

COPY

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 030846-TL - Implementation of  
Section 364.164, Florida Statutes.

---

BEFORE: CHAIRMAN LILA A. JABER  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER RUDOLPH BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 4

DATE: Tuesday, September 2, 2003

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

TRANSCRIBED BY: MARY ALLEN NEEL  
Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS, INC.  
2894-A REMINGTON GREEN LANE  
TALLAHASSEE, FLORIDA 32308  
(850)878-2221

DOCUMENT NUMBER-DATE

08557 SEP 10 8

FPSC-COMMISSION CLERK

## PARTICIPANTS:

CHARLES BECK, on behalf of the Office of Public Counsel.

RICHARD CHAPKIS, on behalf of Verizon.

JOHN FONS, on behalf of Sprint-Florida.

MICHAEL GROSS, on behalf of FCTA.

TOM MCCABE, on behalf of TDS Telecom/Quincy.

ED PASCHALL, on behalf of AARP.

MICHAEL TWOMEY, on behalf of Sugarmill Woods Civic Association, et al.

NANCY WHITE, on behalf of BellSouth Telecommunications.

BETH KEATING and PATRICIA CHRISTENSEN, FPSC Staff.

## STAFF RECOMMENDATION

ISSUE 1: Should the Commission hear oral argument from the ILECs and other interested persons?

RECOMMENDATION: Yes. Staff recommends that the Commission hear oral argument from the ILECs and other interested persons.

ISSUE 2: What overall procedural schedule should be adopted in order to meet the statutory requirement of the issuance of a final order within 90 days?

RECOMMENDATION: Staff recommends that the Commission follow the procedural time frame outlined in the analysis portion of staff's memorandum dated August 21, 2003.

ISSUE 3: How should the discovery limitation set forth in subsection 364.164(3), Florida Statutes, be construed?

PRIMARY RECOMMENDATION: The discovery should be limited to the plain meaning of subsection 364.164(3), Florida Statutes, which provides that any discovery on the petitions filed pursuant to section 364.164(3), Florida Statutes, shall be limited to verification of the pricing units.

ALTERNATIVE RECOMMENDATION: The limiting provisions contained in subsection 364.164(3), Florida Statutes, should be construed in its narrowest sense to limit discovery only to the extent that said discovery pertains to the pricing units referenced in subsection 364.164(3).

ISSUE 4: What is the pertinent scope of this proceeding, and what analysis should be included within the proper standard of review?

RECOMMENDATION: Staff makes the following recommendations:

Staff recommends that the Commission define the scope of its review of large ILECs' petitions under the criteria set forth in subsection 364.164(1)(a), Florida Statutes, as including a review of whether support exists. For the small ILECs, staff recommends that support be assumed.

Staff recommends that the cost standard for quantifying the current amount of support for large ILECs should be Total Service Long Run Incremental Cost (TSLRIC). Regarding the appropriate geographic level for calculating the current amount of support for large ILECs, staff recommends that analyses be performed at two levels, exchange and total company. Staff recommends that the Commission, to the extent possible, express preliminary guidance regarding its preferred cost standard and geographic level for calculating current support, but refrain from precluding the use of other options. To the extent a party is able to adequately support and justify use of a different approach, it should be allowed to do so.

Staff recommends that the Commission define the scope of its review under the criteria set forth in subsection 364.164(1)(b), Florida Statutes, to include a review of profitability in terms of both stand-alone basic service and a basic/nonbasic service bundle, as well as the potential effects on various market entry strategies.

Staff does not believe that the criteria set forth in subsections (c) and (d) of 364.164(1), Florida Statutes, need interpretation beyond the plain language of the statute.

Staff also recommends that large ILECs be required to submit their "interstate switched network access rate" calculated on the same basis prescribed for their "intrastate switched network access rate, although they should have the opportunity to present evidence whether or not this is the appropriate definition. They should also provide the supporting calculations for the derivation of the "intrastate switched network access rate" and the derivation of the "intrastate switched network access rate."

All petitioning LECs should be required to provide a price-out for each planned annual filing for the revenue category, showing pricing units, old

rates, new rates, and revenue effect. In addition, staff recommends that the petitioning LEC provide a price-out summary, demonstrating that each annual filing will be revenue neutral within the revenue category, pursuant to subsections 364.164(2) and (7), Florida Statutes. While a petitioning LEC should not be precluded from presenting evidence that other methods are more appropriate for making the actual determination on revenue neutrality, staff recommends that the price-outs and summary be required.

ISSUE 5: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending receipt of the first LEC petition filed pursuant to Section 364.164, Florida Statutes, and establishment of a docket to address that petition. Thereafter, this docket should be closed administratively. The provisions of the order resulting from this recommendation should, however, be considered applicable to each petition filed pursuant to Section 364.164, Florida Statutes, and should be so recognized in each corresponding docket.

## PROCEEDINGS

1  
2 CHAIRMAN JABER: Okay. Let's get back on  
3 the record. And I think we've got participation  
4 on Item 4.

5 COMMISSIONER DAVIDSON: Really?

6 CHAIRMAN JABER: I think.

7 Staff, do you have an introduction?

8 MS. KEATING: Just a very brief one, Madam  
9 Chairman.

10 Item 4 is staff's procedural recommendation  
11 regarding the implementation of new Section  
12 364.164, Florida Statutes. Staff recommends  
13 that oral argument be received because of the  
14 complexity and expedited nature of this  
15 proceeding.

16 Staff's recommendation in Issue 2 addresses  
17 the schedule, Issue 3 addresses the scope of  
18 discovery, and Issue 4 addresses the scope of  
19 the proceeding itself. Staff notes that  
20 petitions have already been filed pursuant to  
21 this section by BellSouth, Sprint, and Verizon.

22 As you can see, there are a number of  
23 interested persons here to participate, and  
24 staff is available to answer any questions you  
25 may have.

1 CHAIRMAN JABER: Okay. Beth, I need you to  
2 just stay close to the microphone.

3 And, Commissioners, Issue 1 is actually the  
4 formal vote on whether parties can participate.  
5 I certainly would like for parties to  
6 participate.

7 MR. DAVIDSON: So move.

8 CHAIRMAN JABER: So there is a move staff  
9 on Issue 1.

10 COMMISSIONER DEASON: Second.

11 CHAIRMAN JABER: And a second. All those  
12 in favor say aye.

13 (Simultaneous affirmative responses.)

14 CHAIRMAN JABER: Issue 1 is approved  
15 unanimously.

16 Now, staff, you are not recommending, nor  
17 do I feel the need to establish a time period.  
18 Commissioners, we'll just encourage parties to  
19 be concise, not repetitive, but certainly to  
20 make all the points they feel necessary to this  
21 item. And I would like to establish up front  
22 the order for presentations. This was a  
23 recommendation initiated by staff, not based on  
24 a petition necessarily, so do you have a  
25 recommended order for me, Ms. Keating?

1 MS. KEATING: Not too well, though perhaps  
2 the ILECs may be the most appropriate place to  
3 start.

4 CHAIRMAN JABER: Okay. I see Ms. White,  
5 BellSouth, Verizon, Sprint. Mr. Gross, Time  
6 Warner?

7 MR. GROSS: No, FCTA.

8 CHAIRMAN JABER: FCTA. Thank you. Let me  
9 write this down.

10 And then, Mr. Beck, should I come back to  
11 you?

12 MR. BECK: Sure.

13 CHAIRMAN JABER: Okay. And then  
14 Mr. Paschall and Mr. Twomey. See, you're easy  
15 to forget over there, but Mr. Twomey.

16 Anyone else?

17 Okay. Ms. White?

18 MS. WHITE: Thank you, Madam Chairman. I  
19 assume that the Commission would want all the  
20 issues to be taken up in the argument at one  
21 time rather than issue by issue?

22 CHAIRMAN JABER: I think so.  
23 Commissioners, do you have any problem with  
24 that?

25 Yes. Go ahead.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. WHITE: All right. Thank you.

Issue 2 is the overall procedural schedule. Staff has recommended a schedule, and Public Counsel has also filed a motion to order a case management conference, to which a schedule is attached.

BellSouth's position is that this Commission has been setting procedural schedules for 10 these many years, and we feel that the Commission is perfectly capable of setting a fair and reasonable procedural schedule.

The only comments I would have about Public Counsel's procedural schedule is that we disagree with their schedule in that they only give seven days between intervenor and rebuttal testimony. We feel like that is an extremely short period of time. We do agree with them that a bench decision with oral recommendation is appropriate.

With regard to the mechanics of discovery that is also in Issue 2, this is also brought up by the staff recommendation and by Public Counsel in their motion to expedite discovery schedule. We do not have any objections to the mechanics with regard to how service should be



1           made, the amount of time for objections, serving  
2           responses and requests on staff. The one thing  
3           we do take issue with is the discovery  
4           responses. Staff is recommending 15 calendar  
5           days, and Public Counsel is recommending 10  
6           calendar days. I guess BellSouth's position  
7           would be that we would like to see something  
8           maybe in the middle of those two.

9           The bottom line with us is that we're going  
10          to do our best to provide discovery responses  
11          whenever the Commission says they're due. I'm  
12          sure there are going to be occasions when  
13          something is just not ready or is not able to be  
14          ready in time, and we'll deal with those when  
15          they arise with the staff and with Public  
16          Counsel.

17          Issue 3 is the discovery limitations. That  
18          goes into what kind of discovery should be  
19          permitted in this case. BellSouth supports the  
20          primary recommendation. We believe that Section  
21          364.164 specifically states that, quote, "Any  
22          discovery or information requests under this  
23          section should be limited," end quote. "Under  
24          this section" refers to section 364.164. It  
25          does not refer to subsection (3).

1                   COMMISSIONER DAVIDSON: Chairman I have a  
2 question for Ms. White at this point.

3                   CHAIRMAN JABER: Commissioner Davidson.

4                   MS. WHITE: Sure.

5                   COMMISSIONER DAVIDSON: Turning to page 10  
6 of the staff rec -- and I understand BellSouth's  
7 position. How is it if we limited discovery in  
8 the manner suggested by BellSouth that we would  
9 be able to make the specific determinations  
10 required by the statute as to whether removing  
11 current support for basic local telecom service  
12 will provide a more attractive competitive local  
13 exchange market, induce enhanced market entry,  
14 and be revenue neutral? I mean, how is it that  
15 we make that determination short of sheer  
16 speculation as to what the consequences of the  
17 rebalancing would be?

18                   MS. WHITE: I think you look at the case  
19 put on by BellSouth, and I think you look at the  
20 case put on by Public Counsel.

21                   COMMISSIONER DAVIDSON: But wouldn't that  
22 case -- as part and parcel of putting on a case,  
23 you provide the other parties notice as to what  
24 your case will be. They then are in typical  
25 litigation afforded a reasonable opportunity to

1 take discovery as to the elements of your case,  
2 and you all take discovery as to the elements of  
3 their case. So how do we manage that process if  
4 we in fact just limit discovery to pricing?

5 MS. WHITE: I think -- well, I think there  
6 are a couple of answers to that. One is I think  
7 that discovery about pricing units could  
8 probably get into other areas that are relevant  
9 to pricing units. I think --

10 COMMISSIONER DAVIDSON: well, you've just  
11 broadened the scope of the discovery then.

12 MS. WHITE: well, no, pricing units -- what  
13 does pricing units mean? I mean, I think the  
14 Commission -- I guess to some extent -- I was  
15 tempted to argue that this issue wasn't ripe  
16 yet, because it's going to depend on the kinds  
17 of questions that are asked. I think that, yes,  
18 the Commission does have an interest in some  
19 things. I think that if Public Counsel or  
20 whoever else is in this case is going to get  
21 into issues like affiliate transactions or  
22 things like that that are just totally outside  
23 the scope, then that's not appropriate. I mean,  
24 to some extent, we're not going to be able to  
25 say what's relevant, or the Commission may not

1 even be able to say what's relevant until you  
2 see the questions.

3 COMMISSIONER DAVIDSON: Well, give us a --  
4 well, let's take the statute, for example. Give  
5 us a couple of examples of what we would  
6 consider to assess the statutory criteria of  
7 whether granting the petitions will induce  
8 enhanced market entry. How would we do that?

9 MS. WHITE: I think you look at the number  
10 -- you could look at the number of CLECs that  
11 are providing residential service in Florida  
12 today. We'll put on evidence to that effect.  
13 You have your own report, competition report,  
14 the Commission's competition report. You see  
15 what parties have said in other dockets about  
16 why or why not -- why or why they aren't going  
17 into the residential market, and you see whether  
18 raising basic rates, residential rates will help  
19 that out, will help people go into the market.

20 COMMISSIONER DAVIDSON: Could we hear, for  
21 example, from competitors who may say granting  
22 this -- if this rate rebalancing occurs, we will  
23 enter the market, and here's how we would plan  
24 on doing that?

25 MS. WHITE: I think so. I think that's --

1 I think that the intervenors, the possible  
2 intervenors are not just limited to Public  
3 Counsel and consumer groups. I think it also  
4 includes CLECs that either say, look, is this  
5 going to help or hurt my business.

6 COMMISSIONER DAVIDSON: And that's really  
7 sort of the gist of this, because you're  
8 arguing, in a sense, for a very limited and  
9 structured amount of discovery. And I don't  
10 know that that other discovery would be adverse  
11 to your interest or to any party's interest. I  
12 mean, I think the goal is to figure out how is  
13 this going to impact competition. And we have  
14 two options based on the recs right now: Either  
15 take a very limited notion of discovery, or take  
16 a broader view of discovery and tie it to the  
17 specific factors that we have to consider. And  
18 that's just sort of a comment to wrap up on my  
19 questions.

20 CHAIRMAN JABER: Commissioner Davidson, I  
21 appreciated, actually, that you asked those  
22 questions when you did, because, Ms. White, in  
23 the legislation working its way, it was always  
24 my understanding that the scope of that language  
25 was designed to prevent earnings reviews of

1 ILECs, that what everyone wanted to avoid was  
2 rate of return, rate base regulation earnings  
3 reviews.

4 And I don't know if that's supported by  
5 the primary or alternative, but just like  
6 Commissioner Davidson, to put a statement out  
7 there from the very beginning that the  
8 understanding -- and, Mr. Fons, I'm very  
9 interested in having you address this  
10 specifically when you get there. The  
11 expectation was that everyone would be able to  
12 follow up on what product offerings might be  
13 available if certain market conditions existed,  
14 what companies would make a commitment to come  
15 into Florida if certain market conditions  
16 existed. And the limitation on discovery  
17 everyone represented was to prevent earnings  
18 reviews. Can you -- can't I --

19 MS. WHITE: well, unfortunately --

20 CHAIRMAN JABER: -- get you to agree to  
21 that today?

22 MS. WHITE: Yes, I will agree that one of  
23 the limitations is to prevent earnings reviews.  
24 I think that the bottom line here is, both the  
25 primary rec and the alternative rec are both

1 recognizing that there is a limitation. Now,  
2 where does that limitation lie? I mean, that's  
3 up to you all to order. I would --

4 CHAIRMAN JABER: Right. What you all need  
5 us to do, what the parties need us to do is to  
6 establish what we believe that limitation is and  
7 to give you guidance. It may not be as simple  
8 as saying it's the primary or the alternative.

9 MS. WHITE: I absolutely agree. And that's  
10 why to some extent it may depend on the question  
11 that is asked, the discovery question that is  
12 asked. I mean, it's a little hard to sit here  
13 and try to imagine, with Mr. Beck's fertile  
14 imagination and Mr. Twomey's fertile  
15 imagination, questions that they could come up  
16 with --

17 CHAIRMAN JABER: And, of course, you mean  
18 that in a good way.

19 MS. WHITE: -- that might or might not be  
20 appropriate.

21 CHAIRMAN JABER: You mean that in a good  
22 way.

23 MS. WHITE: I mean that in a very good way.

24 CHAIRMAN JABER: Okay. Let's let you  
25 finish.

1 MS. WHITE: So let me move on to Issue 4.  
2 Issue 4 is -- I'm not sure how to describe what  
3 Issue 4 does. It's essentially the staff's  
4 concept of what filings would look like, could  
5 look like, should look like. To the extent it's  
6 what filings should -- well, to the extent of  
7 any of those things, we believe it's moot,  
8 because the filings have been made. They are  
9 what they are. They contain what they contain.

10 To the extent that the staff was intending  
11 it to be things that the Commission should order  
12 and should be the right way to do a filing, I  
13 believe that to some extent that's prejudging  
14 the case. And we believe that these options  
15 that the staff has set out are really no longer  
16 relevant due to the fact that the filings have  
17 been made.

18 I can speak specifically about how the rec  
19 and how BellSouth's filing coexist, but I'm not  
20 going to do that at this time. We can come back  
21 to that if we need to.

22 And I think the last thing I would like to  
23 comment on, probably just so I don't have to  
24 respond to it in writing, is Mr. Beck's, Public  
25 Counsel's motion to hold public hearings.



