an
18 unrestricted market environment, that would be
19 perfectly permissible. BellSouth believes in
20 full competition. If there is an imposition,
21 though, you should look at whether or not to
22 apply it equally across the board to everyone.

23 COMMISSIONER BRADLEY: One other question
24 and I'll be finished.

25 Should ALECs be prohibited from sharing

1 information with its retail division, such as
2 informing the retail division when a customer is
3 switching?

4 MR. TURNER: It seems to me that if FDN --
5 when BellSouth --

6 COMMISSIONER BRADLEY: I'm just curious as
7 to what BellSouth's position is.

8 MR. TURNER: Again, it should be the same,
9 because to me, FDN is going to have folks who
10 work orders to send the customer back to
11 BellSouth. And if those customers -- if FDN's
12 folks are allowed to walk over or pick up the
13 phone and say, "Hey, we're about to lose
14 somebody. Go back and get them," you know,
15 whether that's good or bad, it's equally good or
16 bad for BellSouth, I would think. So again, I
17 believe it should be -- our concern is, if
18 you're going to impose that type of restriction,
19 you should consider whether to do it across the
20 board or not.

21 CHAIRMAN JABER: Mr. Turner, quickly finish
22 your presentation.

23 MR. TURNER: Getting back to termination
24 liability, FDN's tariff has a full buy-out
25 provision in it. It says that if you come with

1 us, the tariff on file with the Commission, and
2 you leave us, among other things, you pay the
3 full tariffed rate or the full contract rate for
4 the service for the remaining term of the
5 contract, discounted by the -- some interest
6 rate. It's a net present value full buy-out
7 provision.

8 The termination provisions in the promotion
9 we have are much less than that. The
10 termination provisions of the new promotion that
11 we filed are much less than that. So, number
12 one, I think our termination liability
13 provisions are entirely consistent with Florida
14 Statutes or Florida law. They're valid
15 liquidated damage provisions.

16 But this goes to the point about looking
17 across the board. If the concern is that you
18 are -- one concern that has been expressed,
19 maybe not exactly in these words, but the basic
20 concern seems to be if a customer is going to
21 pull some -- if a carrier is going to pull
22 somebody out of the available pool of customers
23 and, quote, lock them into a contract, that's
24 bad, because you take somebody out of the pool.

25 well, I don't agree with that. I think

1 when you limit the ability to enforce a term
2 contract, you limit the ability to offer lower
3 discounts that come with term contracts.

4 But setting that aside, how is a customer
5 any less drawn out of the pool of available
6 customers, if you apply that logic, if they're
7 sitting with FDN with a full buy-out termination
8 provision than they are if they're sitting with
9 BellSouth with a partial buy-out provision? And
10 FDN is not alone. If you look through the
11 files, there are about eight or ten CLECs that
12 have full buy-out provisions. There are seven
13 or eight more that have something that's very
14 akin to them, and we have a list of them that we
15 can make available to you either directly or
16 through staff.

17 But again, termination liability, ours
18 comply with the law, and if you're going to put
19 any restrictions on them, it certainly should
20 apply across the board, and it should be imposed
21 not in this proceeding, but in an appropriate
22 proceeding in which everyone participates.

23 As far as using retail information, I would
24 like to harken back to the IDS proceedings.
25 There were some allegations throughout those

1 proceedings that BellSouth does this and
2 BellSouth does that. And when we finally came
3 to the hearing room, when we sat Mr. Brett
4 Hamilton in that chair over there and started
5 asking him about it, if you go back and look at
6 that transcript, they weren't able to
7 substantiate a lot of that.

8 So if there is a desire to look into the
9 retail practices and what kind of information
10 exchange is going on, again, it should be done
11 on an overall basis. But you should not make a
12 decision today based on anecdotal evidence that
13 has not been subjected to cross-examination.

14 I'm going to quickly go through the rest of
15 my list. There was a comment made about you're
16 in the position of having to decide whether to
17 stop a program that's already in effect. Well,
18 with all due respect to the petitioners, it was
19 the petitioners that waited until this program
20 went into effect to challenge it. Now, they
21 were on 15 days' public notice from the tariff
22 filing, but they were on 45 days' notice from
23 the filing on the ALEC interconnection page that
24 says we're about to make this filing. So they
25 have a whole lot more advance notice of our

1 promotions than we have of theirs, and they
2 could have protected any rights they think they
3 had earlier than they did.

4 There was a question about why not lower
5 rates all across the board, and Mr. Gallagher
6 said, "why don't you do a 5 percent discount
7 across the state of Florida?" Well, if a
8 customer is sitting in Miami and he has an offer
9 for 5% off of BellSouth's tariffed rates, or 20%
10 off of BellSouth's tariffed rates through FDN,
11 or 22% from Access Integrated, which one is he
12 going to choose?

13 And as far as geographic -- concentrating
14 in geographic areas, the staff is correct. The
15 statute allows that. But, you know, the
16 argument I'm hearing is akin to if a team runs
17 the ball up the middle play after play after
18 play, the other side is not going to play a
19 prevent defense and spread the field. The other
20 side is going to pack right in the middle and
21 say, "Until you show me you can do something
22 else, this is where I am." And there's no foul
23 in that. That's the way it works.

24 And if the CLECs decide, "You know, we're
25 going to have to spread out a little bit. We're

1 not making as much headway anymore in Zone 1.
2 Let's go out to Zone 2, or let's go out to Zone
3 3. Let's package intraLATA toll with paging
4 services and with Internet services, and let's
5 go out there," that's what competition is
6 designed for. Make them spread out, make them
7 go out there into the other areas, and then
8 we'll have to go out there too, and consumers
9 will benefit.

10 An analogy was drawn to the Arrow case. I
11 have two points to that. The first is, the
12 Arrow case involved a petition to suspend a
13 tariff that was filed before the tariff went
14 into effect. The other thing I have to point
15 out is that when the Arrow case was filed, you
16 didn't have the FCC's analysis in the Georgia
17 271 -- I'm sorry, the Georgia-Louisiana 271
18 case. You didn't have the D.C. Circuit court of
19 opinion throwing back the impaired standard of
20 the FCC, saying, "You guys just got it wrong.
21 You've got to relook at this. You've got to
22 consider all these things." A lot of
23 jurisprudence has been put out there since that
24 Arrow case, and that's why a comparison to Arrow
25 is not appropriate, not to mention the fact that

1 in Arrow you didn't have comprehensive discovery
2 and build a record as you did in this case, and
3 the record supports BellSouth's position.

4 Madam Chair, may I have one moment to make
5 sure I haven't missed anything?

6 CHAIRMAN JABER: Thirty seconds.

7 MR. FEIL: Madam Chair, are we going to
8 have a brief opportunity for rebuttal, or did
9 you want to move on with discussion?

10 CHAIRMAN JABER: No, we're going to move on
11 to Commissioner questions, but certainly
12 Commissioners can address questions --

13 MR. FEIL: Thank you.

14 CHAIRMAN JABER: -- to all the parties.

15 MR. TURNER: Madam Chair, I apologize for
16 the length and for not being a little bit more
17 organized, but I do very much appreciate the
18 opportunity to address this.

19 CHAIRMAN JABER: Thank you, Mr. Turner.
20 Commissioners, do you have any questions?
21 Go ahead, Commissioner Palecki.

22 COMMISSIONER PALECKI: I have one question
23 for staff. I wonder if you could comment,
24 please, on Mr. Feil's position regarding
25 customer contact in order to effectuate

1 conversion. And his position was that that
2 should not be an opportunity for win-back, and I
3 think he gave an example of where there was some
4 sort of existing work order that a customer had
5 to cancel and that that customer was then
6 approached with the win-back sell. And if you
7 could just comment on that --

8 MR. CASEY: Sure, Commissioner Palecki. We
9 did address it in our recommendation on page 23
10 at the very top. We have quoted an FCC order,
11 and in the order, if I may read it, it says,
12 "Petitioners argue that the use of another
13 carrier's order, including a carrier or customer
14 request to lift a PIC freeze, is clearly and
15 separately forbidden by sections 222(b) and
16 201(b). We conclude that section 222 does not
17 allow carriers to use CPNI" -- that's customer
18 proprietary network information" -- to retain
19 soon-to-be former customers where the carrier
20 gained notice of the customer's imminent
21 cancellation of service through the provision of
22 carrier-to-carrier service. We conclude that
23 competition is harmed if any carrier uses
24 carrier-to-carrier information, such as switch
25 or PIC orders, to trigger retention marketing

1 campaigns, and consequently prohibit such
2 actions accordingly."

