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September 23, 2003

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Ms. Blanca Bayó, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 990649B-TP

Dear Ms. Bayó:

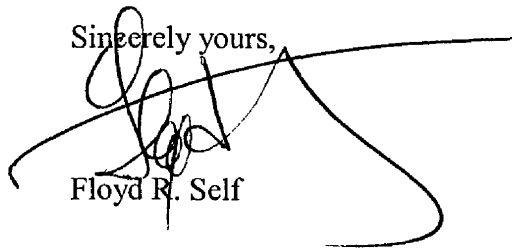
Enclosed for filing on behalf of KMC Telecom III, Inc. is the original transcript of the discussion of Item 9 from the June 17, 2003 Florida Public Service Commission Agenda Conference in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

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Sincerely yours,



Floyd R. Self

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cc: Mr. John McLaughlin
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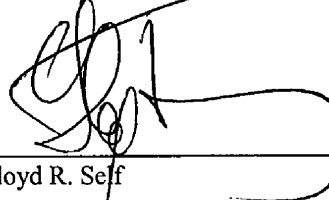
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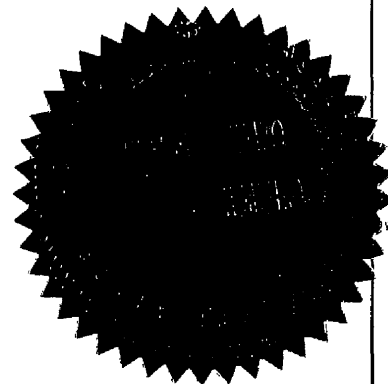
Floyd R. Self

Excerpt from Proceedings

Agenda Conference

FLORIDA PUBLIC SERVICE COMMISSION

June 17, 2003



Transcribed from tape recording by

BARBARA KIRKLAND GRAVES, RPR

ACCURATE STENOTYPE REPORTERS

100 Salem Court

Tallahassee, Florida 32301

850/878-2221

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1 *(This transcript was prepared from a tape recording*
2 *furnished to the reporter.)*

3 THE CHAIRMAN: Item 9, Commissioners. The first
4 issue addresses a request for oral argument.

5 Commissioners, I have a number of questions on
6 this item, but I don't -- I personally don't need oral
7 argument. But whatever the Commissioners' pleasure
8 is.

9 I should say that this is a panel, Jaber, Deason,
10 Baez, Bradley.

11 And the last item, Commissioners, let me offer,
12 is Item 10, Deason, Baez, Davidson. If it's all
13 right, I'll leave that in the same order we've got it,
14 and take that up last. Is that all right?

15 COMMISSIONER DEASON: Madam Chairman, I don't
16 particularly need the benefit of oral argument, but if
17 there are other Commissioners who desire it, I
18 certainly could not object to it.

19 COMMISSIONER BAEZ: I'd like to move staff on
20 Issue 1.

21 THE CHAIRMAN: Okay. There has been a motion to
22 accept staff's recommendation on Issue 1.

23 COMMISSIONER DEASON: Second.

24 THE CHAIRMAN: All those in favor, say aye.

25 (Responses) Issue 1 is approved.

1 Commissioners, as I said earlier, I do have a
2 number of questions, not on all issues, but I wanted
3 to start with just making a general statement to
4 Dr. Bain (phonetic), which is some degree legal, but I
5 think primarily to Dr. Bane. If I would have known
6 when -- this was a case, as I recall, Dr. Bane, where
7 staff came to us with a recommendation initially to
8 accept the prefiled testimony without cross
9 examination. The parties have reached agreement. Is
10 that correct? You need to remind me. Wasn't this
11 where we accepted some stipulation without cross
12 examination of Sprint? Did we have cross on Sprint?

13 MR. DOWDS: I honestly don't remember.

14 THE CHAIRMAN: Well, it's my recollection that we
15 did not have cross examination on Sprint. You all
16 don't remember?

17 MS. CHRISTENSEN: Unfortunately, I wasn't the
18 attorney when the hearing was actually held, so it's
19 not something that I'm aware of. Staff is saying that
20 there was cross.

21 THE CHAIRMAN: Okay.

22 COMMISSIONER DEASON: I think cross was
23 permissible, but I don't think it was taken advantage
24 of. I don't think --

25 THE CHAIRMAN: That's my point. And by the way,

1 I don't know why I'm troubled, but I'm troubled that
2 you don't remember, because I do remember.

3 Here's my concern, Dr. Bane. If I would have
4 known that there were holes in the record, as were
5 discussed in the first recommendation and again in
6 this motion for reconsideration, I would have insisted
7 on cross examination. I don't know what else I can
8 say to be more direct. This recommendation from the
9 very beginning concerned me. You may recall we spent
10 a lot of time asking questions and looking at options,
11 and we didn't have a number of options articulated in
12 the original recommendation, which generated a lot of
13 questions from the Commissioners.