1           BellSouth has no objection to that. If the  
2           Commission believes that that is the appropriate  
3           thing to do, then that's fine. We'll deal with  
4           it.

5                     And I think that's all I have to say.  
6           Thank you.

7                     CHAIRMAN JABER: Thank you, Ms. White.

8                     Mr. Chap --

9                     MR. CHAPKIS: Chapkis.

10                    CHAIRMAN JABER: Chapkis, thank you.

11                    MR. CHAPKIS: Good afternoon. Mr. Chapkis  
12           for Verizon.

13                    Verizon agrees with staff's proposed  
14           schedule. That's Issue No. 2. We believe that  
15           it fairly allocates time to each task that needs  
16           to be performed. Of course, it's a tight  
17           schedule, but it had to be tight in light of the  
18           time constraints imposed by the legislation.

19                    I just wanted to comment on Public  
20           Counsel's proposed schedule. Like BellSouth,  
21           Verizon also objects to the proposed seven days  
22           for rebuttal testimony. It would be patently  
23           unfair to require Verizon to prepare rebuttal  
24           testimony in seven days.

25                    On rebuttal, Verizon is going to have to

1           respond to any factual allegations that are made  
2           by Public Counsel and even the other opposing  
3           parties, and we're also going to have to respond  
4           to any expert opinions submitted by those  
5           parties. This could require us to have to  
6           conduct our own discovery, to the extent  
7           discovery is permissible, and to hire additional  
8           witnesses. In addition, Verizon and the other  
9           parties are going to have to prepare the  
10          rebuttal testimony itself. And staff concluded  
11          that we needed two weeks to perform these tasks,  
12          and we agree. We just think that one week is  
13          unworkable.

14                 with respect to the discovery schedule  
15          itself, Verizon agrees with the discovery  
16          procedure outlined by staff. The proposed time  
17          frames strike the appropriate balance between  
18          the need for enough time to prepare accurate and  
19          complete responses and the need for parties to  
20          respond expeditiously. We think that 15 days  
21          for responding to discovery is workable within  
22          the constraints outlined by the legislation.

23                 In terms of the scope of discovery -- and I  
24          know we've had some discussion on this -- we  
25          agree with BellSouth that as an initial matter,

1           there's no need for the Commission to render an  
2           opinion on the proper scope of discovery now.  
3           The Prehearing Officer is capable of addressing  
4           the discovery issues if and when they become  
5           ripe.

6           If the Commission were to decide those  
7           discovery issues now, which it shouldn't,  
8           Verizon also agrees with staff's primary  
9           recommendation. The statute, which is the  
10          governing document here, is clear and  
11          unambiguous on its face. It provides that the  
12          Commission only has the authority to verify  
13          pricing units. It further provides that this  
14          limitation applies to all discovery taken under  
15          all of Section .164, not the subsection. More  
16          specifically, it states that any discovery or  
17          information requests under this section, again,  
18          not under the subsection, must be limited to a  
19          verification of historical pricing units.

20          Accordingly, the Commission should adopt  
21          the primary recommendation and should not try to  
22          manufacture a different outcome that contradicts  
23          the plain language of the statute. The plain  
24          language of the statute itself is clear.

25                 CHAIRMAN JABER: Mr. Chapkis, let me be

1 clear. If it is the primary completely you  
2 support, I'm not going to agree with you. Or is  
3 it that you want this Commission to make clear  
4 that this case is not about the companies'  
5 earnings?

6 MR. CHAPKIS: The former.

7 CHAIRMAN JABER: You believe that the  
8 parties are not entitled to discovery on what  
9 market conditions are inherent in the State of  
10 Florida? You believe parties can't ask you what  
11 product offerings and innovations may come out  
12 of certain market conditions existing in the  
13 state? You believe that parties can't ask you  
14 what commitment you're willing to make if  
15 certain conditions exist in the state?

16 MR. CHAPKIS: That's correct, Your Honor.  
17 As I read this, the plain language of the  
18 statute says any discovery or information  
19 requests under this section shall be limited to  
20 a verification of historical pricing units  
21 necessary to fulfill the Commission's specific  
22 responsibilities under this section. And I read  
23 that strictly and just according to the plain  
24 language of the statute.

25 Now, I believe, as Commissioner Davidson

1 indicated, this could -- discovery could harm or  
2 benefit Verizon. But I believe that when you  
3 just take a look at the plain language of the  
4 statute that that's what it says.

5 CHAIRMAN JABER: Okay. Go ahead.

6 MR. CHAPKIS: And I was going to now  
7 comment on Issue No. 4, which is what the filing  
8 should look like. Like BellSouth, Verizon  
9 thinks that the Commission should not at this  
10 juncture dictate how Verizon goes about proving  
11 its case. Rather, it should judge -- it should  
12 wait until the end of the case and then judge  
13 whether or not Verizon has met its burden of  
14 addressing the four criteria set forth in  
15 Section 364.164.

16 First, at this point, the Commission  
17 doesn't have a record that's sufficient before  
18 it to establish rules on this issue. It would  
19 be a violation of Verizon's due process rights  
20 to establish such rules without developing a  
21 sufficient record in a rulemaking, and that's  
22 something that the Commission doesn't have the  
23 time to do within the confines of this  
24 proceeding.

25 Second, it's really not necessary to

1 establish these rules. Verizon has analyzed the  
2 statute, and we've presented sufficient evidence  
3 to meet the criteria. There's no good reason to  
4 preclude Verizon at this juncture from  
5 supporting and justifying an approach that's  
6 different than that recommended by staff.

7 And third, staff itself throughout its  
8 recommendation has recognized that there are  
9 many different ways of meeting the criteria  
10 established in the statute. And this suggests  
11 that there's really no one right way to go about  
12 meeting those criteria, and this Commission  
13 should refrain from adopting a one-size-fits-all  
14 approach. Accordingly, the Commission shouldn't  
15 take the very unusual step of rendering an  
16 opinion on the validity of the petitions at this  
17 early stage.

18 With respect to the public hearings -- and  
19 this is the last issue that I'll take up --  
20 Verizon also agrees that the Commission is well  
21 suited to make this decision and really has no  
22 position on that issue.

23 CHAIRMAN JABER: Mr. Fons?

24 MR. FONTS: Good morning. My name is John  
25 Fons. I'm representing Sprint-Florida.

1 I would like to address the issues in  
2 reverse, if we may. I would like to get to  
3 Issue 5 first, and that is to close the docket.  
4 By its very premise, the staff has recommended  
5 that this docket be closed if and when the  
6 parties make their filings, and the parties have  
7 made their filings. So there's no need to go  
8 further with this particular docket. Instead,  
9 what the Commission ought to do is set up a case  
10 management, just as Public Counsel has  
11 recommended in one of his many pleadings in this  
12 proceeding, and that the Commission then address  
13 in some other fashion how this case is to be  
14 managed.

15 We all recognize it's 90 days. It was 90  
16 days because that's what the Legislature has  
17 mandated, that it be 90 days. And the reason it  
18 was 90 days I think is very apparent from the  
19 nature of the proceeding, and that is it's a  
20 very focused proceeding. It's focused on  
21 whether access charges should be reduced in a  
22 revenue neutral manner, and that's the focus.  
23 It's not anything else, and whether or not in  
24 doing so this will create a competitive  
25 environment where the marketplace will take the

1 place of what we're doing here today. And  
2 that's the main function --

3 CHAIRMAN JABER: So the focus is on the  
4 development of a competitive market in Florida?

5 MR. FONS: And by reducing access charges  
6 in a revenue neutral manner to accomplish that.  
7 That's the focus. And so anything that should  
8 come out of that focus should be directed to  
9 that focus.

10 Now, the second thing that the staff has  
11 recommended is the scope of the proceeding. And  
12 again, historically, this Commission has handled  
13 that in two ways. The first is in the issue  
14 identification meeting, and that would be  
15 perfectly appropriate, and that would be part of  
16 the case management. We've had them all the  
17 time. It will not detract from the ability of  
18 this Commission to address this in 90 days. And  
19 then the issues are propounded. The parties  
20 agree upon the issues, and the parties present  
21 their case to substantiate those issues.

22 The staff has got the cart before the  
23 horse, and they are saying, "This is what the  
24 issues are, and here's where we recommend, as a  
25 substantive matter, where the Commission should



1           elect to come out." That's the wrong way to do  
2           it. The right way to do it is to wait until  
3           you've heard all the evidence, you've heard the  
4           companies' evidence, you've heard the  
5           intervenors' evidence, and you've had hearings,  
6           and then you make your decision, not now. This  
7           would be inappropriate, as Mr. Chapkis has  
8           pointed out that the procedural rights of the  
9           companies would be tampered with if you were to  
10          make decisions today on what the scope of the  
11          proceeding is.

12                 There's nothing wrong with the scopes that  
13                 the staff has recommended, the various issues.  
14                 These are the relevant issues the Commission  
15                 should ultimately address in this case, but not  
16                 now.

17                 So what I would say is, you put this all  
18                 aside, close this down, and let's have the case  
19                 management proceeding, hopefully with the  
20                 Prehearing Officer, and if the Commission wants  
21                 to participate, that's fine as well. We all  
22                 recognize this is a very, very important  
23                 proceeding. It's not a proceeding that should  
24                 be done in secret or behind closed doors, and  
25                 the companies are not recommending that.

1           We have put on our first part of this case.  
2           We have filed our petitions. We have submitted  
3           all of the data that we believe address the  
4           factors that the Commission must consider, so  
5           the time for going into that is as we unfold the  
6           case.

7           Now, putting that aside, let's talk about  
8           the discovery issue.

9           CHAIRMAN JABER: Mr. Fons, I appreciate  
10          your opinion, but let me tell you, I don't --  
11          while we may agree or disagree on substance, I  
12          have to strongly disagree with you with respect  
13          to the approach staff took. I think they were  
14          very diligent in recognizing the expedited time  
15          schedule, and I think we all should be  
16          applauding staff for moving forward and taking a  
17          look at how the 90 days can be met. And I'm  
18          disappointed in your statement in that regard,  
19          because if staff would have sat back and not  
20          filed a recommendation and forced this  
21          Commission and you all to think about the time  
22          lines, we wouldn't be having this conversation  
23          this closely to when you filed.

24          Go on.

25          MR. FONTS: It was not a criticism of staff.

1 CHAIRMAN JABER: It came out that way.

2 MR. FONTS: I'm sorry, Chairman. It was not  
3 a criticism. It was designed --

4 CHAIRMAN JABER: Commissioner Davidson.

5 COMMISSIONER DAVIDSON: Yes, I would like  
6 to jump in with a comment here also. And I do  
7 appreciate your position. That's why you're  
8 here saying this. But I really -- I do  
9 appreciate staff's work on the rec, and I will,  
10 of course, like probably all of us up here, have  
11 a few comments as we go through. But it has got  
12 the ball rolling, and we're going to be, I  
13 think, ahead of where we would have been but for  
14 the recommendation.

15 And just going forward, as I sit here, this  
16 Commission is very experienced at setting  
17 schedules, and it's experienced at setting  
18 schedules in very complex cases, and I've yet to  
19 hear a compelling reason for some type of case  
20 management conference. And that's just where I  
21 sit as we sit here today. I appreciate, you  
22 know, staff's recommendation here.

23 CHAIRMAN JABER: And there's one more thing  
24 from the perspective of a Prehearing Officer.  
25 Maybe we don't vote on any of these issues

1           today. I don't know. That will be -- we need  
2           to defer to the majority of the Commissioners.  
3           But as a Prehearing Officer on other cases, I  
4           can tell you that the ability to sit as a  
5           collegial body today and receive guidance from  
6           each other is priceless. So take that for  
7           whatever it's worth. Go ahead.

8           MR. FONTS: I appreciate those comments.

9           COMMISSIONER DEASON: Madam Chairman, since  
10          we've kind of opened this discussion here --

11          CHAIRMAN JABER: Go ahead, Commissioner.

12          COMMISSIONER DEASON: -- let me add --

13          CHAIRMAN JABER: Go ahead, please.

14          COMMISSIONER DEASON: Excuse me, Mr. Fons.

15          I understand the arguments that perhaps  
16          what we're doing today is premature, and I can  
17          appreciate that. But on the other hand is the  
18          extremely tight time frame in processing these  
19          cases. I'm not opposed to deferring all of this  
20          to the Prehearing Officer, specifically since  
21          I'm not the Prehearing Officer. But as we all  
22          know, in many cases, a Prehearing Officer, he or  
23          she makes a decision, and then those --

24          CHAIRMAN JABER: He.

25          COMMISSIONER DEASON: -- decisions get

1            appealed to the full Commission.

2            CHAIRMAN JABER:    He.    Yes.

3            COMMISSIONER DEASON:    Okay.    I don't want  
4            that procedure -- for example, I have no idea  
5            what's going to happen in the case, but if  
6            there's a dispute on discovery, that it exceeds  
7            the scope of discovery as set forth in the  
8            statute, and the Prehearing Officer rules one  
9            way or the other, and an aggrieved party wants  
10           to have that reviewed by the full Commission,  
11           we don't have the luxury of doing all of that  
12           in 90 days.    Perhaps in an eight-month  
13           file-and-suspend case, we can afford that, but  
14           we don't have that here.

15           So if we're going to just defer this to the  
16           Prehearing Officer, I would like a commitment  
17           that whatever he, in this case, does, that's  
18           going to be binding.    We're not going to have  
19           the luxury of -- for example, if there's a  
20           dispute on discovery and someone says, "I don't  
21           have to file the discovery.    I'm going to" --  
22           and the Prehearing Officer says you do, then  
23           does that give you the right if you're going to  
24           appeal that to the full Commission not to file  
25           it?    And de facto, by not filing it, it's not

1 going to be considered in the 90-day schedule,  
2 so, in essence, you've won just by the fact of  
3 the shortened procedure.

4 These are the kind of things I'm concerned  
5 about. So in your presentation, or later on  
6 perhaps I'll ask questions of others, these are  
7 the things I'm concerned about as to how we  
8 proceed from this point further.

9 MR. FONTS: And, Commissioner Deason --

10 CHAIRMAN JABER: Commissioner Bradley, I  
11 think you had a comment. We'll let you comment  
12 in a minute, Mr. Fons.

13 COMMISSIONER BRADLEY: Right. And I can  
14 respect the comments of Mr. Fons, but, you know,  
15 I think it's very appropriate to in this  
16 instance share the wealth with the other  
17 Commissioners.

18 CHAIRMAN JABER: We appreciate that.

19 COMMISSIONER BRADLEY: And I'll tell you  
20 why. This is new and uncharted territory, and I  
21 think that by sharing the wealth up front, what  
22 we are able to do is to gather not only from the  
23 wisdom of staff, but from the wisdom of the  
24 other Commissioners so that we can deal with  
25 these procedural and policy matters and have, in

1 my opinion, a guiding light or some guiding  
2 principles in order to begin and to not  
3 negatively impact the 90-day time frame that  
4 we've been statutorily mandated to render a  
5 decision within.

6 And as I said, I can understand what the  
7 concern might be with the companies, because we  
8 are deviating from what we normally do. But  
9 this is new and uncharted territory, and I think  
10 that it's just good wisdom to rely upon the  
11 experiences of staff, as well as the other  
12 Commissioners as we get off into this uncharted  
13 territory.

14 CHAIRMAN JABER: Thank you, Commissioner  
15 Bradley.

16 Mr. Fons, we're going to let you complete  
17 your presentation.

18 MR. FONTS: Thank you, Madam Chairman.

19 In response first to Commissioner Deason's  
20 suggestion, from Sprint-Florida's standpoint, I  
21 think we would be agreeable that if the  
22 Prehearing Officer rules on a discovery issue,  
23 that that will be it. We believe that the time  
24 frames are short, and we think that that's  
25 probably a good policy, and we would not -- we

1 would certainly be willing to commit to that  
2 today if that were the Commission's desire.

3 But let's talk about the scope of discovery  
4 for just a moment, because that apparently seems  
5 to be somewhat of a focal point here.

6 The statute is very clear. It says that  
7 the only discovery will relate to the pricing  
8 units. The statute says section. It doesn't  
9 say subsection. The Legislature knew that it  
10 was doing when it wrote that, because in the two  
11 sentences before that, it specifically said  
12 subsection with regard to another matter. So  
13 section and subsection mean what they mean, so  
14 it's not limited just to the subsection where it  
15 appears. It flows throughout the whole section.

16 And secondly, with regard to that, the  
17 suggestion that it would only eliminate  
18 discovery as to earnings, there is a particular  
19 section, or I should say subsection within .164  
20 that says earnings are not to be considered, and  
21 that's subsection (4). So to that extent,  
22 that's independent of the discovery rights, and  
23 if anybody were to ask for discovery on that in  
24 any event, that particular subsection (4) would  
25 go to the earnings issue.