3 COMMISSIONER PALECKI: So would that cover
4 the situation that was suggested by Mr. Feil
5 where a customer affirmatively would call the
6 ILEC in order to effectuate the conversion, but
7 the reason for the call was to cancel a work
8 order?

9 MR. CASEY: It would depend on what the
10 work order is, Commissioner. If it was a work
11 order to switch service, something like that,
12 oftentimes customers will call and notify
13 BellSouth or an ILEC, "I'm going to switch," and
14 that, of course, triggers retention marketing,
15 and that's allowable under the FCC. But
16 anything such as a PIC freeze, where a customer
17 calls up to notify them to lift a PIC freeze or
18 anything like that is prohibited.

19 COMMISSIONER PALECKI: So it would
20 basically depend upon the language the customer
21 used when the customer called the ILEC. So if
22 the customer informed the ILEC that his call,
23 the purpose was to remove the PIC freeze, then
24 the win-back sell could not take effect. But if
25 the customer did not inform the ILEC and just

1 went ahead and said, "I need to have a work
2 order canceled," because they had been informed
3 that they could not convert to the CLEC until
4 that occurred, then that would not trigger the
5 prohibition.

6 MR. CASEY: A standard work order should
7 not.

8 COMMISSIONER PALECKI: Thank you.

9 CHAIRMAN JABER: Commissioners, any other
10 questions?

11 COMMISSIONER DEASON: I have --

12 CHAIRMAN JABER: Commissioner Deason.

13 COMMISSIONER DEASON: I guess I have two.
14 First of all, what is the -- I understand that
15 you have a concern with the possibility that
16 when there is a switch from one company to
17 another that there could be the possibility of a
18 double billing if there's a switch from
19 BellSouth to an ALEC and then an immediate
20 switch back, and that's the reason for the
21 30-day prohibition.

22 MR. CASEY: Yes, Commissioner.

23 COMMISSIONER DEASON: How did you learn of
24 that problem?

25 MR. CASEY: From complaints we have

1 received not only in this case, but in our
2 compliance docket. ALECs have complained that
3 ILECs will immediately start win-back promotions
4 as soon as the completion of the switch-over, at
5 the completion of the switch-over.

6 COMMISSIONER DEASON: Have we had
7 complaints with customers switching from one
8 ALEC to another and getting double bills?

9 MR. CASEY: I'm not aware of any.

10 COMMISSIONER DEASON: would that problem --
11 would the basis for that problem exist
12 regardless of which direction or whether it was
13 two ALECs involved or an incumbent LEC and an
14 ALEC? I'm trying to understand what the basis
15 of the problem is and whether this is something
16 that we need to explore on a generic basis or
17 whether this is appropriate for this particular
18 tariff filing.

19 MR. CASEY: We believe it's only one way.
20 It would be from the ILEC to the ALEC, because
21 of the ILEC billing the ALEC.

22 COMMISSIONER DEASON: Because of the ILEC
23 billing the ALEC. Go ahead.

24 CHAIRMAN JABER: Do you understand that? I
25 don't understand this.

1 COMMISSIONER BAEZ: Yes. Can you --

2 CHAIRMAN JABER: Can you elaborate on that?

3 MS. BULECZA-BANKS: I will try to do my
4 best. What we have heard happens -- and we have
5 had some of the customers actually by phone
6 happen to tell me that this has happened to them
7 -- is that when the switch-over occurs or
8 change-over in between and a win-back occurs in
9 that series, Bell will still bill the ALEC for
10 that period of time, even though the customer
11 didn't fully come over. So the ILEC receives a
12 billing statement from Bell. They assume that
13 it has already gone through and the customer is
14 switched and then renders a bill to the
15 customer. Bell, of course, didn't really lose
16 the customer after all, so it renders its own
17 bill, so the customer actually gets two bills.

18 Now, eventually it gets straightened out,
19 and the ALEC generally will end up telling the
20 customer it does not have to pay that bill,
21 because it finds out subsequently it never did
22 go over. That's the issue that we generally
23 have with two bills.

24 COMMISSIONER DEASON: Well, it doesn't -- I
25 mean, I'm trying to think of an example.

1 Doesn't that happen in competitive markets too?
2 I mean, if you've got an insurance carrier and
3 you've been with them for a while and they
4 automatically renew it and send you the premium,
5 and in the meantime you decide you want to
6 switch to a different insurance carrier and you
7 make arrangements with them, you get two bills,
8 and you just have to call up and say, "I'm
9 sorry. I'm no longer your customer anymore. I
10 don't want your insurance coverage. I'm not
11 paying the bill." I mean, doesn't that happen?
12 It's just not something that is confined to
13 telecommunications, is it?

14 MS. BULECZA-BANKS: I think that's correct,
15 and I would agree with you. I think that the
16 difficulty now is that a lot of times the
17 customer doesn't know what actually happened,
18 because a lot of times when they call up, if
19 there's problems during the change-over or
20 anything occurs and they call, the ILEC may say,
21 "well, you're not my customer anymore. You need
22 to call your competing carrier." The competing
23 carrier goes on and says, "well, I need to find
24 out this information from the ILEC." when they
25 call the ILEC, the ILEC says, "The conversion is

1 not competed. I can't address your concerns
2 until after the conversion is completed." You
3 have this window of difficulty. And I think
4 that because of those things occurring, when
5 customers get the bill, they're not sure who
6 they are or who -- did they really make the
7 switch-over. I mean, do I know that I'm not
8 obligated to pay carrier 1 or carrier 2?

9 I think in some of the other industries
10 like insurance or any other ones that you have
11 bills, you're kind of -- you realize that,
12 because you've been involved in that for so long
13 and you know how that works, that if I don't
14 renew and I receive a bill from them, they
15 generally say your service is going to be
16 canceled if you don't renew in 12 days or 15
17 days. And I don't know. I haven't reneged on
18 my insurance, so I don't know if actually they
19 would call me and remind me that, you know, I
20 still didn't pay. But generally it just says
21 that you'll be canceled in 15 days for nonpay,
22 we will cease your insurance.

23 But, I mean, I see your analogy. I'm just
24 -- I think it may be the infancy of the
25 competitive situation we are in telephone versus

1 maybe some of the more established industries.

2 COMMISSIONER DEASON: Is it asymmetrical in
3 the sense that this is a 30-day prohibition for
4 there to be marketing efforts for a lost
5 customer from BellSouth's perspective, but that
6 there's not a 30-day prohibition if the
7 direction is from the ALEC to a customer
8 switching from the ALEC to BellSouth, or vice
9 versa, or whatever. You understand the
10 question.

11 MS. BULECZA-BANKS: I understand. And I
12 can actually argue both sides of that for you.
13 Because we're in a posture that we're trying to
14 promote competition, I have no problem with
15 telling you that for a period of time, I don't
16 have a problem with it being asymmetrical. I
17 can also argue for you the other side, that in
18 all fair play, I don't really necessarily have a
19 problem if it was put on both sides.

20 On the flip side, the ALEC is not going to
21 bill BellSouth for any services like the ILEC
22 has to bill the ALEC, and that's the distinction
23 that I have, because the ILEC is not going to
24 receive a bill from the ALEC for services it
25 provided. And that's the difference.

1 COMMISSIONER DEASON: Well, when --

2 MS. BULECZA-BANKS: But I can argue both
3 sides for you on that.

4 COMMISSIONER DEASON: When is the ALEC
5 notified by BellSouth that they've lost the
6 customer? In other words, if BellSouth has the
7 obligation as the wholesale provider and there
8 is an ALEC that is using UNE to provide service
9 to a customer and they have an obligation to pay
10 BellSouth for those UNes, when does BellSouth
11 notify the ALEC when that customer leaves?