14 Saying all of that, I don't have questions,
15 Commissioners, on Issue 2. My questions start on
16 Issue 3.

17 COMMISSIONER DEASON: Move staff on Issue 2.

18 THE CHAIRMAN: And I can support the motion. Let
19 me give you an example, Dr. Bain, to make the point.
20 On Page 13 of Issue 2, there's a sentence in here --
21 "Otherwise, the Commission -- " this is in the second
22 paragraph -- "Otherwise, the Commission would have no
23 evidence on which to rely to support its decision.
24 Although staff acknowledges there may be imperfections
25 in Sprint's cost study, the Commission did not find in

1 its order that those imperfections were fatal or
2 require that Sprint file additional or supplemental
3 cost study."

4 Not only did I go back and read the
5 recommendation, I spent a lot of time listening to the
6 tapes last night, from the agenda conference. It's my
7 recollection, that I confirmed last night, that not
8 only did we find that there were imperfections in the
9 cost study, we recognized that the information wasn't
10 all that great. But I don't recall an option in the
11 recommendation that had us considering whether we
12 needed additional or supplemental information. So I
13 just want to be clear for the record.

14 Saying that, there's a motion and a second --

15 COMMISSIONER DEASON: Let me follow up with
16 something in addition to that, I if I may.

17 THE CHAIRMAN: Commissioner Deason.

18 COMMISSIONER DEASON: These cost studies are very
19 complex and difficult, and I think the Commission has
20 expressed from the bench before, and maybe it's time
21 to reiterate that, while we understand there are
22 difficulties in having the same cost study be applied
23 across company boundaries, I think that if we could
24 attempt that and have a common cross study that would
25 be applied to all companies, that it would eliminate a

1 lot of the problems we're seeing here.

2 THE CHAIRMAN: Right.

3 COMMISSIONER DEASON: Now, I know there are
4 problems associated with doing that, but I think we
5 need to weigh the benefits of that versus having
6 difficulty with a particular company's cost study, and
7 perhaps -- and I'm not saying this is the case in this
8 particular item here -- but if there are deficiencies
9 in the record, I think that it would help cure that.

10 But that's just something for future
11 consideration. I think the staff is already looking
12 at it.

13 THE CHAIRMAN: I wholeheartedly agree, and I
14 don't know what the magic answer is, but perhaps
15 before stipulations are recommended, someone as a
16 sanity check has to go through each issue. Do we
17 have -- And that's not to say that you know, when you
18 go through the issue, how the issue will fall out, but
19 do you have all the information you need to make a
20 complete recommendation to this Commission so that we
21 can make an informed decision. I'm not suggesting
22 that when you go into a hearing, you know what
23 position you're going to take. But when it comes to
24 us for a vote, it's too late.

25 Okay. Motion and a second on Issue 2. All those

1 in favor, say aye. (Responses) Issue 2 is approved.

2 Issue 3, can we skip temporarily?

3 COMMISSIONER DEASON: It's fine with me.

4 THE CHAIRMAN: Commissioners, do you mind if we
5 skip Issue 3? And Mr. Dowds, tell me if there's
6 anything incorrect about that. As I understand it,
7 the other issues don't affect the vote on Issue 3.

8 MR. DOWDS: That's my understanding. Three is
9 just the methodology.

10 THE CHAIRMAN: Okay. Are there questions or a
11 motion on Issue 4?

12 COMMISSIONER DEASON: Move staff.

13 COMMISSIONER BAEZ: Second.

14 THE CHAIRMAN: Okay. Dr. Bain again, on Page 21,
15 the very last sentence, "In fact, the record is silent
16 on the impact of fill factors on various UNE rates."
17 There's a motion and a second to staff on Issue 4.
18 All those in favor, say aye. (Responses) Issue 4 is
19 approved.

20 Issue 5.

21 COMMISSIONER DEASON: Move staff.

22 THE CHAIRMAN: Motion and a second. All those in
23 favor say aye. (Responses) Issue 5 is approved.

24 Issue 6.

25 COMMISSIONER DEASON: Move staff.

1 COMMISSIONER BAEZ: Second.

2 THE CHAIRMAN: All those in favor say aye.

3 (Responses) Issue 6 is approved.