1           We recognize that the Commission does need  
2 a lot of information with regard to this  
3 proceeding, and they're getting a lot of  
4 information with regard to their  
5 decision-making. To suggest that asking the  
6 telephone companies, the ILECs, what the CLECs  
7 are going to do and that we have to provide that  
8 information in discovery doesn't really make a  
9 lot of sense. We don't have that information  
10 That's carefully guarded information that the  
11 CLECs have. The CLECs would have to be asked  
12 those questions, and --

13           CHAIRMAN JABER: Mr. Fons, let me clarify.  
14 No, I think it depends on the nature of the  
15 question. My point was not that that  
16 information would come from the ILECs  
17 necessarily, but that that question could be  
18 asked of a company and would be afforded a  
19 response. So let me let you modify your  
20 presentation as appropriate.

21           MR. FONTS: Okay. That was just my point,  
22 is that I understood that the questions would be  
23 asked of the ILECs, since we're the subject of  
24 this, that we would have to produce this  
25 evidence. We can only produce what evidence is

1 in the public record.

2 And the Commission has -- as was pointed  
3 out by Mr. Chapkis, they have reports. They  
4 have competition reports. You get this  
5 information. You get it confidentially in some  
6 cases from the CLECs. So you have the  
7 information about what the CLECs are doing. All  
8 we can do in our case is to show you what has  
9 happened elsewhere when you reduce access  
10 charges and bring local rates closer to costs.  
11 So we have put on in our filings, and I assume  
12 that some people have looked at them by now,  
13 what we believe meet the considerations the  
14 Commission must consider.

15 So we believe that the primary  
16 recommendation is the appropriate recommendation  
17 with regard to discovery. If it were to go  
18 beyond that, then -- of course, then we get into  
19 the issue of what is the scope of discovery, and  
20 we would have to know what that is fairly  
21 quickly.

22 With regard to the time frames, we agree --  
23 Sprint-Florida agrees with BellSouth and Verizon  
24 Florida that the staff recommended time schedule  
25 is an appropriate time schedule. We think it's

1 very workable. We think that the time allowed  
2 to the parties to file their testimony and for  
3 the ILECs to file their rebuttal testimony is  
4 adequate, and we believe that the -- on balance,  
5 what the staff has recommended with regard to  
6 discovery is appropriate. We believe 15 days to  
7 respond is the appropriate way, not 10 days.

8 Thank you.

9 CHAIRMAN JABER: Mr. Gross?

10 COMMISSIONER DEASON: Well, may I ask  
11 Mr. Fons a quick question?

12 CHAIRMAN JABER: Commissioner Deason.

13 COMMISSIONER DEASON: In terms of the scope  
14 of discovery, do you agree that your testimony  
15 filed in this proceeding, that that is subject  
16 to further discovery, and to the extent your  
17 testimony addresses more than billing units, it  
18 is subject to discovery?

19 MR. FONS: Under the primary  
20 recommendation, that would not be the case. But  
21 we recognize that in the greater scheme of  
22 things, that if we have filed something in  
23 testimony, and strictly in that testimony and  
24 not beyond that, that that may be appropriate  
25 for discovery.

1           CHAIRMAN JABER: How is that different from  
2 what I asked you? Forget the primary and  
3 alternative. If it was our goal to just provide  
4 guidance on what is discoverable and then leave  
5 to the Prehearing Officer the discretion to look  
6 at each issue and decide whether under a general  
7 framework it met the guidance we provided today,  
8 what is wrong with that?

9           It was never envisioned by the Legislature,  
10 certainly in all of the questions I got from the  
11 Legislature, Mr. Fons, and I would venture to  
12 say the questions you got from the Legislature  
13 in front of me, that people could not follow up  
14 in discovery based on testimony.

15           MR. FONTS: And there's no question about  
16 that. The testimony that we put on is our case.  
17 If we were to fail to provide follow-up  
18 information on that, then that would only weaken  
19 our case, and you could make a decision at the  
20 end of the proceeding.

21           CHAIRMAN JABER: I think you've made me  
22 happy. That's all I needed you to agree to,  
23 that people can ask you questions based on your  
24 testimony and on your case, understanding that  
25 it shouldn't be turned into an earnings review.

1 Can you agree to that?

2 MR. FONTS: As long as it's focused, as long  
3 as the discovery is focused on what the  
4 Legislature intended this proceeding to be all  
5 about, then I would have to concede that, yes,  
6 we would have to support our testimony with  
7 discovery if need be, or we would lose our case.

8 CHAIRMAN JABER: Any other questions,  
9 Commissioners?

10 COMMISSIONER DAVIDSON: Well, on that, I  
11 would say that my understanding of the  
12 legislative intent -- and I've read the bill  
13 several times and the bill analysis, and I was  
14 present at many hearings, and my understanding,  
15 in a nutshell, is that the Legislature passed  
16 this bill so that competition in the State of  
17 Florida will be enhanced, so that competition  
18 will be enhanced. It's not rate rebalancing  
19 just for the sake of rate rebalancing. It's  
20 rate rebalancing which industry, economists, a  
21 number of folks agree should enhance  
22 competition, but that's the end game,  
23 competition.

24 CHAIRMAN JABER: The focus.

25 COMMISSIONER DAVIDSON: And I think it

1 would behoove you -- you sat here -- and I don't  
2 want to, you know, tell you how to present your  
3 case, but if I was presenting a case, I would  
4 open this wide up to discovery, and I would have  
5 a slew of economists there ready to testify that  
6 this type of structure can impact in a positive  
7 way market development. You're free to argue  
8 whatever you want to argue on this, but I don't  
9 think it is in your own interest to try and  
10 narrow the scope of discovery if what you want  
11 to do is prove a case that what is required or  
12 what is sought by the petitions will enhance  
13 competition in the State of Florida.

14 CHAIRMAN JABER: And, Commissioner  
15 Davidson, correct me if I'm wrong, but there was  
16 one more goal, which was to make sure that the  
17 PSC had all the tools and information it needed  
18 to make a finding with regard to whether  
19 competition would be enhanced because of these  
20 petitions.

21 COMMISSIONER DAVIDSON: I agree.

22 CHAIRMAN JABER: Thank you.

23 MR. FONS: Commissioner Davidson and  
24 Chairman, that was our filing. There are a slew  
25 of economists in these filings talking about

1           these very issues. We recognize that we have to  
2           provide you with information so you can address  
3           these matters that the Legislature has  
4           instructed you to consider. That's our case --

5           CHAIRMAN JABER: Then we're saying the same  
6           thing then.

7           MR. FONS: Right.

8           CHAIRMAN JABER: Then we are saying the  
9           same thing. Won't your petition be supported by  
10          testimony?

11          MR. FONS: It will be supported by  
12          testimony and evidence, yes, and exhibits, which  
13          it has been. We have filed that as our initial  
14          part of our filing.

15          COMMISSIONER DAVIDSON: And intervenors in  
16          the case -- I expect you will agree with this --  
17          will be able to question you, question the  
18          company as to what's contained in the petition,  
19          seek discovery as to the elements that you have  
20          put forth and the evidence that you have  
21          proffered; correct?

22          MR. FONS: That is what we are addressing  
23          right now; that's correct. There --

24          COMMISSIONER DAVIDSON: Oh, I know it's  
25          what we're addressing now, but I'm asking you

1           whether that is correct. I mean, are you  
2           suggesting that something --

3           MR. FONS: We're not suggesting that, no.

4           COMMISSIONER DAVIDSON: -- you put in your  
5           filing would not be subject to discovery?

6           MR. FONS: No, not at all, Commissioner.  
7           Just so that we understand that the focus of  
8           that discovery is limited to what we have filed.

9           CHAIRMAN JABER: Mr. Gross?

10          MR. GROSS: Good morning, Chairman Jaber  
11          and members of the Commission. My name is  
12          Michael Gross. I'm here on behalf of the FCTA,  
13          and I would like to thank you for giving me an  
14          opportunity to speak this morning.

15          I have a comment on just one issue that  
16          none of the parties has addressed this morning.  
17          In the staff recommendation is a recommendation  
18          that support be assumed for the small LECs. And  
19          it is argued in the staff rec that there's a  
20          cited provision in Chapter 364 that --

21          COMMISSIONER DAVIDSON: Where are you  
22          reading from, Mr. Gross? Sorry. If you could  
23          point us to the page.

24          MR. GROSS: Oh, on page 17, B of the staff  
25          rec. Staff refers to Section 364.052(2)(b) as



1 allowing different treatment for small LECs and  
2 then gives as an example a 1999 docket where  
3 354.025(4) required one cost standard, and yet  
4 the Commission permitted another cost standard  
5 for small LECs, as evidence of the Commission's  
6 authority to give different treatment to the  
7 small LECs.

8 First I would suggest that this issue is  
9 really not ripe to decide at this point, since  
10 no small LEC has filed a petition, and it is  
11 speculation at this point as to whether any  
12 small LEC will file a petition. And there's no  
13 need to establish a legal precedent on this  
14 issue if it's not necessary.

15 But secondly, the cited statute,  
16 364.052(2)(b), actually mandates -- it says the  
17 Commission shall establish by rule streamlined  
18 procedures for small LECs. And what we're doing  
19 here is not establishing by rule a streamlined  
20 procedure, but an outright waiver of a  
21 provision, and I think that that's inappropriate  
22 under the circumstances.

23 So, number one, I don't think the  
24 Commission should address this issue at this  
25 time. I think it's not ripe. It's premature.

1           And alternatively, it's not a foregone  
2           conclusion that any or all of the small LECs are  
3           similarly situated with respect to the support  
4           issue and warrant identical treatment, or that  
5           support exists for any or all of the small  
6           LECs.

7                     That's the point I would like to make.  
8           Thank you.

9           CHAIRMAN JABER: Thank you, Mr. Gross.  
10                     Mr. Beck?

11                     MR. BECK: Thank you, Chairman Jaber. For  
12           the record, my name is Charlie Beck with the  
13           Office of Public Counsel.

14                     Commissioners, I would like to start by  
15           joining many of your comments about the staff  
16           recommendation, in that I appreciate the fact  
17           that they filed this recommendation and that  
18           they did it at the time they did. I'm going to  
19           disagree very strongly with some of the things  
20           contained in there and also some of the things  
21           that they omitted, in my view, on the  
22           recommendation.

23                     But nonetheless, we're on a very, very  
24           tight time frame. Today is day 6 of the filings  
25           by the major telephone companies. And if you

1           accepted staff's recommendation for a timetable,  
2           our testimony and the testimony of every  
3           intervenor would be due two weeks from  
4           tomorrow. Under that kind of scheduling, in the  
5           90-day statutory constraint, we need to address  
6           these issues, and the fact that staff has  
7           brought them today for you is very helpful to  
8           us. And I hope you will vote on them and  
9           address them, because, quite frankly, if we wait  
10          for going to the Prehearing Officer and then if  
11          there's objections back and forth about the  
12          scope of discovery, it may be too late, exactly  
13          like was mentioned earlier with the  
14          Commissioners. So anyhow, I do appreciate the  
15          filing of the staff recommendation.

16                   COMMISSIONER BRADLEY: I missed one word  
17                   that you said, vote on the limited --

18                   MR. BECK: Vote on the issues that are  
19                   presented today.

20                   COMMISSIONER BRADLEY: But you used the  
21                   word "vote on a limited," and I didn't hear what  
22                   you said, the word that followed "limited."

23                   MR. BECK: I'm not sure, Commissioner  
24                   Bradley.

25                   CHAIRMAN JABER: I think he said the time,

1 the time --

2 MR. BECK: Limited time.

3 CHAIRMAN JABER: We're under a limited  
4 time.

5 MR. BECK: We have a limited time frame.

6 COMMISSIONER BRADLEY: Okay. Time frame.

7 I want to ask Mr. Beck a question.

8 CHAIRMAN JABER: Commissioner Bradley.

9 COMMISSIONER BRADLEY: I'm trying to -- I'm  
10 looking at the time frame here, and I'm trying  
11 to figure out how we would accommodate the  
12 request to hold public hearings. And I'm trying  
13 to figure out if the public hearing will come --  
14 if in fact we decide to hold public hearings, if  
15 we would hold the public hearing prior to or  
16 afterwards. And I'm just trying to figure out  
17 how we would fit that into the 90-day time frame  
18 and how that might impact, for example, what you  
19 just said.

20 MR. BECK: Yes, Commissioner Bradley. We  
21 filed motions, again, in all three cases asking  
22 the Commission -- and we filed these last  
23 Thursday, asking the Commission to hold public  
24 hearings. And the thrust of it is to hold  
25 public hearings throughout the state in all the

1 major metropolitan areas.

2 I think it would have to come before the  
3 Commission makes its decision in the case so  
4 that you could consider the evidence presented  
5 by the public in making your decision.  
6 otherwise -- you know, that would be the point.  
7 That's the whole point of having the public  
8 hearings, so the Commission can take testimony  
9 from customers and consider the evidence they  
10 present when you make your final decision in  
11 this case.

12 COMMISSIONER BRADLEY: Right. And my  
13 question is, how might that impact the 90-day  
14 time frame in view of what you said previously  
15 about discovery?

16 MR. BECK: Well, the case has to be done in  
17 90 days, and I think you would have to have the  
18 hearings prior to the time that you vote. And  
19 the staff has various times for when you would  
20 vote on the issues.

21 I wouldn't suggest that the entire  
22 Commission would have to attend every public  
23 hearing. You know, there have been many cases  
24 where one or two or three Commissioners have  
25 attended. And I think that you would just

1 simply need to, the best we can, start doing it  
2 as quickly as we can so you can take the input  
3 from the public.

4 And, Commissioner Bradley, that raises, I  
5 think, into the first point I wanted to address  
6 to the Commission, and that's the scope of the  
7 proceeding, which is the fourth issue that staff  
8 has.

9 Mr. Fons earlier, and the Commissioners  
10 commented on this, said that in his view, the  
11 focus was the access charges being reduced in a  
12 revenue neutral manner. And I think  
13 Commissioner Davidson and Chairman Jaber  
14 mentioned that competition is an important  
15 issue, whether the changes mentioned by Sprint's  
16 counsel will affect competition.

17 I agree with that, but would also point out  
18 that I think there's more to it than that. You  
19 know, repeatedly throughout the debate in the  
20 Legislature on this bill, it was repeatedly  
21 pointed out that one of the big issues for the  
22 Commission to address is whether the filings  
23 would benefit residential customers. In fact,  
24 that and competition were repeatedly mentioned.  
25 And I think it would be helpful to go through

1 some of the legislative history on that point.

2 I passed out two handouts earlier.

3 Hopefully you all have that. One is excerpts

4 from the debate in the Senate, and the other is

5 the staff analysis in the House of

6 Representatives. Commissioners, I would like to

7 briefly go over some of the debate that occurred

8 in the Legislature, what was said about the

9 bill.

10 On the first page in the excerpts from the

11 Senate, it has a question from Senator Campbell,

12 where he asked, "Does the Public Service

13 Commission have the authority to deny or

14 condition a rate rebalancing requested by the

15 companies?" And Senator Haridopolos replied,

16 "Yes, Senator from the 32nd, they have this very

17 strict language in Section (15) of the bill

18 which says that, and the language is outlined,

19 they can show that it must be in the best

20 interest of residential customers and bring

21 local competition to the market before they

22 would look at rates."

23 You'll see on the next page -- there's

24 just comments in a similar vein throughout. On

25 the next page there's a comment by Senator

1 Haridopolos, starting on line 24 of that page,  
2 "To make it clear to the members that the only  
3 way that a rate increase could take place is  
4 only if the mandates or conditions are met, and  
5 that is, it must find in the best interest of  
6 residential customers and must bring local  
7 competition before they can look at rates."

8 On the following page there's a question by  
9 Senator Cowin, to which Senator Haridopolos  
10 responds, "I believe, Senator Cowin, as the bill  
11 clearly states, that what you're going to have  
12 here simply is that the PSC looks at each -- as  
13 the company asks in particular jurisdiction to  
14 raise rates, they're going to look at the  
15 parameters of the area they're looking at  
16 specifically, and they're going to ask those two  
17 basic questions, will it benefit customers, and  
18 is there true competition."

19 On the last page there's a question by  
20 Senator Sebesta, and he says, "So as you said a  
21 minute ago, rates will not be allowed to go up  
22 unless there is new competition in the area."  
23 Senator Haridopolos responds, "That is correct.  
24 There must be competition, and it must be in the  
25 benefit of residential customers."



1           I don't have a transcript from the House,  
2           but I have listened very carefully to the tapes,  
3           and I at least want to share one item with you  
4           from that. During the debate in the House,  
5           Representative Sobel asked, "This is about the  
6           role of the Public Service Commission. Does  
7           section (15) of this bill allow the Public  
8           Service Commission to reject any telephone rate  
9           proposal that does not create an overall benefit  
10          to residential customers? Could you explain  
11          that? " And Representative Mayfield responded,  
12          "Good question. It allows -- this legislation  
13          will allow the PSC to do exactly that. It will  
14          be able to reject any petition on the grounds of  
15          again creating competition in the local market  
16          and benefiting those customers that are being  
17          serviced by that local market. The PSC has  
18          absolute authority over that petition, whether  
19          or not to agree to it or to reject it."