12 MS. BULECZA-BANKS: If I'm correct, and I'm
13 sure one of them will correct me if I'm wrong,
14 my understanding is on a period -- every 30 days
15 or something, they develop a list where they
16 send it to the ALEC.

17 No? Okay. That was my understanding.

18 COMMISSIONER DEASON: Well, if it's
19 permissible, Madam Chairman, I'll just direct
20 that question to either BellSouth or the ALECs,
21 or both, to find out how that works.

22 MR. GALLAGHER: When we lose a customer, we
23 get a port-out request. BellSouth actually
24 creates an LSR, sends it to us and creates an
25 impact porting event, and three days later the

1 customer is gone.

2 COMMISSIONER DEASON: So you have three
3 days' notice?

4 MR. GALLAGHER: It's not even notice.
5 We're not allowed -- we're not allowed to use
6 the CPNI to market, so it's just basically --
7 it's informational in nature.

8 MS. BULECZA-BANKS: And I guess I'm
9 confused, because I was referring to the
10 situation generally where that's going -- where
11 it's in the middle of that window where they
12 haven't really switched and they're in the
13 process there. And I'm not sure that -- at
14 least that's not what I have occurs or would
15 happen. That's when they assume they stayed
16 with Bell and you don't know, and then a list is
17 generated at the end of the month that are
18 provided to the -- I mean, that's the situation
19 I was told.

20 MR. GALLAGHER: That sounds like a resell
21 or a UNE-P possible application, whereas, since
22 we use the loops, they're either gone or
23 they're, you know, with us.

24 COMMISSIONER DEASON: Well, I guess what
25 I'm trying to understand is, BellSouth has

1 indicated -- and I think I heard them correctly
2 that they have voluntarily implemented a 10-day
3 period where there would be no solicitation.
4 And depending upon the promptness in which they
5 advise you as to when a customer has changed
6 back, maybe if you just act promptly on the
7 information you get from Bellsouth, there would
8 be no double billing. You would know before you
9 have to give that bill out that there's no need
10 to send that bill because the customer has
11 actually gone back to Bellsouth. That's the
12 basis of the question.

13 MR. GALLAGHER: Okay. With FDN, the way we
14 do our facilities-based, we don't have a problem
15 with double billing. I think the double billing
16 occurs when there's an ILEC customer, a reseller
17 type of CLEC takes that customer, and the
18 reseller doesn't know how to bill until the
19 reseller gets a record from Bellsouth. The
20 reseller reads the record and marks up and
21 creates a bill. But in that period of time
22 while that bill was being created, if the
23 customer went back to Bellsouth, I could see how
24 that double billing would occur.

25 We don't bill off of some record from

1 BellSouth. We create our own bill record, and
2 so that's not the case with a facilities-based
3 guy.

4 COMMISSIONER DEASON: I'm about to switch
5 gears to something else unless somebody wants to
6 follow up on that.

7 CHAIRMAN JABER: I think Commissioner Baez
8 wanted to follow up. And, Commissioner Bradley,
9 did you have a follow-up --

10 COMMISSIONER BRADLEY: Yes.

11 CHAIRMAN JABER: -- at this point, or --

12 COMMISSIONER BAEZ: To this point, but I
13 think it got straightened out. It was just that
14 listening to Ms. Banks, I had -- I thought I
15 heard two different bill flows happening, but I
16 think after the discussion I'm all right.

17 CHAIRMAN JABER: Okay. Commissioner
18 Bradley.

19 COMMISSIONER BRADLEY: Yes. As it relates
20 to win-back, the win-back issue, why is 30 days
21 the magical number? I'm asking staff that
22 question.

23 MR. CASEY: We've looked at a number of
24 periods. You know, there are some states that
25 do seven days. As he mentioned, South Carolina

1 does 10 days. We even looked at 60 days, and we
2 believed that wasn't necessary. That's why we
3 came back to 30 days, to allow the ALEC to
4 complete a billing cycle with the customer and
5 in order for the customer to experience some
6 competition by having their service provided by
7 an ALEC.

8 Now, we -- in an interrogatory, we had
9 asked BellSouth what is their policy regarding
10 win-back in the State of Florida, and they
11 specifically stated that they wait from three to
12 seven weeks before contacting a customer. So
13 that's 21 to 49 days that we did have. And then
14 they sent the memo out saying, "Well, we're
15 going to do 10 days system-wide."

16 COMMISSIONER PALECKI: Is that 30-day
17 period consistent with Texas and Ohio's
18 decisions?

19 MR. CASEY: The 30-day period has been
20 granted in Ohio. Texas is proposing a rule
21 which will have the 30-day period in it.

22 COMMISSIONER PALECKI: So that still has
23 not been enacted at this point?

24 MR. CASEY: No, sir. They're in the
25 process of rulemaking.

1 CHAIRMAN JABER: The rule that Texas is
2 proposing, is that ILEC-specific, or industry?

3 MR. CASEY: I believe it's ILEC-specific.

4 COMMISSIONER BRADLEY: One other question.
5 why would -- do you know what Georgia's
6 rationale is behind the seven-day period, and
7 Illinois for 17, and Louisiana for seven days?

8 MR. CASEY: The reason for that? No, sir,
9 I couldn't tell you their theory behind using
10 seven days. We just looked at Florida and
11 what's best for Florida.

12 CHAIRMAN JABER: Bob and Cheryl, with
13 respect to the billing, the double billing, I
14 guess that wasn't so much of a concern to me.
15 Throughout these proceedings and from the
16 petition, I gather the ALEC concern also is that
17 you have to allow a sufficient period of time to
18 allow the switching to occur, whether it's
19 because the orders get kicked back or there's
20 some level of communication that has to continue
21 to occur between the ALEC and ILEC. Where I
22 struggle, though, is knowing what a sufficient
23 period of time is. You know, I want the
24 switching the customer to occur, and -- you
25 know, I guess maybe that's what you mean by

1 allowing the ALEC to have one competitive
2 billing cycle before the customer is contacted.

3 What I envision is, you know, you've got --
4 initially when you call to switch service, you
5 may have difficulty. It may take two or three
6 days to get the switch to happen. If the
7 customer is contacted during that period of
8 time, they may associate the difficulty
9 automatically with the ALEC. And maybe that
10 continues on for seven days, or maybe it
11 continues for 10 days. It definitely won't
12 continue for 30 days, I hope. But is 10 days
13 okay? You know, in terms of customer
14 complaints, what have we heard? How long does
15 it take for the switching to occur?

16 MR. CASEY: What we're talking about on 30
17 days now is after the switch is complete. So
18 the switching is all complete. We're just
19 allowing a period of time for the ALEC and the
20 customer to get acquainted.

21 CHAIRMAN JABER: I know, but -- oh, so
22 you're suggesting it's a 30-day period even
23 beyond the switch?

24 MR. CASEY: That's correct. That's
25 correct.

1 CHAIRMAN JABER: Okay. That wasn't clear
2 to me. I thought the whole period of time was
3 30 days.

4 MR. CASEY: Win-back marketing to regain a
5 customer starts after the switch is complete.
6 Prior to that, it would be retention marketing.

7 COMMISSIONER BRADLEY: So how long does it
8 take for the switch to occur?

9 MR. CASEY: Sometimes it may take a couple
10 of weeks to switch over. I believe FDN could
11 probably give you a better idea.

12 CHAIRMAN JABER: Okay. But while the
13 switching is -- the transition is occurring,
14 there is no contact from ILEC to win the
15 customer back.

16 MR. CASEY: That's what we're saying in our
17 recommendation.

18 CHAIRMAN JABER: Okay. And it's a period
19 once the switch is complete that we're
20 suggesting -- that you're suggesting a 30-day
21 waiting period?

22 MR. CASEY: Yes, ma'am.

23 CHAIRMAN JABER: Now, the 10 days suggested
24 by BellSouth would be again post switch, there
25 would be a 10-day waiting period.