4 Issue 7.

5 COMMISSIONER DEASON: Move staff.

6 COMMISSIONER BAEZ: Second.

7 THE CHAIRMAN: Issue 7, all those in favor say
8 aye. (Responses) Issue 7 is approved.

9 Okay. Issue 8, I've got some questions,
10 Commissioners. This is one of the issues we spent a
11 significant amount of time on. As I recall, there was
12 acknowledgment by staff and FDN and KMC to make this
13 point again in their motion for reconsideration that
14 -- and the Commission acknowledged that there were
15 errors in the start and end times. And Mr. Dowds, as
16 I recall, you were trying to give us a comfort level
17 that the total time, while you couldn't determine was
18 completely accurate, fell within the range compared to
19 what was done for BellSouth -- what was accepted for
20 BellSouth.

21 COMMISSIONER DEASON: Chairman, I have to defer
22 to Mr. Wright. I don't recall the details on the
23 actual time (inaudible).

24 THE CHAIRMAN: Mr. Wright, what I just stated,
25 would you agree with that?

1 MR. WRIGHT: Yeah. What the problem was, the
2 total times, they did several activities and measured
3 within a total time. And when it came to the actual
4 function, they just observed a certain time and put
5 that down. So even though the total times may have
6 been inaccurate in certain cases, the times -- the
7 actual times that they used for the study, as far as
8 we know, were correct.

9 THE CHAIRMAN: Okay. My question goes to our
10 reliance on comparing what we did for BellSouth. FDN
11 and KMC try to make the argument that we made a
12 mistake of law in relying on the BellSouth comparison
13 because that wasn't evidence in the record. And I
14 would agree with that, if we relied on it. And I
15 guess what I need to hear from you is, can you assure
16 me that your recommendation, and ultimately our
17 decision, was not based on that comparison, but rather
18 your independent review that the actual times, to the
19 best of your knowledge, based on the evidence in the
20 record, were correct?

21 MR. WRIGHT: Yes. That was just kind of an
22 adjunct, looking at the Bell rates. But we based it
23 on the rates that were filed by Sprint.

24 THE CHAIRMAN: I think that needs to be clarified
25 again in the order, because if, unintentionally or

1 intentionally, we relied on something outside the
2 record, I would have to agree with FDN and KMC, that
3 that was probably inappropriate. But you are assuring
4 me that you relied on independent record analysis?

5 MR. WRIGHT: Yes. Yes, ma'am.

6 THE CHAIRMAN: Questions on Issue 8?

7 COMMISSIONER DEASON: Move staff.

8 COMMISSIONER BRADLEY: Second.

9 THE CHAIRMAN: Motion and a second. All those in
10 favor, say aye. (Responses) Issue 8 is approved.

11 Issue 9.

12 COMMISSIONER DEASON: Move staff.

13 COMMISSIONER BAEZ: Second.

14 THE CHAIRMAN: All those in favor, say aye.
15 (Responses) Issue 9 is approved.

16 Issue 10, Commissioners, I'd like to take up
17 after Issue 3.

18 COMMISSIONER DEASON: That's fine.

19 THE CHAIRMAN: Issue 11 is acknowledging the AT&T
20 and WorldCom's withdrawal of a motion for
21 reconsideration in the Verizon docket.

22 COMMISSIONER DEASON: Move staff.

23 COMMISSIONER BAEZ: Second.

24 THE CHAIRMAN: All those in favor, say aye.
25 (Responses) Issue 11 is approved.

1 Going back to Issue 3, staff and Commissioners,
2 just so you know, the charts I'm referring to are the
3 ones that staff handed out at the last agenda. Do you
4 remember when they calculated the different sums and
5 gave us a copy of what the fallout rates would be?
6 The Commission approved Zone 1 wire centers and final
7 rates, David?

8 MR. DOWDS: I'm sorry, Chairman. I didn't hear
9 you. Forgive me.

10 THE CHAIRMAN: The Commission approved Zone 1
11 wire centers and the Zone 1 rates? There are four
12 wire centers in Zone 1, as we approved?

13 MR. DOWDS: That's correct.

14 THE CHAIRMAN: Have you ever thought about the
15 nature of those wire centers in comparison to the
16 other ones? We spent a lot of time, as I recall, a
17 lot of time considering how many wire centers should
18 be in Zone 1 and how many should be in Zone 4. And we
19 spent a lot of time discussing the plus or minus
20 20 percent and whether we should deviate from that.
21 But have we ever considered the question, what kind of
22 wire centers? And do we have a cross section of
23 customers in each wire center?