20          Also supporting this is an analysis by the  
21          staff of the House. And I've handed out an  
22          excerpt from the staff analysis that addressed  
23          section (15) of the bill. And in that, which is  
24          the second page of the handout, they go over the  
25          statutory criteria that the PSC must consider

1 when granting a petition. And you'll notice  
2 there's five items listed, and what they have  
3 done is separated out the issue of whether the  
4 filings will benefit residential customers as a  
5 separate item when addressing that.

6 And again, that's consistent with the  
7 remarks that were made in both the House and the  
8 Senate on the debate on the bill, that the focus  
9 of this proceeding should be on whether the  
10 filings will benefit residential customers. And  
11 again, part of that will be whether competition  
12 is increased. But that's the overall question,  
13 we believe, the focus and the parameters that  
14 should be in the Commission. And we're going to  
15 ask the Commission to make that a separate issue  
16 and ask you to rule on that when you decide on  
17 these.

18 The reason I present this is the staff's  
19 analysis of the scope of the proceeding doesn't  
20 mention this, and I think to the extent that it  
21 omits that, it has omitted what should be the  
22 central focus of all the other things that go  
23 into the case.

24 COMMISSIONER BRADLEY: A question.

25 MR. BECK: Yes, sir.

1                   CHAIRMAN JABER: Commissioner Bradley.

2                   COMMISSIONER BRADLEY: As a former  
3 legislator, you know, I clearly understand  
4 legislative responsibilities. And as a  
5 regulator here at the Public Service Commission,  
6 I clearly understand what our role is. The  
7 folks across town make laws and statutes, and we  
8 on the other side of town are here to implement  
9 what it is that comes from the Legislature and  
10 what gets signed by the Governor, or what he  
11 allows to become law without his signature.

12                   And one of the things that I don't want to  
13 -- one position I don't want to put myself in is  
14 to -- well, I don't want to put myself in the  
15 position of becoming an activist Commissioner,  
16 that is, one who is not implementing, but one  
17 who is creating law. And I listened to the  
18 debate, and I intend to implement the will of  
19 the Legislature and to participate in rule  
20 promulgation to the extent that the legislative  
21 intent allows me to have some prerogative.

22                   But what was OPC's position when the  
23 Legislature was debating this bill? Were you  
24 all very emphatic about the points that you are  
25 being very emphatic with us about? Did you

1 clearly tell them that you should not include  
2 certain things in the bill, or is it that you  
3 now are telling us that we need to maybe do what  
4 you all could have done with respect to your  
5 participation over in the legislative body? I'm  
6 just trying to clearly understand what did  
7 happen, because I wasn't privy to anybody's  
8 participation, you know.

9 And you also understand very clearly -- I  
10 mean, you are a legislative agency the same as  
11 we are. I mean, did you clearly tell Senator  
12 Campbell and Senator Haridopolos that certain  
13 things should not be included in the bill that  
14 you're discussing with us now, or is it that you  
15 are just taking those issues up with us?

16 MR. BECK: I had no discussions with them,  
17 and I don't believe the office made any  
18 presentations at the Legislature on that.

19 My point here is trying to implement what  
20 the Legislature said, and that's the point of  
21 bringing the legislative history to you, is to  
22 show the intent behind the legislation. Our  
23 role is to have it implemented and to represent  
24 customers before the Public Service Commission.

25 I don't know if I've answered your question

1 or not, Commissioner Bradley.

2 COMMISSIONER BRADLEY: So you didn't tell  
3 Senator King what you had to have in the bill?  
4 You didn't find a need to participate in the  
5 debate?

6 MR. BECK: I'm sure that to the extent the  
7 Legislature asked our office questions, we  
8 responded to any questions the Legislature had.  
9 All I can tell you is I didn't personally, and  
10 that's my understanding of what our office did,  
11 that we responded to any questions the  
12 Legislature had and gave our response.

13 And again, what I've presented to you so  
14 far, Commissioners, is simply what the  
15 Legislature -- the legislators themselves said  
16 during the debate as to what their intent of the  
17 bill is and what they thought the Commission  
18 would be doing when implementing the bill.

19 COMMISSIONER BRADLEY: Well, let me ask  
20 this question. Have you all had any discussion  
21 with the Legislature with respect to what their  
22 legislative intent is or was after the bill was  
23 passed, or is it just that you all --

24 MR. BECK: Well, I'm going by what was said  
25 and what's presented and what was done publicly.

1           These were all at public hearings. That's what  
2           I'm presenting to you as the history of the  
3           legislation.

4           COMMISSIONER BRADLEY: Have you all had any  
5           post-legislative discussions with respect to  
6           what the legislative intent is with the  
7           appropriate legislative committee?

8           MR. BECK: No, I've not. I'm going by the  
9           public record and what was said when the  
10          legislation was passed.

11          COMMISSIONER BRADLEY: Okay.

12          MR. BECK: I would also mention what I've  
13          mentioned so far, as far as the intent being  
14          that residential customers benefit, that being  
15          the intent of the legislation.

16          I would also -- Solicitor General Chris  
17          Kise was here earlier. He had a class that he  
18          teaches that he had to leave for, but he would  
19          like to mention that the Attorney General also  
20          agrees that his understanding was that the  
21          legislation was to be beneficial to residential  
22          customers and that would be part of what the  
23          Commission would look at in implementing the  
24          legislation.

25          with respect to public hearings,

1           Commissioners, I think, you know, on the time  
2           frame, for Commissioner Bradley, I think just as  
3           quickly as possible, again, not suggesting that  
4           the entire Commission attend every public  
5           hearing, but that as many people as possible  
6           attend as many as we could. And it has been  
7           done before that way, where various  
8           Commissioners have attended various hearings and  
9           then read the transcripts from the ones they  
10          couldn't attend.

11                   CHAIRMAN JABER: Mr. Beck, the motion  
12           you're referring to wasn't noticed to be decided  
13           today, but I did take note that the companies  
14           all sort of deferred to whatever the Commission  
15           would decide in that case, and a couple came  
16           right out and said they would actually have no  
17           objection to public hearings. So let me just  
18           take an opportunity to ask you questions about  
19           that in the event the Commission does want to go  
20           ahead and take up the notion of public hearings  
21           today.

22                   As I understand your separate petitions,  
23           you recommended places designated for -- cities  
24           designated for each company. For example -- I  
25           guess it was BellSouth. I don't have the

1 petitions with me. But BellSouth, I think you  
2 recommended Fort Lauderdale and Miami. Would it  
3 be your intent to just have public hearings that  
4 are representative of the entire service  
5 territory, or are you wed to those particular  
6 locations?

7 MR. BECK: The service territory,  
8 Commissioner. Our intent there is to ask you to  
9 hold hearings in all the major metropolitan  
10 areas of the companies, not wed per se to any  
11 specific location. It's just like in a rate  
12 case where you try to go to all the major areas  
13 served by the company.

14 CHAIRMAN JABER: Okay.

15 MR. BECK: There certainly could be others,  
16 others than we've mentioned as well.

17 CHAIRMAN JABER: Okay. And obviously, this  
18 time of year, we've got the fuel hearings and  
19 the triennial review now and much pressure on  
20 the Commission calendar. Are you also wed to  
21 the notion that it has to be a Commission public  
22 hearing, a Commissioner public hearing, or do  
23 you recognize in some cases it may be  
24 permissible to have staff be present in the form  
25 -- very similar to a customer meeting that's



1 conducted in the water rate cases?

2 MR. BECK: It would be my recommendation,  
3 Commissioner, that at least one Commissioner  
4 attend each, and for this reason. First of all,  
5 one of the reasons to have public hearings is  
6 the focus of the legislation on benefiting  
7 residential customers, so we would ask that you  
8 hold the public hearings to hear from  
9 residential customers. But we would want  
10 anything presented to you in those hearings to  
11 be evidence in the case, and in order to do  
12 that, I think a Commissioner would need to  
13 preside at it, because that would be the point  
14 of the hearings.

15 CHAIRMAN JABER: Does the Commissioner  
16 need to preside at it, or does the transcript  
17 need to be in the record? You need to know that  
18 we've taken that testimony into account when  
19 we've made a decision.

20 MR. BECK: I think if all the companies  
21 would stipulate that they would agree that it be  
22 evidence in the case upon which the Commission  
23 could make decisions and make findings of fact  
24 and conclusions of law, that would probably  
25 work, if they would stipulate to that. But

1 otherwise, I would think a Commissioner would  
2 need to be there so that it's a hearing of the  
3 Commission upon which you're going to base your  
4 decision.

5 CHAIRMAN JABER: And I'm not saying whether  
6 it can or cannot be accommodated. I just --  
7 you're here. It was a good opportunity to ask  
8 you what different vehicles might be  
9 appropriate.

10 Commissioner Bradley?

11 COMMISSIONER BRADLEY: I'm not opposed to  
12 having public hearings either, but I'm looking  
13 at what staff recommends with respect to a  
14 schedule that we might possibly approve. How  
15 would you reshuffle the schedule that we have  
16 before us in the staff recommendation in order  
17 to accommodate the 90-day hearing?

18 MR. BECK: Of course, the staff doesn't  
19 address public hearings, which is one of the  
20 points I made.

21 COMMISSIONER BRADLEY: No, it doesn't.

22 MR. BECK: So I think you would simply have  
23 to insert it at any point you could, and I would  
24 hope you would start the process today, that at  
25 any point possible, that public hearings be held

1 in the metropolitan areas of the state so that  
2 it precedes the date for the Commission making a  
3 decision.

4 CHAIRMAN JABER: Commissioner Bradley, just  
5 to try to answer your question, if this  
6 Commission wants to entertain the possibility of  
7 public hearings, it will be my office that looks  
8 at the calendar and figures out which  
9 Commissioners are available and --

10 COMMISSIONER BRADLEY: No, that's not my  
11 question. I'm looking at what staff is  
12 recommending with respect to --

13 CHAIRMAN JABER: It wouldn't alter this,  
14 Commissioner Bradley.

15 COMMISSIONER BRADLEY: It wouldn't?

16 CHAIRMAN JABER: It would be going on at  
17 the same time. And I'm saying that based on my  
18 experience with other public hearings that we've  
19 had --

20 COMMISSIONER BRADLEY: Okay.

21 CHAIRMAN JABER: -- in water rate cases.

22 COMMISSIONER BRADLEY: So that would be a  
23 non-issue.

24 CHAIRMAN JABER: Well, the hearing schedule  
25 would continue as we have our public hearings

1 around the --

2 COMMISSIONER BRADLEY: Well, and the reason  
3 why I'm thinking that it might be an issue, even  
4 though it may be a non-issue, if there's  
5 discovery that indicates something that maybe we  
6 had not given consideration to as a result of  
7 the public hearing, that might alter this  
8 schedule somewhat.

9 CHAIRMAN JABER: Mr. Beck, on your comments  
10 with regard to the schedule, staff is  
11 recommending on page 4 that staff and intervenor  
12 testimony be due on day 22nd -- day 22. I agree  
13 with you that more time should be given to staff  
14 and intervenor testimony to prepare. I don't  
15 agree it needs to be the additional four weeks  
16 you proposed in your pleading.

17 Just coming off of something Ms. White  
18 said, I've reworked the schedule to get some  
19 feedback from you and the parties that is a  
20 compromise, staff and intervenor direct  
21 testimony being due on day 36, rebuttal  
22 testimony and exhibits being due on day 46, and  
23 prehearing statements due on day 46. You all  
24 don't have to respond right now, but that's --  
25 there was wiggle room up front that I wanted to

1 take advantage of, recognizing this is the  
2 companies collectively, their burden to meet,  
3 but wanting to give the intervenors sufficient  
4 time to prepare. I want you to think about  
5 that, day 36 for staff and intervenor testimony,  
6 day 46 for rebuttal and prehearing statements.

7 MR. BECK: Okay. Let me -- I'm ready to  
8 respond, Chairman Jaber. And again, I  
9 appreciate any extra time. Under the staff's  
10 proposal, with today being day 6, they would  
11 have our testimony be due two weeks from  
12 tomorrow, which is just inconceivable to me, you  
13 know, that you could require testimony that  
14 quickly. In fact, when we had a meeting before  
15 the staff recommendation was out, Verizon  
16 proposed day 29. And, you know, I disagreed  
17 strongly with that when they raised it then,  
18 and, of course, staff has moved it backwards on  
19 us.

20 CHAIRMAN JABER: Well, I don't know what  
21 day 36 calculates out to be. I didn't write  
22 that down, but that's an additional --

23 MR. BECK: That's an additional two weeks.

24 CHAIRMAN JABER: That's an additional two  
25 weeks from what staff has proposed.

1 MR. BECK: Right. And, Commissioner Jaber,  
2 one thing -- and again, I'm going to argue for  
3 more time than that, although that's certainly  
4 better than what staff has proposed. You have  
5 essentially all the prehearing work done by day  
6 46, and I'm going to argue that the better  
7 proceeding is the -- and I think BellSouth  
8 agreed with this, if I recall correctly, that  
9 you do the second hearing dates, which would be  
10 day 77 to 81. Again, under the proposal that  
11 you've just put forth, there's not a whole lot  
12 that needs to be done between day 46 and 77  
13 under that. We do need the prehearing  
14 statements and a prehearing conference, but in  
15 my view, that could be compressed quite a bit to  
16 give the intervenors more time as well as the  
17 companies more time.

18 CHAIRMAN JABER: You've never done a  
19 prehearing order.

20 MR. BECK: Well, I understand. I've seen  
21 some pretty long ones.

22 CHAIRMAN JABER: That's right.

23 MR. BECK: And I understand. But I'm going  
24 to simply argue for as much time as we possibly  
25 can.

1                   COMMISSIONER DAVIDSON: What am I missing  
2 here? We're at day 6, and, Chairman, your  
3 proposed staff and intervenor direct testimony  
4 is due day 36. That's 30 days. That's four  
5 weeks from now. What am I missing? I thought  
6 someone had just said it was -- I thought you  
7 said it was two weeks from now.

8                   MR. BECK: No, no.

9                   CHAIRMAN JABER: I'm sorry. I was --

10                  MR. BECK: An additional two weeks over  
11 what staff proposed.

12                  CHAIRMAN JABER: Exactly. What we were  
13 looking at is it's two weeks from the day that  
14 staff proposed, day 22 versus day 36.

15                  COMMISSIONER DAVIDSON: Well, a month. I  
16 mean, frankly, a month in a 90-day time frame  
17 strikes me as inherently reasonable. And this  
18 schedule certainly doesn't preclude a motion  
19 being made to a Prehearing Officer for some  
20 exceptional circumstance. I mean, that sounds  
21 good to me, given a month.

22                  COMMISSIONER BRADLEY: Well, if someone  
23 makes a motion to the Prehearing Officer, I  
24 guess the Prehearing Officer would have to  
25 determine if that's a policy issue or a

1 procedural issue, if we agree to a certain  
2 standard, which might further complicate or  
3 delay the process. I would think it would be  
4 more policy related, and it might have to come  
5 back to the full Commission.

6 CHAIRMAN JABER: It's hard to tell without  
7 seeing what may come in front of you,  
8 Commissioner Bradley, but in terms of just  
9 establishing the time lines, I consider that  
10 procedural. But, obviously, any Prehearing  
11 Officer can defer to the whole Commission  
12 whenever they want to. That's the prerogative  
13 of the Prehearing Officer. But I think for  
14 purposes of what I'm trying to accomplish with  
15 regard to giving you all some ideas of  
16 compromise time frames, I'm just looking at it  
17 from a procedural standpoint today.

18 I do agree that intervenors should have  
19 more time. I think the best we're going to be  
20 able to do, as Commissioner Davidson rightly  
21 pointed out, is day 36 gives you four weeks.  
22 That may be the best --

23 MR. BECK: Well, I'll take any time we can  
24 get, and I appreciate that. I would hope for  
25 more. I think it would be useful to us to have



1 more, particularly since we haven't had a ruling  
2 yet on discovery and what we can get and the  
3 timing of that.

4 CHAIRMAN JABER: Okay.

5 MR. BECK: But obviously, we're poised to  
6 send some discovery. I think the companies, if  
7 you allow it, can expect to receive some  
8 tomorrow from us.

9 CHAIRMAN JABER: Let me just tell you,  
10 Mr. Beck, my hope -- and the reason I welcomed  
11 this recommendation so much, the more we can  
12 work out this morning with respect to the  
13 procedural stuff, the more time you have on  
14 substance, and I want to get to the substance.  
15 I want to get to the substance. So let's pick  
16 and choose carefully what the battles will be.