1 MR. CASEY: That's correct.

2 CHAIRMAN JABER: Okay. Commissioner
3 Deason, you were going to move on to the next --

4 COMMISSIONER DEASON: Well, actually, I
5 guess I need to follow up on my own question.
6 Back to the double billing situation. I guess
7 I'm having difficulty understanding why 30 days
8 cures that. It seems you could be a customer
9 for six months and then decide to switch back to
10 BellSouth. And depending upon when that
11 decision is made and how that's communicated to
12 the ALEC, there may be a double bill then too.
13 I mean, why is it that 30 days is a magic number
14 on the front end to prevent a double bill?

15 MS. BULECZA-BANKS: It's not designed to be
16 a magic number or anything, but I think what it
17 is is to try to get people who are first time
18 switching to an ALEC to have that situation be
19 as easy and less controversial as it could be.
20 And after I've been there for six months, I
21 really don't have a problem with that, because
22 you've already done the switch. You've already
23 experienced a changed carrier from what you have
24 been used to as a monopoly carrier all the
25 time. So I really don't have a problem with it

1 where it occurs in six months. It's kind of
2 like in the initial phase to try to get it as
3 smooth as possible with the least amount of
4 problems. Otherwise, we envision that the
5 consumer will have this concept that anytime I
6 try to change to an alternative carrier, I'm
7 going to have problems, and this is not what I
8 want to do.

9 CHAIRMAN JABER: Commissioner Bradley, you
10 have a question?

11 COMMISSIONER BRADLEY: Yes. Let me see if
12 I understand this now. It takes 30 days to
13 switch a customer from one carrier to another.

14 MS. BULECZA-BANKS: No, sir, I wouldn't say
15 that it takes 30 days. We've heard a range from
16 seven -- and we've had some situations where
17 there has been some difficulties, so there are
18 some anomalies that it may be as long as 30. I
19 can't give you a typical, because I don't know
20 what a typical is, because I don't hear the
21 typicals. I only hear the complaints when
22 things aren't switched quick enough for the
23 customer.

24 So I would be surprised if it's much less
25 than seven to 10 days, because Bell still has to

1 -- or Sprint or any of them, they still have to
2 get them in the roster when they're going to
3 switch over. They have new services that are
4 coming on for customers coming on-line to the
5 IELC itself that they have to fit in to be able
6 to get them on-line. So I don't think seven to
7 10 is an unreasonable time frame to look at when
8 someone is switching.

9 CHAIRMAN JABER: The waiting period starts
10 after the switching is complete.

11 COMMISSIONER BRADLEY: Okay, but I thought
12 I heard --

13 CHAIRMAN JABER: That was the clarification
14 I needed. I didn't understand that. What staff
15 is saying -- BellSouth has proposed the 10-day
16 waiting period is appropriate after the
17 switching is complete. Staff's recommendation
18 is to make it 30.

19 MS. BULECZA-BANKS: And again, going on
20 further, that if we had -- if we didn't measure
21 -- whatever the time frame you have, I think
22 it's appropriate to measure from the time the
23 switch-over is complete because of the variance
24 of time that it takes to switch over a customer.
25 So whatever time frame you're choosing, I think

1 it's just important to set that as the starting
2 time frame.

3 CHAIRMAN JABER: Commissioner Baez.

4 COMMISSIONER BAEZ: I think Commissioner
5 Bradley has a follow-up.

6 CHAIRMAN JABER: Commissioner Bradley.

7 COMMISSIONER BRADLEY: And I'm thinking
8 like a customer. You know, I've had business
9 lines before, and if I switched to one carrier
10 and within a week I found that I got a bad deal,
11 I wasn't so much concerned about the billing
12 period, because I was going to pay the bad
13 carrier and switch to the one that had the best
14 deal for my business purposes. So therefore, I
15 don't see a 30-day billing period as being an
16 issue with the customer, because the customer
17 really is concerned more about the bells and the
18 whistles, the price of the bells and the
19 whistles, and the quality of the service.

20 MS. BULECZA-BANKS: I think the difficulty
21 that still will come through on that situation
22 is that in those carriers -- no matter who
23 you're going with, there are term contracts
24 you're signing. So in seven to 10 days, the
25 customer generally doesn't have an option to

1 switch over unless under these provisions they
2 say that he is dissatisfied and in some
3 situations can prove that dissatisfaction or is
4 willing to pay those termination liabilities,
5 because on these special -- the kind of tariffs
6 we're looking at now, these promotionals are
7 really designed for business customers. They're
8 not for residential. And they're designed to
9 give discounts for certain term agreements, be
10 that 18 months or 36 months. So you don't have
11 too much option if you sign unless there's some
12 extenuating circumstance that allows you to
13 breach that contract you signed with the
14 carrier.

15 CHAIRMAN JABER: Commissioner Baez.

16 COMMISSIONER BAEZ: I have a question again
17 on the double billing issue. If there were --
18 did you all consider perhaps notification
19 alternatives? Instead of actually creating -- I
20 keep -- you know, a cone of silence, if you
21 will, where you can't contact the customer or
22 approach the customer on a win-back, would an
23 alternative be to have notification requirements
24 between the carriers that eliminated this
25 possibility of double billing in these

1 circumstances, instead of a hands-off policy?

2 MS. BULECZA-BANKS: I'm sure that could
3 possibly work. I know that if you are -- if an
4 ILEC has the win-back that occurs during the
5 transition -- and this is when the situation
6 occurs generally -- the ILEC will still continue
7 to bill, because it technically hasn't lost the
8 customer, so that bill is going to go through.
9 So I would think we would have to get processes
10 in place where notification, like you said, is
11 given at some extent so that those in reseller
12 situations won't issue the bill for that.

13 The difficulty also is, however, that my
14 understanding is -- and I'm not sure this is
15 correct either. I'm just going from what I was
16 told, that the ILEC will still bill the ALEC
17 even if they win the customer and transition.

18 COMMISSIONER BAEZ: Well, and --

19 MS. BULECZA-BANKS: And that's where the
20 difficulty gets in, because if they get a bill
21 and they feel compelled they have to pay that
22 bill, I guess that was part of our basis for
23 saying 30 days, because I'm going to have to pay
24 the ILEC. Even though I never got the customer,
25 I still have to pay that bill to the ILEC for at

1 Least a month's worth of service.

2 COMMISSIONER BAEZ: But I think that that's
3 addressed under other processes. And I guess
4 one of the difficulties that I'm having with
5 this particular issue is, you know, are we
6 protecting -- which relationship are we
7 protecting, first of all, because I've heard
8 both you and Mr. Casey say, "Let's let the
9 customer get acquainted with the ALEC," and I
10 have some concerns about that as well. That's
11 another point. Are we protecting two
12 businesses, two carriers, how they deal with
13 each other in their business relationship as a
14 customer and provider as well, or are we really
15 trying to eliminate confusion to the end
16 customer? And I see those as two different --

17 MS. BULECZA-BANKS: And I think that maybe
18 we're trying to look at it all, I mean, to be
19 honest. I think we're trying to make the
20 process as smooth as possible and to try to
21 eliminate double billing, try to eliminate the
22 difficulty that -- to help spur competition. If
23 I am an ALEC and I have to -- I'm submitted a
24 bill for 30 days that I have to pay the ILEC,
25 even though I never got the customer, I think

1 trying to get the whole process a little more
2 fair, maybe, or even balance, and help the
3 transition to see if the process can work. I
4 think we're trying to do it all.

5 COMMISSIONER BAEZ: But isn't that
6 particular issue somewhere addressed, for
7 instance, in an interconnection agreement or a
8 resale agreement, I mean, the process in place
9 for how you true up bills if there's a bill
10 dispute, for lack of a better word, you know,
11 how you clear up that particular aspect of the
12 relationship, so that you're really only left
13 with whatever public interest you have in
14 eliminating some confusion to the customer? And
15 I suspect that there are alternative ways of
16 doing it, but I think that may be a discussion
17 for another day.

18 You know, I see them as two --

19 MS. BULECZA-BANKS: I agree.

20 COMMISSIONER BAEZ: -- different things, so
21 that maybe you don't have to be looking at it
22 all. I don't know. I'm just trying to
23 eliminate some of the confusion that I have on
24 this, because we're trying to address -- we're
25 trying to kill --

1 MS. BULECZA-BANKS: Sure.

2 COMMISSIONER BAEZ: We're not trying to
3 kill two birds, but, you know, we're trying to
4 address two distinct things in my mind anyway,
5 and I'm not sure that we're getting where we
6 need to be on either.