24 Commissioner Bradley asked this last time, and I
25 heard it again last night, and it made me think

1 through that issue better. His question was, do we
2 know where the residential customers are in the wire
3 center and where the commercial customers are in the
4 wire center?

5 MR. DOWDS: The physical locations of the
6 customers?

7 THE CHAIRMAN: Does Zone 1 reflect an accurate
8 cross section of customers such that our goal of
9 keeping Zone 1 rates low for the purpose of incenting
10 competition is met?

11 MR. DOWDS: Bear with me. I'm not quite sure how
12 to answer the question. The four wire centers that
13 are in Zone 1, I would suspect predominantly serve
14 business customers. The reason that they fall in Zone
15 1 is because they have the average lowest cost per
16 loop.

17 Business districts tend to be quite concentrated.
18 You have short loops and a lot of them. My
19 recollection of one of these, the Tallahassee wire
20 centers, and I forget which one, I believe serves the
21 Capital Complex. It's probably the one that has
22 77,000 lines. So the geographic area served by that
23 wire center, which is basically -- when you talk about
24 a wire center serving area, it's the footprint served
25 by a switch. That wire center, which is downtown,

1 predominantly is going to serve business customers.

2 Intuitively, when you -- if you look at a wire
3 center that tends to have higher costs, odds are it
4 will probably serve a greater percentage of
5 residential than business customers. But I guess the
6 difficulty is, at the extremes, it's intuitively easy
7 to explain why you have the characteristics of a very
8 low-cost wire centers, and the high cost. It's the
9 middle that gets kind of (inaudible).

10 And to try to answer the specific question, we do
11 not know off-hand -- it may be in the record, I just
12 don't know -- the specific customer mix, the mix of
13 residential versus business lines for all the wires, I
14 just do not know off-hand. I'd have to check.

15 THE CHAIRMAN: Okay. Let me seek guidance from
16 the Commissioners. Commissioners, I need help on this
17 one. My concern may not rise to the level of, there's
18 been a mistake of fact or law under the strict
19 standard of a motion for reconsideration, but it was
20 always my intent that how we broke up the zones and
21 the fallout rates would comprehensively promote, or at
22 least create an opportunity to promote competition,
23 primarily in the residential community, but certainly
24 overall. I'm not sure, as we sit here now, if the
25 spirit of our decision has been met. I never -- and

1 this was a shortcoming on my part -- I did not take
2 into account the nature of the customers in Zone 1.

3 At the last agenda, where we took up this item,
4 we heard that the current Zone 1 has eleven wire
5 centers. What I'm afraid is that we unintentionally
6 made the environment to create a competitive market
7 worse, not better. And maybe that doesn't fall into
8 the strict motion for reconsideration, but I think I'd
9 like to reevaluate our decision. And how we get
10 there, I don't know.

11 And then again, if I'm the only one that has that
12 concern, I stand to be corrected.

13 (End of tape)

14 COMMISSIONER BAEZ: Question, Madam Chair. Does
15 that more appropriately go to Issue 10, maybe as a
16 policy? Are you looking for a place to place it?

17 And I guess my other question would be to staff
18 or to legal counsel, is what are our options on
19 consideration? Do we have to stay within the motion
20 or do we have some -- do we have discretion on our own
21 motion?

22 MR. MCLEAN: (Inaudible) you can --

23 COMMISSIONER BAEZ: I'm sorry?

24 MR. MCLEAN: I'm sorry. I thought you were done
25 with the question. I believe you have the discretion

1 to reconsider on your own motion.

2 COMMISSIONER BAEZ: Okay.

3 MR. MCLEAN: If you do that, when you issue the
4 order, I think you need to offer the parties an
5 opportunity to suggest reconsideration of that order.
6 Essentially, what you're doing is you're simply
7 deciding that it is, in fact, true that the order is
8 still within the bosom of the Commission, and you
9 haven't issued a final order. So if you choose to
10 reconsider on your own motion, I suggest that when all
11 is said and done, you offer the parties an opportunity
12 to seek reconsideration of that order.

13 COMMISSIONER BAEZ: Well, and Mr. McLean, and
14 again, I sense that the Chairman, by her statement, is
15 having some issue additionally as to where to properly
16 place her concerns, under what issue, whether it's
17 under Issue 3 or Issue 10. Does your statement apply
18 if you find a basis for reconsideration under one of
19 the issues enumerated, such that it's not on the
20 Commission's own motion?