17 MR. BECK: Well, I appreciate that,  
18 Chairman Jaber.

19 CHAIRMAN JABER: Okay. Let's --

20 MR. BECK: That's what we're trying to do,  
21 is to get it so we can prepare our case. We're  
22 trying to get as much time as possible to  
23 prepare the best case that we can on behalf of  
24 the customers.

25 CHAIRMAN JABER: Let's continue your

1 presentation.

2 MR. BECK: Let me move on to discovery,  
3 because that, of course, is all related to this.  
4 I very strongly disagree with the primary staff  
5 recommendation that would relegate discovery,  
6 all discovery in the case to billing units of  
7 the companies. And again, I agree with the  
8 alternative recommendation. I think where the  
9 primary recommendation falls short is not  
10 looking at the context in which the discovery  
11 limitation is placed.

12 The legislation essentially has a two-step  
13 procedure for the companies. The first is where  
14 the Commission looks at the statutory criteria  
15 and decides whether overall to grant the  
16 petition, and that's the 90-day time period.

17 Subsection (2) of the bill says if the  
18 Commission grants the local exchange company's  
19 petition, then the companies are authorized, and  
20 it goes forth on to revenue neutrality, that  
21 they give 45 days' notice and file their  
22 tariffs. I think that's what the discovery  
23 limitation is presented to. And again, that's  
24 the context in which the discovery limitation is  
25 raised, is over the pricing units. I agree that

1 we're not entitled to discovery on their  
2 earnings, as much as BellSouth's counsel  
3 suggests we have a fertile imagination.

4 But I do think that the Commission should  
5 allow discovery on the statutory criteria that  
6 are set forth in subsection (1) of the bill.  
7 Anything that comes within the ambit of the  
8 criteria that you're going to look at on whether  
9 to approve their petitions is the proper scope  
10 of discovery. So we would ask that you go with  
11 the alternative staff recommendation on that.

12 And, Commissioner Jaber, I do appreciate  
13 your taking these issues up now. It's very  
14 helpful to us to have decisions by the  
15 Commission now on this, because otherwise we  
16 would be in this no-man's land for a long time.

17 CHAIRMAN JABER: Thank you, Mr. Beck.

18 Mr. Paschall?

19 MR. PASCHALL: Madam Chair, my name is Ed  
20 Paschall. I'm representing AARP this morning,  
21 afternoon, or whatever -- yes, it's still  
22 morning. And I appreciate the opportunity to  
23 speak to you here a little bit about this bill.

24 Now, you've been involved in a lot of  
25 technical discussions about the aspects of it

1 there. I would like my comments to be a little  
2 more general in nature.

3 AARP, of course, has something like 2.6  
4 million members in the State of Florida, all of  
5 them over 50 years old. So therefore, we are  
6 vitally interested in this legislation, because  
7 it affects every single one of us. Now, I'm  
8 well aware of the fact that some of them work  
9 for telephone companies and are members of AARP  
10 and do enjoy the discounts and things like this  
11 and may not agree with the AARP position of this  
12 bill.

13 But by and large, the position of AARP is  
14 simply this, that this bill went through the  
15 Legislature rather rapidly, and the results of  
16 it after it passed is what you now have to live  
17 with and make your decisions.

18 By all three of them filing at the same  
19 time, that is putting you under the constraints  
20 that you're under right now, and that poses a  
21 problem for you there. So it -- and that  
22 particular thing or point there, I think that  
23 Mr. Beck here was making some very good points  
24 and attempting to get as much leeway in that as  
25 possible.

1                   And in reference to what Commissioner  
2                   Deason mentioned a minute ago, in all the  
3                   hearings that I've been listening to, and some  
4                   of them involved in before, there's something  
5                   like six to eight months involved in it, and  
6                   here you're trying to compress this into a  
7                   90-day period, and that's going to be very  
8                   difficult.

9                   And when I mentioned those 2.6 million  
10                  people, it's very important that you think about  
11                  his suggestion there about holding public  
12                  hearings, the main reason for that being is  
13                  there has been such a diversity of information  
14                  coming out pertaining to this bill and how it  
15                  would affect the people and everything like  
16                  that. They don't know where the right  
17                  information is coming from. So not only will  
18                  they be there to tell you that -- a lot of them  
19                  will tell you that they can't afford any more,  
20                  but one of them -- a lot of them are going to  
21                  want to know what's the correct information. So  
22                  I would second his motion there very strongly in  
23                  those hearings throughout the state.

24                  And another thing that he mentioned here  
25                  time and time again, and I heard it in the

1           Legislature, and those of you who were over  
2           there also heard it, that this bill should also  
3           protect the consumer interest, or the provisions  
4           of it. So I'll mention one thing right here,  
5           that you can raise the basic -- now, there was  
6           also a lot of conversation in here about  
7           competition. Okay. I will mention this right  
8           bluntly. You can raise the basic rates of the  
9           telephones \$50 each, ~~and~~ that will enhance  
10          competition. Is that going to improve the  
11          consumer interest or consumer benefit?

12                   And the reason why I mention that to you  
13                   is, considering the things -- the state of the  
14                   Union right now, stop and think about it. You  
15                   pick up the paper, and you're reading about the  
16                   economic situation. The job positions in the  
17                   State of Florida are not good, the employment  
18                   statistics are very bad, and you have a very  
19                   poor state and national economical situation.  
20                   To even consider raising any kind of a rate at  
21                   this time to me is a little bit ridiculous.

22                   Now, I know that since this application has  
23                   been made to you, that that doesn't make any  
24                   difference. You've still got to go with the  
25                   business. But stop and think of that, in the

1 consumer interest, because they are the ones who  
2 are involved in all of this.

3 Another thing I would like for you to  
4 consider in this, in the Legislature down there,  
5 most all the conversation dealing with this bill  
6 and any raises that would be placed on the  
7 residential consumers would be two to four  
8 years. I believe that all of them that are  
9 considered in this bill -- I mean in this docket  
10 are two years, in which case that almost doubles  
11 the amount of money that the Legislature was  
12 considering that was going to be coming out of  
13 the pocket of the consumer per year, or per  
14 month and per year, or the increases that this  
15 bill might require.

16 Now, then, if it's going to -- and also,  
17 another thing that was mentioned very strongly,  
18 enhanced competition, which would lower rates.  
19 I am going to tell you, and those of you who  
20 know anything about it, if this bill is -- I  
21 mean if this docket is completed as it is and  
22 rates are raised, they will never again be this  
23 low. They cannot, for the simple reason that  
24 the competition can only come in with a certain  
25 price, and the level at which they are charged

1 for leasing the facilities of the local  
2 telephone companies are above what they can  
3 charge to make any money in the residential  
4 market.

5 I would like to mention to you the thought  
6 about these hearings with the consumers out  
7 around the country. And if any of you would  
8 like to check with former Commissioner Clark  
9 about some of the hearings and what their  
10 attendance and interest were at that time -- and  
11 I don't know. Commissioner Deason, you may have  
12 been there as well when the hearing was held in  
13 Lake Worth and the people were leaving before  
14 the meeting ever started. There were no seats  
15 left in that auditorium.

16 So I would leave those thoughts with you  
17 and leave it to you with this thought in mind,  
18 that this will not be a benefit to me, because I  
19 do not make enough long distance telephone calls  
20 within the state to recoup the amount of money  
21 that it will cost me to pay for my increase in  
22 local service. Neither will most of the other  
23 people that are involved with it.

24 Thank you, Madam Chairman. Questions?

25 CHAIRMAN JABER: Thank you, sir.



1           Commissioners, do you have any questions?

2           Mr. Twomey.

3           MR. TWOMEY: Thank you, Madam Chairman and  
4           Commissioners. Mike Twomey. Today I'm  
5           appearing on behalf of a couple of customers of  
6           BellSouth, Thomas and Genevieve Twomey, who you  
7           all have heard of before, at least in the  
8           electric industry, and Sugarmill Woods Civic  
9           Association, Inc., the majority of whom are  
10          served by Sprint. And since this is an  
11          interested party thing, or interested person,  
12          not party, I'm here on behalf of myself as well.

13          You may have seen that if these increases  
14          go through, my local bill, as will all of yours  
15          who live here in Tallahassee, is going to go up  
16          62.5%. So we're talking some big money here.  
17          And I should add that in the lowest rate  
18          classification of Sprint, by the fact that  
19          they're applying these same dollar raises or  
20          rate increases over all classifications, those  
21          people who are the most rural and the least  
22          likely to experience competition under any  
23          scenarios will see their basic local rates  
24          raised by 90%, and as Mr. Paschall pointed out,  
25          only over two years, if you give this company

1           what it's asking for, as opposed to the four  
2           years that it led the Legislature to believe it  
3           would implement these rates over when it was  
4           trying to get this legislation passed.

5           I want to take liberty and comment on the  
6           role of Public Counsel here. Public Counsel  
7           represents me, represents all the consumers in  
8           the state as an advocate before this Commission.  
9           It would be my view, Commissioner Bradley, that  
10          what they -- I say this respectfully, but it's  
11          important, in my view. What they advocated at  
12          the Legislature, which, as you pointed out, is  
13          the Public Counsel's boss, and everybody knows,  
14          that's in the know, that the Public Counsel's  
15          office typically does not advocate for and  
16          against legislation, if for no other reason, at  
17          least in my view, that there are political risks  
18          associated with that.

19          But Public Counsel is here. They're here  
20          not as a judge, as a policymaker. They're  
21          advocates for the consumer. And it's their  
22          obligation to do the best they can for telephone  
23          consumers in these cases within ethical and  
24          legal constraints, and I appreciate that. And  
25          trying to tell you all what the legislative

1 history is is not only responsible; it is  
2 especially important in this case, given the  
3 extent to which these companies, I allege,  
4 talked out of both sides of their mouths in  
5 trying to get this legislation passed.

6 So -- and we've seen this. The Chairman  
7 and other Commissioners have pointed out that  
8 there were what seemed to the Chairman,  
9 apparently, clear discussions that the  
10 limitations on the discovery were designed so  
11 that people couldn't pry into the earnings  
12 situations of these companies. My suspicion is  
13 if you poll the legislators, many, if not all of  
14 them would find that same thing true, not that  
15 there were going to be limitations on whether  
16 you could ask these people questions about the  
17 testimony they filed, you know, whether the  
18 discovery we can have as consumers is going to  
19 be limited to just their pricing units. Nobody  
20 in the Legislature intended that. I submit to  
21 you nobody intended that.

22 But Mr. Chapkis and the others will tell  
23 you, "we know that's what this legislation, what  
24 this bill was intended to say, because we wrote  
25 it." If they were not so polite, they would

1 say, "We wrote every stinking word of this  
2 legislation, this law. We know what it's  
3 intended to say." And --

4 COMMISSIONER DAVIDSON: Mr. Twomey, I'm  
5 just -- I'm speaking for me here, but it's just  
6 not helping me at all here to hurl accusations  
7 at the companies. We're here to address a  
8 number of specific issues in the bill, and it's  
9 just -- if you want to keep your comments to  
10 that, that's great, but --

11 MR. TWOMEY: Okay.

12 COMMISSIONER DAVIDSON: -- this is  
13 providing no benefit for me for you to hurl  
14 accusations --

15 MR. TWOMEY: Okay.

16 COMMISSIONER DAVIDSON: -- at the parties.

17 MR. TWOMEY: I'll move on.

18 The 90-day clock, Commissioners, little  
19 more than 12 weeks, of which a full week has  
20 passed, now, this is no accident. Again, it's  
21 written in the legislation for a specific  
22 purpose. And as Mr. Paschall pointed out, it  
23 ties your hands, especially when all three  
24 companies file at the same time, which they  
25 control the filing date. They had all the time

1 to prepare their testimony in terms -- I'm  
2 talking about the schedule right now. We're  
3 talking about whether the Public Counsel should  
4 have an extra two weeks to file their testimony.  
5 The companies, I would submit to you,  
6 Commissioners, have had at least a year to  
7 prepare their testimony. They control the  
8 filing date. Having additional time is fair to  
9 the consumers.

10 Now, this is in excess of a \$350 million a  
11 year rate increase. That's what it is. The  
12 companies claim that it's revenue neutral to  
13 them, but it's not revenue neutral to the  
14 consumers, and primarily the residential  
15 consumers that you've been charged by the  
16 Legislature with looking out for and seeing  
17 whether there is a benefit for.

18 I would ask you to immediately become  
19 comfortable with the notion that your default  
20 position, if there is any doubt about whether  
21 these companies have made their case consistent  
22 with the statute, should be to deny it, not  
23 approve it. If you have any doubts at all, you  
24 should deny it at the end of 90 days, with the  
25 provision that these companies can refile

1 immediately and go on if extra discovery and  
2 extra hearings are required.

3 My clients support all the Public Counsel's  
4 motions. In terms of the public hearings, I  
5 would submit to you that the size of these  
6 increases and the gravity of these increases  
7 upon the average residential consumer is such  
8 that you should make every effort to have a  
9 Commissioner in attendance. I think if you  
10 examine your schedules closely and are creative  
11 with your time, you can do it. But I would urge  
12 you to grant that motion of Public Counsel and  
13 dignify the hearings for the customers with the  
14 presence of a Commissioner.

15 We would support the alternative staff  
16 position on discovery. It is the only position  
17 you can take, I think, that is consistent with  
18 what was told the legislators in all those  
19 committee meetings on demonstrating the benefit  
20 to the residential consumer. Having just the  
21 pricing units won't do it.

22 I will tell you now that I won't agree to  
23 not take any appeals or any challenges that are  
24 available to my clients legally if it's in their  
25 interest.

1           I want to ask you too to think from the  
2           outset that you should go ahead and consider  
3           right now that you should hold these companies  
4           to the time periods that they gave to the  
5           Legislature when urging that these rates be  
6           increased. BellSouth, if you look at the staff  
7           analysis by the committees in both the House and  
8           the Senate, they've included the fact that  
9           BellSouth said it was going to impose its  
10          increases over three years and that Verizon and  
11          Sprint said they were going to impose theirs  
12          over four. And if you attended the committee  
13          hearings, virtually in every case there was  
14          testimony by the companies that this would help  
15          reduce rate shocks. As Mr. Paschall pointed  
16          out, having Sprint, for example, impose these  
17          huge increases in two years versus four doubles  
18          the pain and shortens the time in half.

19          I would also -- while it's not in the staff  
20          recommendation, I would like to ask you to  
21          consider the -- despite the fact that the  
22          alleged goal of this statute is to increase  
23          competition, I want to challenge you now to look  
24          at the manner in which the companies propose to  
25          implement the increases. I will tell you right

1           now that I think the fact that they are giving  
2           the same dollar increases to all their rate  
3           groups, irrespective of whether they -- and the  
4           people that are more rural always have the lower  
5           rates dollarwise, so the increase percentage is  
6           much greater. They propose to give the same  
7           level of increases dollarwise to each rate  
8           group. I think that is anticompetitive on its  
9           face.

10           COMMISSIONER DAVIDSON: Well, Mr. Twomey,  
11           let me ask you. I mean, you're getting into the  
12           merits now, which we're going to have plenty of  
13           opportunity to do, at least in the next three  
14           months. How does this argument relate to one of  
15           the issues that we have to decide?

16           MR. TWOMEY: well, I think it's related to  
17           the issue of whether there's residential  
18           benefit.

19           COMMISSIONER DAVIDSON: We're not deciding  
20           that issue today.

21           MR. TWOMEY: well, I know, but,  
22           Commissioner, it has to do with discovery, and I  
23           think you need to think ahead on discovery,  
24           whether this is a permissible area for  
25           discovery.



1           If you -- here's my point, if it's not  
2 clear. If you increase by the same dollar  
3 amount Sprint's customers, for example, \$6 plus,  
4 almost \$7, in rural areas as opposed to having  
5 the same percentage, that will of necessity make  
6 it less likely that you'll have more competition  
7 in the urban areas and less likely that you'll  
8 have more competition in the rural areas, as  
9 opposed to if you had the same percentage  
10 increase in each class.

11           COMMISSIONER DAVIDSON: I understand the  
12 argument. My point is, we'll get to that during  
13 the course of these proceedings.

14           MR. TWOMEY: Yes, sir. I understand your  
15 point too. And I don't mean to be dense on  
16 this. All I'm saying is, I want you to think of  
17 that, if you would, please, in terms of what  
18 decisions you make on the discovery.

19           Another factor you might want to consider  
20 in the same vein, or at least hear me briefly,  
21 is that one of the things that was used to sell  
22 to the Legislature and to the public the  
23 benefits of this legislation and this law was  
24 the fact that Mr. Paschall might have the  
25 opportunity to have the same size local bill --

1 the same size bill or even a smaller total bill  
2 by his use of more in-state toll. And that was  
3 one of the things that was preached most often  
4 in the legislation. So the --

5 CHAIRMAN JABER: Mr. Twomey, let me try to  
6 summarize the points you want us to know with  
7 regard to your position so we can move on.