7 CHAIRMAN JABER: Something you said,
8 Ms. Banks, I can't reconcile with the
9 clarification you made for me earlier. You just
10 said in response to Commissioner Baez's question
11 that BellSouth continues to bill, because in
12 their mind, they still have the customer?

13 MS. BULECZA-BANKS: They bill the customer,
14 yes. They bill the customer because he never
15 left.

16 CHAIRMAN JABER: I don't understand that.
17 In clarification to my concern, you said the
18 switch occurs, and then BellSouth --

19 MS. BULECZA-BANKS: "I" is the ALEC. I
20 submit my LSR, and in the process of switching
21 over and having the customer leave, Bell wins
22 back, or Sprint or whoever wins back the
23 customer during that period of time.

24 CHAIRMAN JABER: Okay. How is it they win
25 back that customer if they're not even allowed

1 to contact that customer until the switch is
2 complete? That's what confuses to me. I
3 thought in response to my question you said
4 BellSouth does not contact the customer until
5 the switch is complete plus 10 days.

6 MS. BULECZA-BANKS: But they can retain the
7 customer if the customer calls. And, you know,
8 a lot of customers do call, and they say, "Hey,
9 look, I got this bigger better deal. What can
10 you do for me?" And that's --

11 CHAIRMAN JABER: Okay. So in those
12 situations --

13 MS. BULECZA-BANKS: -- entirely okay.

14 CHAIRMAN JABER: So in those situations
15 where during the transition period the customer
16 on his or her own contacts BellSouth and says,
17 "I've changed my mind. I want to retain you,
18 BellSouth," there might a double billing
19 situation.

20 MS. BULECZA-BANKS: That's my
21 understanding.

22 CHAIRMAN JABER: well, that's very limited
23 then. That possibility is very limited.

24 COMMISSIONER BRADLEY: Madam Chair --

25 CHAIRMAN JABER: Hang on, Commissioner

1 Bradley. See, what I've been hearing you say is
2 there's this double billing scenario that would
3 warrant a 30-day waiting period, but it's not
4 that broad. It's not that general. It's when a
5 customer changes their mind before the switch is
6 complete, there is a potential for a double
7 billing to occur.

8 MS. BULECZA-BANKS: Right.

9 CHAIRMAN JABER: Okay. Commissioner
10 Bradley.

11 COMMISSIONER BRADLEY: Yes. You just made
12 a very interesting comment about how customers
13 respond to competition when they discover that
14 they've bought into a plan that is less
15 advantageous for them as compared to a plan that
16 may be offered by another competitor. It would
17 seem to me that if a customer calls either the
18 ALEC or the ILEC and says, "Hey, I just bought
19 this plan from you, and I discovered that your
20 competitor, even though I have this contract
21 with you, has a better plan," it would seem to
22 me that the response from the competitor would
23 be, "They have a better plan. Well, let me
24 match that plan." I mean, that's when you have
25 true competition.

1 And what I'm really getting at is this.
2 You know, I'm not so much concerned about what's
3 going on with the ALEC and the ILEC. I'm more
4 concerned about what's going on with the
5 consumer, because competition is -- just to have
6 competition for competition's sake is not
7 necessarily good for the consumer. Competition
8 is only good when you have as a result of that
9 interaction better pricing, more bells and
10 whistles, and a higher quality of service.

11 You know, when I think back to the late
12 '70s in the automobile industry when Toyota hit
13 the market, well, Ford and Chevrolet were just
14 puttering around out there. But guess what?
15 They had to do a better job of producing high
16 quality automobiles if they wanted to remain in
17 the market. And guess what they've done? Just
18 that. And that afforded the consumer a higher
19 quality choice and a better price on the
20 automobile.

21 And that's really my position on this, and
22 I'm trying to figure out how all this fits into
23 that particular scheme. Just to have
24 competition out there -- I mean, you know,
25 that's not the American way. The American way

1 is to have people -- the strong survive because
2 of what they have to offer the public, and the
3 public should have good solid choices.

4 MS. BULECZA-BANKS: Did I miss a question
5 in there?

6 COMMISSIONER BRADLEY: A statement. So how
7 are you really defining competition here? And I
8 can see what the FCC has put forth in terms of
9 helping the ILECs -- I mean the ALECs compete
10 and get into the market. But, you know, the
11 statement was made that, you know, we're
12 concerned about what's best for Florida. Well,
13 when you say what's best for Florida, who are
14 you referring to? I mean, most certainly I'm
15 referring to the customers.

16 MS. BULECZA-BANKS: And I would agree. I
17 think that you're right. I mean, competition
18 for competition's sake is not necessarily the
19 best alternative, and the majority of -- when we
20 can get the customers to have choices and be
21 able to find a package that suits them at the
22 best price they can get is the ideal situation.
23 And I just don't think we're there yet. I don't
24 think the market has broadened enough to the
25 point where in every rate center within the

1 state we have ample competition. I just don't
2 think we're there yet.

3 CHAIRMAN JABER: Commissioner Deason, you
4 had additional questions?

5 COMMISSIONER DEASON: Yes. I want to
6 switch gears now to Issue 3, and my question is,
7 as I understand staff's recommendation, you're
8 asking the Commission to preclude BellSouth from
9 filing a like tariff if there is a protest, and
10 we are considering the protest of this existing
11 tariff; is that correct?

12 MS. BANKS: That is correct, Commissioner
13 Deason.

14 COMMISSIONER DEASON: Do we have the
15 statutory ability to do that?

16 MS. BANKS: Staff believes that we do. I
17 know that -- I believe Mr. Turner had made a
18 point that for the Commission to take the
19 position to preclude BellSouth from filing any
20 tariff that mirrors, extends, or builds upon the
21 tariff at issue in this proceeding would -- I
22 believe he used "conclusively invalidate any
23 future tariff filings."

24 Although that is an argument, I believe
25 another argument could be made that it's not

1 necessarily considered to be invalidated, but it
2 could just be for delaying the implementation of
3 that particular tariff until there's a further
4 investigation and review.

5 And I believe that statutory authority is
6 premised or embedded in the Commission's
7 authority under 364.01(4)(g), which provides
8 that this Commission shall ensure that all
9 providers of telecommunications services are
10 treated fairly by preventing anticompetitive
11 behavior and eliminating unnecessary regulatory
12 restraint.

13 At issue in FDN's petition is that this
14 tariff is viewed as anticompetitive, and with
15 that being an issue, this Commission, if we were
16 to find or view it as anticompetitive, I believe
17 that this Commission could indeed actually
18 preclude or prohibit BellSouth from filing
19 tariffs that are similar --

20 COMMISSIONER DEASON: But that would be
21 after a finding that we determine that it's
22 anticompetitive, and that would be after a
23 hearing process, a protest, evidence, a
24 decision. We're basically prejudging it and
25 telling BellSouth we've already found it to be

1 anticompetitive, so don't file it again while we
2 take it to hearing. Is that appropriate to do?

3 MS. BANKS: I believe that it is an avenue
4 that we can take. The appropriateness of it, I
5 guess that could be debated. As I mentioned,
6 with the Commission's jurisdiction to protect
7 consumers as well as prevent any anticompetitive
8 behavior, if there is something pending that
9 could be viewed potentially as anticompetitive,
10 I believe that the Commission does have the
11 power and authority to possibly delay the
12 implementation of that tariff if there's going
13 to be any potential harm to consumers.

14 COMMISSIONER DEASON: Well, how do we --
15 let's say that we're not in this proceeding at
16 all, and there's a new tariff that comes in from
17 BellSouth or any incumbent telephone company,
18 and we have a problem with it, we think there
19 may be some anticompetitive ramifications. Do
20 we have the ability to suspend that tariff?