8 MR. TWOMEY: Okay.

9 CHAIRMAN JABER: You agree with staff's  
10 recommendation that discovery responses come in  
11 within 15 days. You agree with staff's  
12 recommendation that discovery be expedited such  
13 that it be had in e-mail, facsimile, overnight,  
14 and that no additional time for mailing be  
15 given. You agree with some of the statements  
16 you've heard the Commissioners make regarding  
17 discovery being available for testimony and the  
18 petition.

19 MR. TWOMEY: Yes.

20 CHAIRMAN JABER: And whatever the companies  
21 may have filed or will file. You agree with the  
22 notion of having a public hearing and that a  
23 Commissioner be in attendance, and you agree  
24 with the schedule that has been proposed by  
25 Mr. Beck.

1 MR. TWOMEY: Yes, ma'am.

2 CHAIRMAN JABER: What have I left out?  
3 You've got just a few seconds.

4 MR. TWOMEY: That's it.

5 CHAIRMAN JABER: Okay. Thank you.

6 MR. TWOMEY: Thank you.

7 CHAIRMAN JABER: Mr. McCabe, you are  
8 responding to Mr. Gross's -- go right ahead.

9 MR. MCCABE: If I may. Thank you. Tom  
10 McCabe for TDS Telecom/Quincy.

11 We looked at staff's recommendation as  
12 somewhat of a -- all the small companies, we're  
13 in the process of reviewing the legislation.  
14 We're not exactly sure what we're going to do.  
15 Staff's recommendation from our standpoint was a  
16 benefit. It basically laid out the ground rules  
17 in terms of what they're trying to accomplish so  
18 that when we prepare our filings, we'll know  
19 what to include in it. So the fact that we have  
20 not made a filing today really is irrelevant to  
21 the point Mr. Gross made, because this gives us  
22 an opportunity to know how we need to go about  
23 proceeding.

24 Issue 4 is my focus. We can agree for the  
25 most part with most of the staff's

1 recommendation. And that's for TDS Telecom.  
2 I'm not speaking on behalf of the other small  
3 local companies. The issue I want to focus on  
4 is assuming that the support exists.

5 Under 364.052, which was implemented -- I  
6 believe it was back in the '95 time frame. At  
7 that point in time, the Legislature recognized  
8 that the small local exchange companies were  
9 different, and to a large extent, treated us the  
10 same way that they've crafted legislation for  
11 CLECs. You treat them differently. You don't  
12 need to require the same types of things. And I  
13 think that's what staff has recognized in this  
14 proceeding.

15 For the most part, the small local exchange  
16 companies, we do not have cost studies in place  
17 today on our access. Our access rates at the  
18 interstate level are filed through NECA based on  
19 -- I guess it's a nationwide look at the cost  
20 structure for rural companies, and the FCC has  
21 concluded that rate is 2 cents. Our rates in  
22 Florida on the originating side is about 7 to 8  
23 cents, in that neighborhood.

24 CHAIRMAN JABER: Would you support the  
25 notion of like a rebuttable presumption if we

1 made the decision today or sometime in the near  
2 future to assume for the small LECs that support  
3 exists unless someone files testimony to show  
4 otherwise? Setting up a rebuttable presumption  
5 standard, is that something you would agree to?

6 MR. MCCABE: I can't speak on behalf of the  
7 others. I mean, I think that's something that  
8 we could consider. But at the same time, no one  
9 is going to be looking -- we're the only ones  
10 that have our costs, so if someone wants to come  
11 back and say, well, we did the cost study on X,  
12 well, it doesn't exist. No one has our costs.  
13 And even the Florida Legislature came back and  
14 said, "For the small local exchange companies,  
15 we're going to abandon any proxy models and  
16 things of that nature, and we're going to rely  
17 on embedded costs."

18 CHAIRMAN JABER: The NECA information  
19 wouldn't be available to everyone?

20 MR. MCCABE: Well, I believe -- I don't  
21 know how publicly all that cost information is  
22 available, but at the same time, if someone was  
23 to use the NECA cost study, I think one would  
24 reasonably conclude that if 2 cents is the  
25 interstate, then less than 8 cents is the

1 intrastate portion.

2 So from that standpoint, we certainly would  
3 support staff's recommendation, and I believe it  
4 would then enable us to proceed, you know,  
5 differently. I think if we're in the situation  
6 of having to go through cost studies, and you've  
7 got a 90-day time period, I don't know -- you  
8 know, we're looking at 9 to 12 months on cost  
9 studies that have been before this Commission.

10 So that's all I have. Thank you.

11 CHAIRMAN JABER: I didn't forget anyone;  
12 right?

13 Commissioners, I would like to go issue by  
14 issue. Issue 2. Commissioner Baez, you had a  
15 question?

16 COMMISSIONER BAEZ: Actually, I have a  
17 couple of questions. Mr. Beck had suggested  
18 some manner of treating whatever testimony,  
19 assuming there's public hearings, and I think I  
20 heard him throw a challenge out. I just wanted  
21 to see what the ILECs thought of it, or what  
22 their ideas might be, assuming there were public  
23 hearings, what kind of treatment to the public  
24 input.

25 MS. WHITE: Oh, you mean for putting it

1 into the record?

2 COMMISSIONER BAEZ: Transcripts, or what  
3 their ideas might be.

4 MS. WHITE: Well, I haven't had a chance to  
5 talk to anybody yet, but off the top of my head,  
6 I guess there are two things I would want to  
7 make sure of before I could recommend to my  
8 client that we would agree to stipulate to  
9 them. One is that there be somebody at the  
10 public hearing that could swear the witnesses  
11 in, because I don't want testimony going into  
12 the record if it's not sworn, and second, if  
13 what we're talking about are true customers and  
14 not somebody's economist going down there and  
15 testifying. Does that make sense? I mean, I'm  
16 probably not --

17 COMMISSIONER BAEZ: It makes perfect sense  
18 to me.

19 MS. WHITE: -- saying it the right way, but  
20 I want real customers from these places, not  
21 people that, you know --

22 CHAIRMAN JABER: We understand.

23 MS. WHITE: Expert witness types. And then  
24 I -- if those two are resolved, then I would  
25 probably recommend the stipulation into the

1 record by my client.

2 CHAIRMAN JABER: Commissioner Baez, under  
3 Issue 2, I would propose we discuss the schedule  
4 outlined by staff, and also the notion of public  
5 hearings. But just taking it backwards, since  
6 you brought up public hearings, I have a request  
7 of you all to consider.

8 we have a September 16th agenda. I think  
9 it's the 16th. What I would like for staff to  
10 do, because this was not noticed for us to  
11 decide on public hearings, I have, frankly, a  
12 cheat sheet in front of me. Anticipating this  
13 discussion would come up, I had JoAnn take a  
14 look at our calendar for September and October.  
15 Because this was very quick and dirty this  
16 morning, I am hesitant to represent to you all  
17 that this is doable. On the other hand, I'm  
18 hesitant to say that it's not doable.

19 what I would like to do is have staff come  
20 back with -- I don't know if it would be an  
21 emergency recommendation at this point or not,  
22 but for the September 16th agenda, a  
23 recommendation on the motion to have public  
24 hearings, if so, how would they be structured,  
25 and give everyone more detail in that regard.



1 But that should also give staff an opportunity  
2 to get with Mr. Beck, Mr. Paschall, Mr. Twomey,  
3 and all of the companies involved to understand  
4 whether a stipulation could be had on  
5 transcripts where Commissioners just could not  
6 go.

7 what the parties are not privy to, but  
8 certainly we all know, there's a major FCC order  
9 that just came out on the triennial review  
10 that's going to take up three or four days of  
11 hearing, or at least we should anticipate that.  
12 Hopefully it wouldn't, but we should anticipate  
13 that. We've got the fuel hearings coming up.  
14 We have special agendas, and frankly, a hearing  
15 I may have to move to accommodate this hearing.  
16 So I would like all that information in front of  
17 you when you decide --

18 COMMISSIONER BAEZ: Yes, let's --

19 CHAIRMAN JABER: -- whether to have public  
20 hearings.

21 COMMISSIONER BAEZ: I think that's -- I  
22 would certainly accept that. We need to know  
23 what our options are.

24 COMMISSIONER DEASON: The only question I  
25 have in regard to that is, by waiting until the

1 16th, then are we giving up possible hearing  
2 dates that we wouldn't otherwise be able to  
3 achieve because of the noticing requirement?

4 CHAIRMAN JABER: I hope not. What I would  
5 hope -- Ms. Keating, what I envisioned was you  
6 would actually even shadow some dates, prepare  
7 some draft notice -- if your recommendation,  
8 working with JoAnn on the date, is that this is  
9 doable, I would hope you, you know, start your  
10 noticing. Let's take a look at some dates in  
11 October, October in particular.

12 The other thing to think about,  
13 Commissioners, if we're going to have public  
14 hearings, we would want to have some  
15 understanding of what a possible rate impact  
16 would be. You recall when we have the water  
17 customer meetings, staff puts out at least  
18 proposed rates or a customer notice that gives  
19 customers not necessarily the final rates, but  
20 there's a range of possibilities. And to have  
21 meaningful public input, you have to have  
22 something in front of a customer, I think, to  
23 react to. Otherwise, we've got chaos and --

24 COMMISSIONER DAVIDSON: I understand the  
25 concern with putting something tangible before

1 customers. The concern on the other side for me  
2 is that this is only one aspect of the inquiry.  
3 And at these public hearings, I suspect that  
4 we're going to hear repeatedly, "I don't want my  
5 rates to go up, and I cannot afford more." We  
6 have legislation on the books, however, that has  
7 somewhat addressed that argument. That in and  
8 of itself is not going to defeat the  
9 implementation of this bill.

10 So somehow, and I don't know how we get to  
11 this, I would like the public hearings to be  
12 meaningful and structured around what we need to  
13 do, because I think we could hear a thousand  
14 times or see a thousand pieces of paper that, "I  
15 don't want my rates to go up. I can't afford  
16 more," but we've got to go beyond that in how we  
17 implement this bill.

18 And I just don't know -- as I sit here, I  
19 don't know what impact just sort of putting out  
20 before the customers, "This is the anticipated  
21 rate increase," will do, because that's not the  
22 full scope of our inquiry. I mean, we're not  
23 putting before the competitors, "Well, possibly  
24 with this rebalancing, new competitors may come  
25 into your market and serve the market." Maybe

1 that will happen, and maybe it won't. And we're  
2 not laying out any of the other details or  
3 potential benefits of competition that will  
4 result or competition that may not result.  
5 we're putting out one isolated piece of evidence  
6 which I think can be somewhat inflammatory to  
7 the customers, because this is the very essence  
8 of what they don't want to occur, and this is  
9 the very essence of what was addressed before  
10 the Legislature. And that's just really a  
11 concern. I don't know how we deal with that.

12 CHAIRMAN JABER: No, it's a great concern,  
13 Commissioner Davidson, but that's why I would  
14 want staff to address how to structure it. I  
15 think, you know, a summary of the bill is  
16 appropriate in whatever staff report comes out.

17 COMMISSIONER BAEZ: That will be part of a  
18 notice --

19 CHAIRMAN JABER: Exactly.

20 COMMISSIONER BAEZ: -- as well.

21 CHAIRMAN JABER: Exactly.

22 COMMISSIONER BAEZ: I think all of those  
23 concerns -- at the end of the day, you can't  
24 control what public input is going to be.  
25 They're going to speak to what they want to

1 speak to, and -- that has certainly been my  
2 experience, and that's fine. I mean, I think  
3 that's something that we need to take into  
4 account.

5 But I would join you, Commissioner  
6 Davidson, and kind of -- you know, let's be  
7 circumspect about what we say. Let's not -- it  
8 is true that the statute doesn't contemplate a  
9 single focus here. I mean, the rate impact is  
10 only one part of a very large piece of  
11 legislation and a very large consideration, so I  
12 think we need to be very careful and balanced as  
13 to how that information gets presented to the  
14 customers, although at the end of the day, I do  
15 think we need to give them something to be able  
16 to comment on, whether it's -- and I would hope  
17 that it's something balanced that presents a  
18 complete picture.

19 CHAIRMAN JABER: Commissioner Bradley, you  
20 had a question?

21 COMMISSIONER BRADLEY: Yes. And I agree  
22 with Commissioner Baez. I wouldn't want to have  
23 -- I wouldn't want to put staff or a  
24 Commissioner or several Commissioners in the  
25 position of having to debate with the customers

1 the merits of the legislation. I would prefer  
2 that -- I think Mr. Paschall had a good  
3 suggestion, that we give good and clear and  
4 concise and accurate information about what  
5 really -- what the legislation actually does.  
6 And I would hope that those individuals who  
7 debated the bill before the Legislature would  
8 respect that and allow the customers to just get  
9 calm and clear and concise information so that  
10 they can really understand what the legislation  
11 does. And I don't know how we get there, but I  
12 just don't want to put staff in the position of  
13 having to -- or a Commissioner to -- I don't  
14 want to put them in the position of having to  
15 defend or to get into a debate --

16 CHAIRMAN JABER: Right.

17 COMMISSIONER BRADLEY: -- with the public.  
18 I don't think that's our role.

19 CHAIRMAN JABER: Commissioner, what I --

20 COMMISSIONER BRADLEY: Our job is purely to  
21 implement.

22 CHAIRMAN JABER: What I envisioned is that  
23 staff would come back with a recommendation  
24 first and foremost addressing whether the motion  
25 for public hearing should be granted, and then

1 if yes, how should it be structured.

2 Again, just sort of remembering the  
3 experiences in water customer hearings -- and  
4 we've done some with area codes as well. The  
5 companies are given an opportunity, depending on  
6 your service territory, to give a very short,  
7 concise presentation. Public Counsel is given  
8 an opportunity to give a very short, concise  
9 presentation. Staff prepares a staff report  
10 that summarizes the filing and gives a summary  
11 of the appropriate law.

12 It may not be appropriate -- I don't know.  
13 As I sit here today, I don't know if it's  
14 appropriate to include a rate section. I know  
15 we do that in water. Now, obviously, that's a  
16 whole different circumstance. But those are the  
17 kinds of things I want you to think about.

18 COMMISSIONER BRADLEY: Well, I have a  
19 question of Public Counsel.

20 CHAIRMAN JABER: Commissioner Bradley.

21 COMMISSIONER BRADLEY: How might you  
22 envision your participation in a hearing such as  
23 what we're discussing? Would it be to  
24 disseminate information, or would it be to  
25 debate the bill itself, or sound an alarm, or --

1 I mean --

2 MR. BECK: I anticipate it would be very  
3 much like in a rate proceeding, Commissioner,  
4 where we would call the witnesses. I think the  
5 purpose of holding a public hearing is to allow  
6 the Commission to receive evidence on the issue  
7 of whether there will be a benefit to  
8 residential customers. That's the point, is to  
9 hear what the customers have to say regarding  
10 that issue. I don't think it's necessarily for  
11 debate at all. It's to gather evidence.

12 COMMISSIONER BRADLEY: It's exploratory,  
13 discovery.

14 MR. BECK: It's to hear what the customers  
15 have to say so you can take that into account.

16 COMMISSIONER DAVIDSON: Let me ask this  
17 question of Public Counsel. Does Public Counsel  
18 view itself as having a duty not to obstruct the  
19 implementation of the bill, but rather focus  
20 upon what the bill requires and make sure the  
21 requirements are met?

22 MR. BECK: You've really taken me aback. I  
23 can't even understand why you're asking that  
24 question. Our point is to see that the bill is  
25 implemented the way it's intended and --



1           COMMISSIONER DAVIDSON: That was really --  
2           that was the question. You shouldn't have been  
3           taken aback. That was really the question, to  
4           make sure that the bill is implemented, but that  
5           the requirements within the bill are satisfied.

6           MR. BECK: Yes.

7           COMMISSIONER DAVIDSON: All right.

8           CHAIRMAN JABER: Okay. Commissioners, with  
9           your indulgence, then I would like to direct  
10          staff to come back with a recommendation for the  
11          September 16th agenda on the motion to hold  
12          public hearings.

13          And, Beth, if you could just work with  
14          JoAnn on what dates might be available, thinking  
15          ahead, and which Commissioners, if any, might be  
16          available, and also take an opportunity to meet  
17          with the parties on the notion of stipulating  
18          the transcripts in.

19          That leads -- Commissioner, what was your  
20          feedback on the numbers I threw out for a  
21          procedural schedule?

22          COMMISSIONER BRADLEY: Could you --

23          CHAIRMAN JABER: Yes, sure. Day 1  
24          obviously, apparently, was August 27th. Day 7,  
25          if I'm counting correctly, Ms. Keating, is

1           tomorrow. Can you -- you can have an order  
2           establishing procedure at least to the  
3           Prehearing Officer tomorrow?