21 MS. BANKS: I'm not sure I understand your
22 question. If you could just --

23 COMMISSIONER DEASON: A new tariff comes in
24 dealing with something totally different from
25 this, but we have some concerns that it may be

1 anticompetitive. What do we do at that point?
2 Do we suspend it, or do we have that authority
3 for a telephone company? Is it presumptively
4 valid and it goes into effect, but there's
5 refund provisions or make-whole provisions? How
6 are tariffs normally treated, a brand new
7 tariff?

8 MS. BANKS: Well, the Commission could on
9 its own take a recommendation, and if it's found
10 that a tariff is in noncompliance or otherwise
11 not valid, on its own motion or own initiation
12 take a recommendation saying that it should be
13 canceled. As it relates to -- I think your
14 question is whether this Commission has
15 suspension authority. That issue has not been
16 squarely addressed before this Commission.

17 If I could just reference the decision that
18 the parties had referenced earlier, the Arrow
19 decision, and in that particular decision, this
20 Commission did actually vote, and the tariff was
21 at issue, and that was actually filed in Docket
22 No. 99043-TP (sic), which was a petition to
23 review and cancel BellSouth's tariff by Arrow
24 Communications. And in that docket, the
25 Commission did vote that it had the power to

1 suspend or postpone the effective date of a
2 price-regulated tariff upon a prima facie
3 showing that irreparable anticompetitive harm
4 would result from that tariff.

5 However, subsequent to this vote, the
6 petition or the tariff was withdrawn by
7 BellSouth, and so was Arrow's petition, and
8 therefore, there wasn't an order that was
9 actually drafted or that resulted from that
10 decision. So as it relates to our suspension
11 authority, this Commission has not addressed
12 that squarely.

13 CHAIRMAN JABER: May I follow up,
14 Commissioner Deason, on that point?

15 COMMISSIONER DEASON: Sure.

16 CHAIRMAN JABER: I don't know that this is
17 a legal question or a policy question. With
18 respect to your concern, is it undermined by the
19 fact that those agreements can go up to 18 and
20 36 months, so that trying to restrict BellSouth
21 from refiling a tariff is really for naught when
22 the existing tariff, even though it has a
23 limited enrollment period, actually has a life
24 that will exceed the hearing process? Does that
25 make sense?

1 MS. BANKS: Yes, Madam Chair. That is --
2 and I think someone actually referenced about --
3 I think one of the parties referenced maybe this
4 Commission should look at developing some policy
5 that would put a limited duration on tariffs,
6 because as in this instance at issue, this
7 tariff, it is facially moot, because the tariff
8 will actually expire next week. One of the
9 things that I guess --

10 CHAIRMAN JABER: The tariff expires, which
11 is the enrollment period, I suppose, but the
12 implementation of the program that customers
13 have chosen doesn't expire for whenever, you
14 know, the program period is.

15 MS. BANKS: That is correct. That is
16 correct. And that is a concern of staff, and we
17 have looked at that. But if I could just
18 clarify that the only -- what staff is
19 recommending in Issue 3 is that BellSouth be
20 precluded from filing any subsequent tariff or
21 filing, et cetera, only in the event that this
22 PAA recommendation is protested. If it is not
23 protested, then, you know, staff is not
24 recommending that BellSouth be precluded, but
25 only in that instance.

1 CHAIRMAN JABER: I have a sneaky suspicion
2 that this thing is going to get protested. And I
3 don't mean that there's anything mischievous
4 about that. I mean, for the reasons --

5 COMMISSIONER BAEZ: I would protest it.

6 CHAIRMAN JABER: -- articulated -- yes,
7 exactly.

8 MS. BANKS: Madam Chair, if I could just
9 make I guess a notation, and I think this was
10 referenced earlier by one or more of the
11 parties. As you're aware, BellSouth did file a
12 similar tariff on June the 11th that would go in
13 effect, I believe, June 26th. And at the time
14 that staff actually filed this recommendation,
15 that tariff had not been filed. And it was
16 staff's belief or thought that the PAA order
17 resulting from today's decision would be on a
18 prospective basis. That is, it would not be
19 inclusive of the June 11th or would not consider
20 the June 11th tariff filing.

21 COMMISSIONER DEASON: Yes. Mr. Turner, I'm
22 going to ask you, what authority does this
23 Commission have over your tariff filings if we
24 have a concern that there may be something
25 anticompetitive within it? It could be any

1 tariff.

2 MR. TURNER: I think you have the authority
3 to look into it. Now, let me say this. I wish
4 like everything both of our Florida lawyers were
5 not on vacation right now, because I'll tell
6 you, I am no expert on Florida law.

7 I will say, however, that I think to the
8 extent that you're considering this particular
9 rec, it doesn't come into play. We're not
10 talking about a what-if scenario. We've got
11 evidence in the record on which the staff has
12 actually found that this existing tariff is not
13 violative of Florida law.

14 I don't see -- setting legalities aside, I
15 don't see policywise what reasoning there is
16 behind saying if this one complies with the law,
17 but if you file another one that's like it, that
18 one presumptively does not. So I think,
19 especially in the case of Issue 3, clearly, I
20 don't think that that's appropriate. It is
21 prejudging something.

22 And I am not trying to avoid your question.
23 I just do not know enough about the Florida
24 Statutes to address it squarely right now, and I
25 apologize.

1 CHAIRMAN JABER: Commissioner Baez, you had
2 a follow-up?

3 COMMISSIONER BAEZ: Yes, Madam Chairman, a
4 follow-up to Commissioner Deason's question, and
5 I'll pose it to all the legal personnel of
6 various persuasions.

7 Is there anything that this Commission has
8 authority over in the event -- for instance, a
9 generic docket. Is there any vehicle under
10 which it would be appropriate to, in essence,
11 hold any tariff filings, any similar tariff
12 filings back or keep them from taking effect
13 while certain issues are considered?

14 MR. TURNER: Commissioner Baez, I would
15 suggest that if there is, it would have to be
16 based on an initial prima facie showing that
17 there is something wrong with that tariff. It's
18 either the Kansas Commission -- I think it was
19 the Kansas Commission, and I can clarify in just
20 moment which one it was, but a similar issue was
21 raised in which the staff of the state
22 commission said, "We've got some general
23 problems with win-back tariffs that we want to
24 look into," and they opened a generic
25 proceeding. And when a subsequent tariff was

1 filed, the staff recommendation was, "Suspend
2 it. It touches on the subject of win-back.
3 We've got this proceeding over here. You'll
4 just suspend it." And the Commission on
5 reconsideration reversed and said, "How in the
6 world can we suspend a tariff when we don't even
7 -- haven't even looked at it and haven't
8 determined whether the issues allegedly
9 presented about that tariff have facial validity
10 or is sufficiently connected to what we're
11 looking into, just say on the front end suspend
12 it?"

13 COMMISSIONER BAEZ: So you're suggesting
14 that suspension of a tariff as a notion is
15 something that has to go on a case-by-case
16 basis?

17 MR. TURNER: Absolutely, yes, sir.

18 COMMISSIONER BAEZ: Anybody else? Any
19 other takers?

20 CHAIRMAN JABER: Mr. Feil.

21 MR. FEIL: Commissioner, if I may, I think
22 you've actually already decided this issue in
23 the Arrow case, as Ms. Banks referred to, and
24 what you decided there was if a tariff had on a
25 facial showing indicated that it was

1 anticompetitive, then the Commission had the
2 authority to suspend or cancel that tariff. And
3 if you think about it, the reason that that
4 makes sense is that you could have the most
5 anticompetitive, evil tariff there is out there,
6 and if you didn't have authority to stop it
7 before it happened, then, you know, what good is
8 your authority to prevent competitive harm?

9 COMMISSIONER BAEZ: well, but I think you
10 touch on an important issue. You have to stop
11 it before it happens. I mean, it hasn't
12 happened. It's not before us yet.

13 MR. FEIL: In this case, it has been
14 progressive, because --

15 COMMISSIONER BAEZ: well, in this case,
16 somehow all the petitions came in after it took
17 effect, unless I'm getting the time line wrong.

18 MR. FEIL: We filed a petition relative to
19 the in-effect win-back tariff now several days
20 after it became effective. But then you have to
21 ask yourself the question, does it make a
22 difference whether or not we have to wait for
23 the competitive harm to come in effect, or we
24 can only stop competitive harm before it
25 happens? It shouldn't make a difference one way

1 or the other.

2 COMMISSIONER BAEZ: Well, I may not
3 disagree with you. However, the fact still
4 remains that that -- even this prospective, this
5 pending tariff, as you said, isn't before us now
6 for us to be able to suspend it.

7 So you're not -- I don't think, Mr. Feil,
8 you're giving me anything different than this
9 case-by-case -- you know, this case-by-case
10 constraint that seems to be suggested. I'm not
11 sure I agree with it, but --

12 MR. FEIL: Well, the petition did reference
13 win-back tariffs, not --

14 COMMISSIONER BAEZ: In general.

15 MR. FEIL: In general, yes, sir.

16 CHAIRMAN JABER: Mr. McGlothlin.

17 MR. MCGLOTHLIN: I would just like to offer
18 a couple of comments. One is this. Listening
19 to Mr. Turner, I've heard him refer several
20 times to evidence of record. Well, today it
21 seems like if there's something he can put his
22 hands on that he likes, it's evidence of
23 record. Something that we offer is anecdotal.
24 But what you have is a situation that there has
25 been no evidentiary proceeding on this issue as

1 of yet.

2 I would just offer a couple of things in
3 response to Commissioner Baez. I agree with
4 Mr. Feil that the Commission got it right in the
5 Arrow case, and that is one regulatory tool you
6 have at your disposal. I think in the absence
7 of a generic rule, what you have is a
8 case-by-case approach, but you do have the
9 ability and the authority under case law to
10 engage in incipient policymaking on a
11 case-by-case basis until you reach a point where
12 you have in place a generic rule that governs
13 the broad spectrum of things. So I think you
14 have several things in your arsenal, and I think
15 one premise should be that you're not limited to
16 tools that are by definition too ineffective and
17 too late to serve your purpose.

18 CHAIRMAN JABER: Ms. Christensen, you had a
19 response to Commissioner Baez's question?

20 MS. CHRISTENSEN: I believe so. I wanted
21 to clarify one thing, which is, there has been a
22 new filing, a June 11th filing which will go
23 into effect next week, which is basically an
24 extension of this win-back program, the Key
25 Customer win-back program.

1 And also, I think, if I'm understanding
2 your question correctly, Commissioner Baez, is
3 the question not do we have to do this on a
4 case-by-case basis as the tariffs come in, or
5 can we determine a specific type of tariff,
6 i.e., the Key Customer win-back type of tariff,
7 is anticompetitive on a prima facie showing and
8 prevent any similar type of tariffs from being
9 filed in the future?

10 COMMISSIONER BAEZ: Well, for the --

11 MS. CHRISTENSEN: For the duration of the
12 proceeding until there's an actual --

13 COMMISSIONER BAEZ: For the duration of
14 the proceeding and pending whatever
15 determination is --

16 MS. CHRISTENSEN: -- determination. I
17 would argue that under your authority under
18 364.01, (d) and (g), that you would have the
19 power to suspend any similar types of tariffs if
20 you find that this type of tariff filing is
21 prima facially anticompetitive, and that way
22 mitigate some irreparable harms if it's
23 perceived by the ALECs that these continue to go
24 on while you're trying to make that final
25 determination. And if you make a determination

1 that there's irreparable harm and that these
2 prima facially are anticompetitive, I would
3 argue that, yes, you could not only suspend any
4 tariffs that are in effect, but any future
5 tariffs that may be filed during that period of
6 time.

7 CHAIRMAN JABER: Legal, with respect to the
8 June 11th tariff, what does that clarification
9 mean that there is a June 11th tariff that
10 BellSouth has filed? Does that mean that
11 there's no harm to BellSouth if we conduct a
12 hearing proceeding because the June 11th tariff
13 will be in effect? Clarify that for me.

14 MS. CHRISTENSEN: Well, I know staff has
15 some concerns about the June 11th filing that
16 has been filed, and we are looking at bringing
17 that to the Commissioners' attention. The way
18 the issue was worded on Issue 3, there was a gap
19 that was kind of left open between the current
20 tariff filing, and should the Commission vote to
21 approve staff on Issue 3, this June 11th filing
22 would not have been captured by that language.
23 It wouldn't have been prevented, because it
24 would have already been filed.

25 So I suppose at the Commissioners'

1 discretion, they could go ahead at this time and
2 vote to suspend that if they determined that it
3 was anticompetitive, or that could be addressed
4 in a subsequent recommendation brought by
5 staff.

6 CHAIRMAN JABER: Commissioners, do you have
7 questions?

8 COMMISSIONER BRADLEY: I have a question.

9 CHAIRMAN JABER: Were you done,
10 Commissioner Deason?

11 Commissioner Bradley.

12 COMMISSIONER BRADLEY: Of General
13 Counsel. Harold, I understand -- Mr. McLean, I
14 understand very clearly what our statutory
15 authority is as it relates to this Commission
16 itself following federal law. What's the
17 governance -- I mean, what are the parameters as
18 it relates to our ability to govern or to make
19 decisions as it relates to FCC rules?

20 MR. MCLEAN: We're compelled to follow
21 those rules, if I understand your question
22 correctly.

23 COMMISSIONER BRADLEY: We're compelled to
24 follow the rules to what extent? To the letter,
25 or do we have some ability to interpret for

1 ourselves also on a case-by-case, state-by-state
2 basis?

3 MR. MCLEAN: If I understand your question,
4 yes, sir. But our authority flows from the
5 Florida Legislature, not from the Federal
6 Government. But we have to implement the Laws
7 of Florida such that they're not inconsistent
8 with federal laws and federal rules which
9 implement those laws.

10 COMMISSIONER BRADLEY: Okay.

11 CHAIRMAN JABER: Commissioners, I don't
12 know if you have any more questions or not, but
13 let me try to put this in perspective for us and
14 see if we can get a vote out of this.

15 These are very important issues, because
16 they do affect one way or the other the
17 competitive arena that we have in
18 telecommunications in Florida. I think -- and,
19 Commissioner Bradley, you know this better than
20 I do. The Florida Legislature spoke to this
21 very issue in 1995 when they charged us with the
22 mandate to promote a telecommunications local
23 market in the State of Florida.

24 And I look at 364.01(4)(b) and just go down
25 the list, encourage competition through flexible

1 regulatory treatment among providers of
2 telecommunications services in order to ensure
3 the availability of the widest possible range of
4 consumer choice in the provision of all telecom
5 services; (c) protect the public health, safety,
6 and welfare by ensuring that monopoly services
7 provided by telco companies continue to be
8 subject to effective price, rate, and service
9 regulation; and (d) promote competition by
10 encouraging new entrants into the
11 telecommunications market and by allowing a
12 transitional period in which new entrants are
13 subject to lesser regulation.

14 I didn't write the law. I didn't write the
15 state law. I didn't write the federal law. But
16 I have to tell you, I look at those statutes in
17 relation to does the tariff, the promotional
18 tariff create an environment that doesn't let
19 competition occur in the local market. That's
20 the test I've used for myself, is that tariff
21 prohibiting the ALECs to compete adequately in
22 the local market.

23 I have to tell you, Commissioners, based on
24 today's discussion, I'm not convinced that's the
25 case. I am not convinced today that BellSouth's

1 tariff results in behavior that does not allow
2 the local entrants to compete. But I have to
3 also tell you that I look forward to the hearing
4 in this case, because I think that, depending on
5 the evidence in the record, Mr. Turner -- and I
6 would agree with Mr. McGlothlin. That's not
7 what we have today. But depending on the
8 evidence in the record, I'll look forward to
9 fully understanding whether there is some
10 behavior that results in a lack of competitive
11 entry.

12 Commission, we can go forward with
13 questions, or we can take a motion.

14 COMMISSIONER BAEZ: Well, Madam Chair, I
15 too would look forward to a hearing. But my
16 question still remains. I mean, I'm sensing
17 that our process, our noticing requirements and
18 so on have created a gap so that we're -- I need
19 the answer to be cleared up, or I need to get a
20 clear answer anyway, if we can in fact hold off
21 on these tariff filings, and how do we go about
22 that? You know, I don't know that Issue 3's
23 recommendation gets us there, because I do have
24 concerns over prospectively foreclosing, you
25 know, a process that is available or that should

1 be available under our rules.