4           MS. KEATING: Yes.

5           CHAIRMAN JABER: Okay. I'm proposing,  
6           Commissioners, that instead of staff and  
7           intervenor direct testimony being due at day 22,  
8           it would be due at day 36. And Commissioner  
9           Davidson correctly pointed out that's like a  
10          month from today. And then rebuttal testimony  
11          and prehearing statements would be due day 46.

12          Mr. Fons, you wanted to address us, and  
13          I've neglected to let you do that.

14          MR. FONTS: Two things, if I may, Madam  
15          Chair. Number one, on the issue of public  
16          hearings, Public Counsel filed a motion last  
17          week. We did not receive it until Thursday.  
18          Our time for responding to that in writing has  
19          not expired, so we would still reserve our  
20          right, if we may, to respond in writing to that  
21          motion.

22          CHAIRMAN JABER: My only request is that  
23          you expedite your response so --

24          MR. FONTS: We shall.

25          CHAIRMAN JABER: -- that staff can work on

1 their recommendation. But the reason we even  
2 talked about it today, frankly, is because you  
3 all expressed a position on it.

4 MR. FONTS: Yes, but there are elements of  
5 it that have been pointed out that were not  
6 clear at the time that that motion came up, the  
7 whole issue of what is going to be presented to  
8 the customers. Second is the noticing aspects  
9 of it, who is going to provide the notice to the  
10 customers on this and what's going to --

11 CHAIRMAN JABER: You personally.

12 MR. FONTS: Me personally? I'll start  
13 ringing door bells as soon as we leave.

14 CHAIRMAN JABER: Okay. Thank you,  
15 Mr. Fons.

16 MR. FONTS: Those are the issues. And if we  
17 could also be heard on the scheduling, since we  
18 were not given an opportunity yet to --

19 CHAIRMAN JABER: Go ahead.

20 MR. FONTS: -- speak to the scheduling. We  
21 do not have a problem with the 36th day, which  
22 is the 2nd of October. I believe you said the  
23 46th day, which would be 10 days from that,  
24 which, according to my calendar, will be a  
25 Sunday, which would mean it would be the 13th of

1           October, which still only gives us 11 days. If  
2           we could have to the 17th to respond to the  
3           rebuttal, or the intervenors' testimony, I think  
4           that would be -- we would welcome that if we  
5           could have that.

6           CHAIRMAN JABER: For rebuttal and  
7           prehearing statements, you would recommend we do  
8           the same day?

9           MR. FONTS: That would be fine. That's  
10          traditionally been the way things have been  
11          handled.

12          CHAIRMAN JABER: Commissioner Bradley.

13          COMMISSIONER BRADLEY: Yes. Just a  
14          question. Realizing that some time has expired  
15          because we're trying to establish policy and  
16          procedure, or we're trying to clear up some  
17          policy and procedural issues, the time frame  
18          amendments or adjustments that we're making  
19          today, are those adjustments purely for this  
20          first time frame, and after this time frame has  
21          expired, if we have to deal with this issue  
22          again, then we will go to the time frame stated  
23          in staff's recommendation?

24          CHAIRMAN JABER: It's my understanding that  
25          what staff wanted the full Commission to do

1           today is give them and you as the Prehearing  
2           Officer some feedback with regard to what dates  
3           would accommodate the 90-day time frame. And  
4           they're going to go back and take these dates  
5           that we approve and put them in an order  
6           establishing procedure for you to sign. So it's  
7           the spirit of what we decide today that will be  
8           included into the Order on Procedure.

9           COMMISSIONER BRADLEY: Okay. So we're --  
10          basically what we're doing then is to agree to  
11          modify the suggested time frame that we have  
12          here that was put forth by staff?

13          CHAIRMAN JABER: That's right, agree to  
14          modify staff's recommendation.

15          COMMISSIONER BRADLEY: Okay. Okay.

16          CHAIRMAN JABER: Yes. Good question.

17          Okay. Commissioners, the request is to  
18          make rebuttal testimony and prehearing  
19          statements due October 17th. I have to tell you  
20          I don't have a problem with that, and it works,  
21          because the hearing dates we're looking at are  
22          November 4th, 5th, and 6th, which is consistent  
23          with the hearing dates, Mr. Beck, that you were  
24          suggesting.

25          There's one glitch. And I bring this up

1           because it's going to take the cooperation of  
2           some company sitting right out there. There is  
3           a hearing already scheduled for November 4th,  
4           5th, and 6th. I can't schedule this hearing  
5           unless that hearing moves. So I would  
6           anticipate that you work closely with legal  
7           staff to accommodate a November 4th, 5th, and  
8           6th hearing date.

9           Commissioners, if that works out, then  
10          there's nothing wrong with October 17th.

11          COMMISSIONER BAEZ: Can't we choose which  
12          hearing we want to --

13          CHAIRMAN JABER: I think I just did.

14          MS. WHITE: Yes. Can the companies choose  
15          that too?

16          CHAIRMAN JABER: I think I just did. Did  
17          you not get that?

18          COMMISSIONER DAVIDSON: Does that keep  
19          rebuttal and prehearing at day 46, or has that  
20          been modified?

21          CHAIRMAN JABER: I think we added -- let's  
22          see. Day 46 Mr. Fons tells me is a Sunday.

23          MR. CHAPKIS: That would make it day 50.

24          CHAIRMAN JABER: Day 50? Okay.

25          COMMISSIONER DAVIDSON: Day 50. Thank

1           you.

2           CHAIRMAN JABER: Day 50. And then the  
3 rest, staff, if you'll just fill in the blanks.  
4 The hearing date obviously is important, and  
5 then you have to back into that from the  
6 prehearing date.

7           Commissioner Bradley.

8           COMMISSIONER BRADLEY: How do we deal with  
9 holidays as it relates to this schedule?

10          CHAIRMAN JABER: It falls on the next day,  
11 according to the -- well, let me let legal staff  
12 answer that.

13          COMMISSIONER BRADLEY: well, I mean, you  
14 said 90 days. what if there's a --

15          CHAIRMAN JABER: If it's a Sunday --

16          COMMISSIONER BRADLEY: what if there are  
17 two or three holidays involved in the time  
18 frame?

19          MS. KEATING: For filing dates -- under  
20 the rules of procedure, for filing dates, you  
21 get the next day if it falls on a holiday.

22          COMMISSIONER BRADLEY: So the  
23 interpretation would be that we're dealing with  
24 business days.

25          CHAIRMAN JABER: No. As you count --

1                   COMMISSIONER DAVIDSON: Full calendar  
2 days.

3                   CHAIRMAN JABER: The holidays that come  
4 within the 90 days just get counted as days. If  
5 the 90th day falls on a Sunday or Labor Day, we  
6 go to the next day. And Halloween doesn't  
7 count, apparently.

8                   COMMISSIONER BRADLEY: That's your  
9 birthday.

10                  CHAIRMAN JABER: Halloween doesn't count.  
11 what's the holiday between now and --

12                  COMMISSIONER DAVIDSON: Thanksgiving I  
13 think falls right at the end.

14                  CHAIRMAN JABER: Okay.

15                  COMMISSIONER BAEZ: Veterans Day.

16                  CHAIRMAN JABER: So that just gets counted  
17 as a regular day.

18                  MR. BECK: Chairman Jaber --

19                  COMMISSIONER BRADLEY: (Inaudible.)

20                  CHAIRMAN JABER: No. No.

21                  MR. BECK: Chairman Jaber, could I just  
22 clarify the question? When you had the three  
23 days, November 4th, 5th, and 6th, are you going  
24 to schedule all three cases for those three  
25 days, or are you thinking --



1           CHAIRMAN JABER: Well, you're jumping  
2 ahead. I'm -- you're jumping ahead.

3           With regard to Issue 2, though,  
4 Commissioners, are you okay with the proposed  
5 time line as described?

6           COMMISSIONER DAVIDSON: I am, and I -- I  
7 was going to move -- before we got to that  
8 particular issue, I was going to offer the  
9 comment that in my view, we don't have a need  
10 for a case management conference for resolving  
11 this, so I was going to move, before we got to  
12 Issue 2, move that we deny OPC's motion seeking  
13 the Commission to order a case management  
14 conference to be held for the parties.

15           COMMISSIONER DAVIDSON: I can second that,  
16 if it's appropriate.

17           CHAIRMAN JABER: Okay. And do you want to  
18 -- okay. So let's do that separately is what  
19 you're saying?

20           Okay. There's a motion and a second to  
21 deny Public Counsel's motion to have a case  
22 management conference. All those in favor say  
23 aye.

24           (Simultaneous affirmative responses.)

25           COMMISSIONER DAVIDSON: And with that, I

1 would move staff as modified on Issue 2.

2 COMMISSIONER BAEZ: Madam Chair, a  
3 question.

4 CHAIRMAN JABER: Commissioner Baez.

5 COMMISSIONER BAEZ: Do we need to -- has  
6 the issue of whether we're going to take a bench  
7 decision or go to special agenda, has that been  
8 made? I don't recall it being made, but --

9 CHAIRMAN JABER: No, not officially. I  
10 think we heard consensus that the notion of  
11 hearing, bench decision only, with an oral  
12 recommendation was okay, but we haven't  
13 officially included that in our --

14 COMMISSIONER BAEZ: Can we -- I'm not  
15 saying that we need to vote on it. I'm just  
16 saying, you know, let's all be on the same page  
17 as to what we're going to do, because it might  
18 have some impact on what kind of days --

19 CHAIRMAN JABER: Right.

20 COMMISSIONER BAEZ: -- are available, if  
21 necessary.

22 CHAIRMAN JABER: I think to accommodate the  
23 90 days, Commissioner Baez, the only dates I  
24 have to play with are those November 4th, 5th,  
25 and 6th.

1 COMMISSIONER BAEZ: Okay.

2 CHAIRMAN JABER: Now, I don't know where  
3 that falls into this calculation. I don't know  
4 what day that is.

5 COMMISSIONER BAEZ: Okay.

6 CHAIRMAN JABER: Is it enough, Ms. Keating,  
7 to express our desire that we will do a bench  
8 decision?

9 MS. KEATING: I believe that's sufficient  
10 for us to work that into the schedule.

11 CHAIRMAN JABER: Okay.

12 COMMISSIONER DEASON: And we will have a  
13 bench decision at the conclusion of the  
14 hearing?

15 CHAIRMAN JABER: Right. And then --

16 MS. KEATING: As opposed to a special  
17 agenda conference; right.

18 CHAIRMAN JABER: Right. But again, leave  
19 the Prehearing Officer with some discretion that  
20 if the issues -- I envision something similar to  
21 the fuel hearings. We always get ready for a  
22 bench decision for the fuel hearings, but every  
23 once in a while an issue arises that warrants --  
24 because of its complication or whatever,  
25 warrants a specific written recommendation. And

1 I would leave that decision to the discretion of  
2 the Prehearing Officer.

3 COMMISSIONER BAEZ: Well, I'm sorry. I  
4 hate to be complicating this --

5 CHAIRMAN JABER: That's okay. You're not.

6 COMMISSIONER BAEZ: -- more than is  
7 probably going to be necessary, but if we do  
8 have a bench decision, you know, there's usually  
9 -- I would anticipate some kind of oral  
10 argument. That takes time, and maybe three days  
11 of hearings probably is not going to be enough  
12 if we're anticipating a bench decision with full  
13 discussion and debate and that kind of thing. I  
14 just wanted to throw that out there.

15 CHAIRMAN JABER: No, it's a good point.  
16 Staff, in your recommendation, you talked about  
17 closing arguments, the possibility of allowing  
18 the parties to have closing arguments at the  
19 conclusion of the hearing.

20 MS. CHRISTENSEN: Yes, that's correct.

21 CHAIRMAN JABER: Okay. Did you hear that?

22 COMMISSIONER BAEZ: I was distracted, and  
23 not in a good way.

24 CHAIRMAN JABER: I was just reminded by  
25 staff that in this recommendation, they were

1 contemplating allowing the parties to have  
2 closing arguments at the end of the hearing. Is  
3 that what you mean by oral argument, or --

4 COMMISSIONER BAEZ: Yes. I'm sorry. I  
5 misspoke. But I guess the point being, there's  
6 going to be some after-hearing, quote, unquote,  
7 action, and I'm wondering is three days really  
8 enough. And maybe --

9 CHAIRMAN JABER: The fourth day is a  
10 Saturday.

11 COMMISSIONER BAEZ: I'll be here on a  
12 Saturday. I don't care. Even if I'm the only  
13 one.

14 COMMISSIONER DAVIDSON: That would be a  
15 first.

16 COMMISSIONER BAEZ: That's right. That's  
17 right.

18 CHAIRMAN JABER: No, unfortunately not.  
19 Unfortunately not.

20 COMMISSIONER BAEZ: Again, my apologies,  
21 I'm not trying to complicate things. I just  
22 don't -- personally, I'm feeling a little  
23 squeezed, and I'm sure we all are, because we do  
24 have a very short time frame. I just -- I don't  
25 want to get now all of a sudden squeezed on the

1 day the decision is due as well. At least let's  
2 -- I would like to hear what others think. And  
3 if they can set my mind at ease, all the better.

4 COMMISSIONER BRADLEY: Maybe this will help  
5 a little bit. If it gets too complicated, the  
6 Prehearing Officer will punt back to the  
7 Commission, to the full Commission.

8 COMMISSIONER BAEZ: I'm not sure that's  
9 comfort, but thank you.

10 COMMISSIONER BRADLEY: Maybe not punt back,  
11 but pass back or hand off, huh?

12 COMMISSIONER DAVIDSON: Chairman, I have a  
13 question on the schedule. Day 90 is the day for  
14 the order. If we are going to hold hearings  
15 with a bench -- are we agreeing here to a bench  
16 decision only so that -- are we avoiding the --

17 CHAIRMAN JABER: Well, let me ask you  
18 this. Isn't there enough time at the back end,  
19 Commissioners -- and Ms. Christensen, you can  
20 correct me if I'm wrong -- to actually put in  
21 the Order on Procedure the hearing dates,  
22 reflecting -- and also have a special agenda  
23 date with a parenthetical that says if needed?  
24 Why can't we do that? Why does that have to be  
25 decided right this minute?

1 MS. CHRISTENSEN: I believe that can be  
2 done, and certainly we can make a parenthetical  
3 and reserve the time, and I think that might  
4 alleviate some of the concerns. And that  
5 decision could be made at the end of the  
6 hearing, whether or not you wanted to extend the  
7 hearing to a special agenda.

8 CHAIRMAN JABER: Frankly, by the prehearing  
9 conference you would know more. When you've  
10 seen the prehearing statements, you would know.  
11 So what I'm suggesting is we have a date for the  
12 prehearing, a date for a hearing, a date for a  
13 special agenda, if any, but we'll have a shadow  
14 date there, a date for the order, and a date to  
15 close the docket.

16 COMMISSIONER BAEZ: Then I can second the  
17 motion.

18 COMMISSIONER DAVIDSON: Well, can I --

19 COMMISSIONER DEASON: It is --

20 COMMISSIONER DAVIDSON: I now have a  
21 question. Oh, I'm sorry.

22 CHAIRMAN JABER: Commissioner Deason and  
23 then Commissioner Davidson.

24 COMMISSIONER DEASON: My question is, is it  
25 clear that the statutory time frame contemplates

1 an order by day 90 or a decision by day 90?

2 MS. CHRISTENSEN: The statute clearly says  
3 that a final order must be issued on day 90.  
4 That's what the statute says, the final order  
5 must be issued.

6 COMMISSIONER DAVIDSON: And we had heard  
7 that your office was going to carry the lead on  
8 drafting that order, Commissioner Deason.

9 COMMISSIONER DEASON: It will be a short  
10 order.

11 CHAIRMAN JABER: Commissioner Davidson, you  
12 had a question.

13 COMMISSIONER DAVIDSON: I do have a  
14 question. We're in such an expedited time frame  
15 here. Day 50 is the day for both rebuttal  
16 testimony and exhibits as well as prehearing  
17 statements. It would be useful for me if the  
18 prehearing statements could address the rebuttal  
19 testimony and exhibits put in by the other  
20 parties, and submitting them on the same date  
21 makes that difficult. Since we are in such a  
22 crunch, I think we'll benefit, perhaps more in  
23 this case than in others, from having very  
24 strong prehearing statements that address the  
25 criteria set forth in the statute. And if I was



1 one party, I would really like an opportunity to  
2 address the rebuttal testimony and exhibits put  
3 in by the other. I don't know if that could  
4 work in the calendar.

5 CHAIRMAN JABER: I have that October 17th,  
6 which apparently is day 50, that that falls  
7 on --

8 MS. KEATING: Actually, Madam Chairman, I  
9 think it's day 51, just for clarification  
10 purposes.

11 CHAIRMAN JABER: Okay. Well, whatever  
12 October 17th is, that's a Friday. Commissioner  
13 Davidson, how about a weekend? Honestly, that's  
14 about as much time as we can give and still  
15 allow staff -- here's where the difficulty comes  
16 in. Staff takes all of those prehearing  
17 statements and turns it into a draft prehearing  
18 order so that the Prehearing Officer has it for  
19 the prehearing conference.