2 I have trouble not having a tariff before
3 me to say, "Okay. We suspend it. This is what
4 we're going to be looking at." And I'm not sure
5 that we're on clear legal footing as to whether
6 we can do it through the vehicle of a generic
7 proceeding, because I think, and I'll tell you
8 honestly, I can go either way on this. I would
9 just as soon entertain a generic proceeding
10 under our own motion and set out the issues,
11 many of which we've heard today, the issues that
12 we would want to be considering, or wait on a
13 protest.

14 I'm just not confident that a protest under
15 this particular docket is going to afford us the
16 opportunity to really do the right thing and
17 say, well, if we have a concern with these types
18 of programs and we want to look at them and
19 really make a -- you know, decide whether
20 they're good or bad or whatever, that this
21 particular opportunity will let us say, "This
22 stops here until we've been able to make our
23 determinations."

24 CHAIRMAN JABER: Yes. Is your question --
25 because I think legal has taken a stab at it, so

1 let's try to be more specific, and maybe we can
2 get a specific answer.

3 I heard two questions. Do we have the
4 clear authority to suspend a tariff, that's the
5 first question. The second question is, how do
6 we go about --

7 COMMISSIONER BAEZ: I am less -- Madam
8 Chairman, I am less concerned with our authority
9 to suspend a tariff under the appropriate
10 circumstances and pursuant to the appropriate
11 process as I am -- my concern here is, if we've
12 identified policy concerns that we want to
13 consider, if we've identified aspects of these
14 types of programs that we want to look into
15 further, how do we -- in the context of what we
16 have before us today, how do we say, "Let's
17 everybody take a step back, because we are going
18 to look at these on a generic basis," or "we are
19 going to look at these issues, generally
20 speaking, if we have the authority to do that."

21 CHAIRMAN JABER: whether we call it
22 suspension or something else.

23 COMMISSIONER BAEZ: Precisely. I mean, I'm
24 certainly not married to -- I think suspension
25 is a different process.

1 CHAIRMAN JABER: Mr. McLean,
2 Ms. Christensen, Ms. Banks.

3 MR. MCLEAN: Well, I like
4 Ms. Christensen's analysis. The point is, you
5 know, you want these win-back programs before
6 you either in a generic sense or in this
7 particular docket. You've got to deal with
8 entities filing these same tariffs in the
9 meantime. What are you going to do with those?
10 How can you avoid prejudging them?

11 And my notion is that you ought to be able
12 to suspend them pending the outcome of this
13 proceeding. I can't think of a more rational
14 way to go about it. Any other scenario to me
15 has you prejudging them as they come in. And
16 maybe to some extent, suspending them does that
17 too, but at least this gives you an opportunity
18 to have a proceeding of some sort, yet to be
19 decided, in which you determine and think about
20 in a very generic sense these win-back programs.

21 COMMISSIONER BAEZ: Mr. McLean, this may be
22 a distinction without a difference. The problem
23 is that here we're taking -- we're morphing a
24 specific petition into what would amount to a
25 generic proceeding, and I'm not sure that -- I'm

1 not sure that we can -- I don't know if we can
2 do that or not.

3 MR. MCLEAN: I'm not sure that it serves
4 the interests of all the parties, but then
5 rulemaking is a rather cumbersome thing in which
6 to engage --

7 COMMISSIONER BAEZ: I would agree. I
8 mean --

9 MR. MCLEAN: -- down the road somewhere,
10 whereas, you know, with this proceeding, at
11 least you're dealing with something fairly soon,
12 and you know -- I mean, in many ways, this would
13 be a generic. I mean, looking at the folks at
14 the table, it's going to be a fairly generic
15 proceeding too. But whether you can make
16 general policy statements from that particular
17 proceeding is a matter that Bell addressed and
18 is my concern too. It's a difficult question.

19 Time is of the essence, I think. If what
20 the ALEC community says is true, then you need
21 to stop the bleeding. If what they say is not
22 true, then you need to permit these kinds of
23 filings. So I think time is of the essence, and
24 the PAA process is probably the quickest way to
25 a resolution.

1 CHAIRMAN JABER: Commissioner Baez, at the
2 very least, regardless of the outcome of Issue
3 3, at the very least, we should expedite the
4 proceeding, and certainly we'll try to make that
5 happen.

6 COMMISSIONER BAEZ: Does that require us to
7 make a decision on Issues 1 and 2, I guess is
8 really the -- that would be my question. And I
9 don't want to put words in anyone's mouth here.
10 If you're talking, Madam Chairman, about
11 expediting the proceeding by recognizing that on
12 our own we need to have a proceeding or just
13 waiting on -- let the PAA process take its
14 effect.

15 MR. MCLEAN: Madam Chairman, I didn't mean
16 to imply that you could not go on your own. You
17 don't have to wait on the PAA thing. You can
18 vote today to go to hearing if you choose to.

19 CHAIRMAN JABER: Right. Commissioner
20 Baez, when I made that statement, it's in
21 anticipation of a protest to a PAA. But
22 honestly, that's not to preclude the alternative
23 of setting this directly for a hearing. That
24 just -- that didn't occur to me.

25 COMMISSIONER BAEZ: No, and I'm not -- you

1 know, again, I can -- the will of the
2 Commission. Either way works for me. If it
3 gets the issues out, I don't have a problem,
4 whichever way is fastest.

5 CHAIRMAN JABER: Commissioners, any
6 feedback?

7 COMMISSIONER DEASON: I'm willing to make a
8 motion, and we'll just see what happens.

9 CHAIRMAN JABER: Let's do it.

10 COMMISSIONER DEASON: I move staff on Issue
11 1. Or I can make a motion on all three issues.

12 COMMISSIONER BRADLEY: I'll second that.

13 CHAIRMAN JABER: Let's hear your motion on
14 all three, and maybe we can do it all together.

15 COMMISSIONER DEASON: Okay. I would move
16 staff on Issue 1; I would move staff on Issue 2,
17 with the exception of the imposition of the
18 30-day moratorium period for the initiation of
19 win-back activities; and I would move staff on
20 Issue 3, with the exception that we do not
21 include a provision which would prohibit
22 BellSouth from filing a like tariff while this
23 matter is going to hearing.

24 CHAIRMAN JABER: And on Issue 2, your
25 removal of the 30 days is also acceptance of the

1 voluntary 10-day period, Commissioner Deason?

2 COMMISSIONER DEASON: Yes, it would be
3 acceptance of that.

4 And let me say that the 30-day moratorium I
5 have a number of problems with. First of all,
6 it appears it's asymmetrical. I'm not so sure
7 it's appropriate in a tariff filing of this
8 nature.

9 And the double billing problem, I'm not so
10 sure how pervasive that problem is. It's very
11 limited circumstances, it appears, and it seems
12 like the double billing can be better addressed
13 in a different venue. It seems to me that it's
14 more a question of accurate and timely billing,
15 either in an interconnection agreement or in
16 performance standards, not necessarily in a
17 tariff filing.

18 COMMISSIONER BRADLEY: And, Madam Chair, I
19 would like to offer a second to Commissioner
20 Deason's motion.

21 CHAIRMAN JABER: Okay. The motion is to
22 move staff on Issue 1, to move staff on Issue 2
23 with the exception of the 30-day wait-out period
24 and acknowledge BellSouth's voluntary 10-day
25 waiting period, and on Issue 3 it's move staff

1 with the modification regarding not precluding
2 Bellsouth from filing a tariff in the interim.
3 There has been a second, a motion and a second.
4 All those in favor say aye.

5 (Simultaneous affirmative responses.)

6 CHAIRMAN JABER: Opposed, nay.

7 (No response.)

8 CHAIRMAN JABER: Okay. That addresses
9 Item 11.

10 (Conclusion of consideration of Item 11.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 128 are a true and correct transcription of my stenographic notes.

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

DATED THIS 26th day of June, 2002.



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