20 So why don't we say October 20th -- that's  
21 a weekend -- for prehearing statements. Does  
22 that give you some --

23 COMMISSIONER DAVIDSON: Well, it does. And  
24 I don't want to complicate this for the parties.  
25 I mean, do the parties see value in being able

1 to address rebuttal exhibits and testimony, or  
2 would the parties rather just throw in the  
3 prehearing at the same time?

4 MR. FONS: I believe, Commissioner, that  
5 the only people that will be filing rebuttal  
6 testimony on the 17th will be the ILECs.

7 CHAIRMAN JABER: There's nothing wrong with  
8 giving folks that weekend.

9 COMMISSIONER DAVIDSON: All right.

10 MS. CHRISTENSEN: Commissioners, I --

11 CHAIRMAN JABER: There was -- I'm sorry.

12 MS. CHRISTENSEN: I'm sorry. I was going  
13 to maybe make another suggestion. We may be  
14 able to allow them a little bit more additional  
15 time than just the weekend, depending on when  
16 the prehearing conference is. We just need some  
17 time built in there to come up with a draft  
18 prehearing order. So maybe if we could have a  
19 little bit of flexibility, taking into  
20 consideration that you want some time between  
21 the rebuttal testimony and the prehearing  
22 statements, we can maybe even get them some  
23 additional time and work backwards from the  
24 prehearing conference.

25 MR. FONS: Excuse me, Chairman.

1 CHAIRMAN JABER: Mr. Fons.

2 MR. FONTS: If they're going to have more  
3 time to issue their prehearing after we file our  
4 rebuttal, I think it needs to be -- they should  
5 not be using that as an opportunity to file  
6 surrebuttal testimony.

7 CHAIRMAN JABER: Well, surrebuttal  
8 testimony is not on the schedule.

9 MR. FONTS: All right. Thank you.

10 CHAIRMAN JABER: Ms. Christensen, I always  
11 want to give you flexibility, but the whole  
12 purpose of this is to try to come up with  
13 parameters that make everyone's life easier. So  
14 I think -- for purposes of today, I've got a  
15 motion, Commissioners, that modifies the  
16 schedule as we've already said. Do you need me  
17 to repeat it to make sure we're all on the same  
18 page?

19 Okay. There's a motion and a second to  
20 approve staff recommendation on Issue 2 as  
21 modified. And staff will be getting the  
22 Prehearing Officer an Order on Procedure  
23 consistent with the discussion herein. All  
24 those in favor say aye.

25 (Simultaneous affirmative responses.)

1                   CHAIRMAN JABER: Issue 2 is approved as  
2 modified.

3                   Issue 3. Commissioners, personally, I  
4 don't see why a vote on this issue, a formal  
5 vote on this issue is necessary. For purposes  
6 of what I wanted to accomplish today, I wanted  
7 consensus from the Commission, if possible, that  
8 recognizes that the discovery limitation --  
9 there should be a discovery limitation, and the  
10 statute does allow for one, related to not  
11 turning these pleadings into an opportunity for  
12 an earnings review, because that's not the scope  
13 of regulation we have over these companies, but  
14 to also recognize that it is legitimate and  
15 appropriate to have discovery of all parties by  
16 all parties related to testimony, filings, the  
17 requests. I think all of that is fair game, but  
18 for the limitation on not turning the pricing  
19 information into an earnings review. I don't  
20 know that that needs to take a vote, but --

21                   COMMISSIONER DAVIDSON: I think you're  
22 right, Chairman. In my view, this language  
23 presents a clear case of sausage. The House and  
24 the Senate have included this language that  
25 purports to limit the scope of discovery.

1           But if you read the language, and it's  
2           cited at page 7 of the staff recommendation,  
3           "The Commission shall have the authority only to  
4           verify the pricing units for the purpose of  
5           ensuring that the company's specific  
6           adjustments, as authorized by this section, make  
7           the revenue category revenue neutral for each  
8           filing." That really goes to factor (d) of the  
9           statutory factors that we are tasked with  
10          reviewing here. We have a number of other  
11          factors that we have to consider. And I've seen  
12          nothing in the history of this bill or in the  
13          bill itself to say that as to those other  
14          factors, we can't consider other materials.

15                 So I would agree with the chair's comment  
16                 on this, and I don't know that a vote is  
17                 necessary.

18                 CHAIRMAN JABER: Okay. Thank you,  
19                 Commissioner.

20                 COMMISSIONER DEASON: Just let me add too  
21                 that I think --

22                 CHAIRMAN JABER: Commissioner Deason and  
23                 then Commissioner Bradley.

24                 COMMISSIONER DEASON: -- I'm in agreement.  
25                 It seems to me that there are statutory

1 criteria. It's the burden of those filing their  
2 applications to justify or to meet that burden  
3 that those criteria have been met. To do that,  
4 they're going to have to present a case in some  
5 form, which in my mind means they're going to  
6 have to present testimony. So to meet their  
7 burden, they're going to have to raise those  
8 issues or put forward evidence, and by doing so  
9 they're subjecting themselves to discovery on  
10 those matters as contained within their  
11 testimony.

12 It seems to me that there's going to have  
13 to be some interpretation by the Prehearing  
14 Officer or ultimately the Commission as to what  
15 is contained in the testimony and is discovery  
16 particularly -- is it relevant to, pertains to  
17 what is in the testimony, or does it go beyond  
18 that. And we won't be able to ascertain that  
19 until we get that particular situation laid in  
20 front of us.

21 CHAIRMAN JABER: Commissioner Bradley?  
22 Thank you, Commissioner.

23 Commissioners, one of the other things we  
24 haven't discussed and I haven't heard the  
25 parties talk about, but it gave me comfort to go

1 back and look at the Governor's letter approving  
2 the bill, signing the bill into law. There was  
3 so much mention about the PSC having the tools  
4 necessary to make the most informed decision it  
5 can make. I highlighted just two sections that  
6 were so critical to what -- I believe critical  
7 to the Legislature and the Governor's thought  
8 process in supporting the bill.

9 The bill will allow the PSC to determine  
10 the benefits that consumers would receive due to  
11 increased competition. Using this benefit-based  
12 criteria, the PSC will evaluate the extent and  
13 level of competition for local phone consumers.  
14 If the PSC concludes that there will not be a  
15 benefit for consumers, they have the discretion  
16 and authority to deny rate adjustments  
17 outright.

18 Everyone contemplated a very informed  
19 decision by the PSC, and to do that, discovery  
20 has to be had. So do you agree no vote is  
21 necessary? Staff, are you all right with that?

22 COMMISSIONER DAVIDSON: And, Chair, if I  
23 may just offer my thoughts as well. On Issue 4,  
24 I have a couple of comments. And my thesis is  
25 no vote is necessary there also, but I start

1 with, I really appreciate the effort that staff  
2 put into this analysis. But my thought is,  
3 let's let the parties each decide how to present  
4 their case, build the record, establish whether  
5 criteria are met, how they're met. And there  
6 may be lots of different ways to meet those  
7 criteria. There may be all types of innovative  
8 ideas and arguments. I suspect there will be,  
9 as to how the legislation is met.

10 But in any event, I would propose that we  
11 hear the evidence, let the parties present their  
12 cases, we hold hearings, read the briefs, and  
13 then we decide, and using possibly staff's  
14 commentary here as guidance where appropriate.  
15 But I would suggest that we not rule on Issue 4  
16 as well.

17 CHAIRMAN JABER: I wholeheartedly agree  
18 with that. The only one that gives me pause,  
19 though, the only one I don't know what to do  
20 with in Issue 4 relates to the small LECs,  
21 because they are -- well, they are different,  
22 and the statute recognizes they're different.

23 And something Mr. McCabe said I would want  
24 your feedback on. He said we were looking for  
25 staff and the Commission to give us guidance,



1 because they don't have the resources or the  
2 ability, according to Mr. McCabe, to meet that  
3 90-day time frame and do a cost study. We can  
4 certainly cross that bridge when we come to it,  
5 when they file.

6 COMMISSIONER BAEZ: Well, I mean, I didn't  
7 have anything necessarily -- I didn't have any  
8 objection substantively to the points that are  
9 identified by the staff. I thought it kind of  
10 rendered it moot. I mean, we've already got an  
11 application, and they will be what they will be.

12 CHAIRMAN JABER: Right.

13 COMMISSIONER BAEZ: But at the same time, I  
14 don't think it's necessary even to give  
15 Mr. McCabe and the rest of the small LECs  
16 guidance, if nothing else but to read what would  
17 have been a recommendation carefully. I don't  
18 think we -- I don't think we need any more than  
19 that.

20 CHAIRMAN JABER: Commissioners, do you all  
21 agree with that? Is there consensus there?

22 Okay. Great. Then no vote on Issue 4 is  
23 necessary.

24 Issue 5, Commissioners, this is where I  
25 wanted to talk to you all about the three

1 petitions coming in at once. I thought that the  
2 most efficient way of handling the petitions was  
3 very similar to how we do the fuel hearings.  
4 That's a very efficient process. We have one  
5 hearing, we have -- the prehearing order  
6 articulates the various positions. Staff gives  
7 us a recommendation on each position. Frankly,  
8 I think that's the only way we can accommodate  
9 the November days if we do it that way.

10 Is there direction to give to staff to go  
11 ahead and consolidate the petitions? Is there a  
12 strong objection to that?

13 COMMISSIONER DEASON: I'm all for doing it  
14 in the most efficient way possible.

15 COMMISSIONER BAEZ: Yes, I think that's  
16 probably the best way to go. And, Madam Chair,  
17 I don't know if the companies have had a chance  
18 to consider any effects, if there's something  
19 that we're missing to the --

20 CHAIRMAN JABER: Ms. Keating, have you had  
21 any discussions with regard to how -- do you  
22 have the same docket number assigned to the  
23 petitions that you had for this recommendation?

24 MS. KEATING: No, Madam Chairman, we don't.  
25 All three petitions have separate docket

1 numbers.

2 CHAIRMAN JABER: So you do need -- well, do  
3 you really need a formal decision to consolidate  
4 it, or would you just bring all three dockets to  
5 the same hearing date?

6 MS. KEATING: Typically what we have is an  
7 order from the Prehearing Officer. If it's the  
8 same Prehearing Officer for all three dockets,  
9 then the Prehearing Officer, with the consent of  
10 the Chairman's office as far as scheduling, can  
11 do the consolidation.

12 CHAIRMAN JABER: Ms. White, Mr. Chapkis,  
13 and Mr. Fons, let me start with you. November  
14 4th through the 6th are the only hearing dates  
15 we may have available, which means all three  
16 filings have to be entertained. I think it  
17 would be more efficient to just consolidate the  
18 dockets.

19 MS. WHITE: Well, you could either do that,  
20 or you could just consolidate it for purposes of  
21 the hearing and leave the three dockets open for  
22 the filings, because then you don't have one  
23 huge massive thing.

24 CHAIRMAN JABER: Sure.

25 MS. WHITE: But I don't have any problem

1 with consolidating it for hearing.

2 CHAIRMAN JABER: Okay. Verizon?

3 MR. CHAPKIS: Verizon agrees. No problem  
4 with consolidation for hearing.

5 CHAIRMAN JABER: Sprint?

6 MR. FONS: No problem with consolidating  
7 for hearing.

8 CHAIRMAN JABER: Okay. Mr. Beck, I think  
9 that would be most efficient in terms of your  
10 resources as well.

11 MR. BECK: Agreed.

12 CHAIRMAN JABER: Okay. Mr. Paschall?  
13 Mr. Twomey? Mr. Twomey, your parents would want  
14 to show up three days instead of six; right?

15 MR. TWOMEY: I think your idea -- I'm  
16 sorry. I think your idea of having them all  
17 together is an excellent one, and it doesn't  
18 matter whether the dockets are consolidated or  
19 not.

20 CHAIRMAN JABER: Okay. Then let's do that,  
21 bring the Prehearing Officer whatever order you  
22 believe appropriate, but the goal would be to  
23 have all three heard on the same days.

24 Commissioners, I think I need a motion to  
25 close this docket.

1           MR. CHAPKIS: Can I raise one just quick --  
2           I just learned something from my company. And  
3           this will just inform staff's recommendation  
4           with respect to the public hearings. Apparently  
5           we don't have a sufficient time to get out  
6           notice of public hearings, to the extent it  
7           would be the ILEC's responsibility, through a  
8           bill insert. And to the extent we did it  
9           through an individual mailing, it would cost a  
10          very large amount of money. And I just wanted  
11          to see if it was possible to get newspaper  
12          notice in there or some other form of notice to  
13          the extent it's going to be very rapid.

14          CHAIRMAN JABER: You just drive my point  
15          home further. That's why a separate  
16          recommendation on that whole issue was  
17          warranted. All of those things that we -- and  
18          there are probably more we're not thinking  
19          about. Work it out with staff. Come back with  
20          a comprehensive recommendation that takes care  
21          of that matter completely.

22          I need a motion to close this docket,  
23          Commissioners.

24          COMMISSIONER DEASON: So move.

25          CHAIRMAN JABER: And a second. All those

1 in favor say aye.

2 (Simultaneous affirmative responses.)

3 MS. KEATING: Madam Chair.

4 CHAIRMAN JABER: Issue 5 is approved  
5 unanimately.

6 Ms. Keating.

7 MS. KEATING: Can I bring up just one  
8 more --

9 CHAIRMAN JABER: Sure.

10 MS. KEATING: -- administrative matter?  
11 Earlier on you took a vote on OPC's motion  
12 regarding the scheduling of a case management  
13 conference. Just to try to clarify, the motions  
14 were actually filed in the individual petition  
15 dockets, not in this docket that you have before  
16 you today. I would propose that your vote today  
17 be recorded in this docket as having considered  
18 as a part of your procedural contemplation of  
19 this docket that a case management schedule -- a  
20 case management conference is not necessary, and  
21 therefore the motions in the individual dockets  
22 when ruled upon by the Prehearing Officer in  
23 those dockets would be rendered moot.

24 CHAIRMAN JABER: Can't we go ahead and  
25 render that motion moot, which I think was the

1 spirit of the motion we entertained today, to  
2 render OPC's motion -- motions moot by virtue of  
3 what we did today?

4 COMMISSIONER DEASON: Well, let me ask,  
5 haven't we basically done that today?

6 CHAIRMAN JABER: Yes.

7 COMMISSIONER DEASON: And maybe Public  
8 Counsel would just be willing to withdraw.

9 MS. KEATING: You have, Commissioner. The  
10 only concern that I have is the same concern  
11 that the Chairman brought up earlier with regard  
12 to scheduling the public hearing, the fact that  
13 they weren't actually noticed for decision  
14 today. But --

15 CHAIRMAN JABER: Hang on to that thought.  
16 Mr. Beck, would you withdraw your motion --

17 MR. BECK: Yes, I will.

18 CHAIRMAN JABER: -- on the case management  
19 conference?

20 MR. BECK: You have addressed them today.

21 CHAIRMAN JABER: Thank you. You know what  
22 else we've addressed today, Mr. Beck, is the  
23 motion to expedite the discovery process.

24 MR. BECK: You've addressed that.

25 CHAIRMAN JABER: Would you withdraw that

1           too?

2           MR. BECK: Yes.

3           CHAIRMAN JABER: Really? I mean no,  
4           pressure.

5           MR. BECK: We had asked for 10 days for  
6           discovery response time, and I guess what you're  
7           doing is denying our request for a 10-day  
8           discovery response time, even though that wasn't  
9           addressed specifically by you. But you've  
10          addressed the issue.

11          CHAIRMAN JABER: Thank you, sir. So that  
12          is -- that motion is withdrawn as well.

13          MR. BECK: Yes.

14          CHAIRMAN JABER: Thank you.

15          MS. KEATING: Thank you, Madam Chairman.

16          CHAIRMAN JABER: I need to thank all the  
17          parties for being here. Thank you. We  
18          appreciate your feedback.

19                 (Conclusion of consideration of Item 4.)

20

21

22

23

24


25



1  
2 CERTIFICATE OF TRANSCRIBER  
3

4 STATE OF FLORIDA:

5 COUNTY OF LEON:

6 I, MARY ALLEN NEEL, do hereby certify that the  
7 foregoing was transcribed by me from an audiotape,  
8 and that the foregoing pages numbered 1 through 128  
9 are a true and correct transcription of the aforesaid  
10 proceedings to the best of my ability.11 I FURTHER CERTIFY that I am not a relative,  
12 employee, attorney or counsel of any of the parties,  
13 nor relative or employee of such attorney or counsel,  
14 or financially interested in the foregoing matter.15 DATED THIS 9th day of September, 2003.  
1617   
18 MARY ALLEN NEEL, RPR  
19 2894-A Remington Green Lane  
20 Tallahassee, Florida 32308  
21 (850) 878-2221  
22  
23  
24  
25