21 MR. MCLEAN: I believe that you're on safer
22 ground if you do it on the Commission's own order.

23 COMMISSIONER BAEZ: Okay.

24 MR. MCLEAN: I haven't given it a lot of thought.
25 That's just where I come down intuitively, and that's

1 what I'd advise you to do.

2 THE CHAIRMAN: And it doesn't matter to me with
3 respect to which issue, Commissioner. For me, Issue 3
4 and Issue 10 are so intertwined, it's hard for me to
5 separate them. We're making an assessment of the
6 zones for the purpose of continuing our statutory
7 mandate to promote competition. But they're not --
8 you know, it's so intertwined, it's like both of those
9 issues should be left open.

10 But the other thing that gave me concern, and
11 perhaps I should have taken up Mr. Dowds on his offer
12 the last time we were gathered to meet on this item,
13 there was so much discussion about the plus or minus
14 20 percent and whether that was appropriate for Sprint
15 because of geographically, how the Sprint territory
16 is, and the huge differences between the minimum and
17 the maximum of Zone 1 compared to the minimum and the
18 maximum of ultimately what became Zone 4, that I
19 didn't think through sufficiently whether we should
20 consider deviating completely from the plus or minus
21 20 percent. Where we left it, you offered to come
22 back and give us a number of options, different ways
23 to break up the zones, David. And we chose to vote it
24 out, because I was hopeful that the rates could be
25 implemented and we would have time to see what the

1 effect of the rates would be.

2 As I understand it from my (inaudible) the staff,
3 these rates have not been implemented. So the desire
4 to move forward really has become sort of
5 nonimportant, compared to getting it right. And I'm
6 wondering if we should take another look at whether
7 the 20 percent criterion is appropriate for Sprint.

8 MR. DOWDS: One minor comment. It's my
9 understanding that the order is effective, so I would
10 presume, but I can't speak for Sprint, that the rate
11 should be available at the present time.

12 THE CHAIRMAN: Well, they're available, but as I
13 understand it, what staff has said is that the rates
14 are implement when the interconnection agreements are
15 modified. Right? And that you all haven't had any
16 interconnection agreements modifying Sprint rates.

17 MR. DOWDS: I wouldn't know.

18 COMMISSIONER DEASON: I would be surprised.
19 These rates are generally higher than what are in
20 effect now, so I guess they're building up motivation
21 for people to come in and seek changed rates.

22 THE CHAIRMAN: Commissioners, what do you think?
23 Am I the only one that's taken -- maybe my concern is
24 premature. Maybe we should let these get implemented
25 and we see the fallout.

1 Here's -- from having been chairman now and
2 having presented testimony to the legislature, and
3 recognizing we have a responsibility once a year to
4 present our competition report, if you look at the
5 Sprint level of competition in relation to BellSouth
6 and Verizon, it's remarkably lower. And there are
7 many reasons for that, but I don't want our decision
8 to make it even lower. That's hard to explain. But
9 more importantly, we have a statutory mandate to do
10 everything we can to promote competition, and I'm not
11 confident that the way we outlined the zones does
12 that.

13 COMMISSIONER BAEZ: Well, if what you're
14 suggesting is -- I guess if the result -- and I heard
15 you mention, Madam Chairman, the spirit of our
16 decision, I guess we can assume that the spirit of our
17 decision was always to be consistent with promoting
18 competition. And if that spirit is not, by the face
19 of the decision or by the obvious implementation of
20 the decision, is not going to result, then perhaps I
21 share your concerns.

22 My immediate concern is what our options are in
23 order to get the two thoughts in line. And that's a
24 discussion that we haven't -- and I haven't, you know
25 -- I think we could benefit from what staff's thoughts

1 on that are because perhaps there's a solution out
2 there that doesn't necessarily do violence to a
3 decision right now, and it does afford that time that
4 we had all contemplated having the benefit of some
5 experience with the order before we move forward. So
6 I'm interested in knowing what our options are on all
7 those fronts in order to really address whether we
8 have to say that our decision isn't really going to do
9 what we thought it would, and we go from there.

10 THE CHAIRMAN: Mike, would you please check
11 Mr. Baez's microphone?

12 COMMISSIONER BAEZ: It may just be Commissioner
13 Baez. That's the problem.

14 THE CHAIRMAN: Commissioner Bradley?

15 COMMISSIONER BRADLEY: Yes, ma'am. My concerns
16 are the same now as they were when we had our
17 discussion about zones. And I don't know how we get
18 there because when you look at Sprint and when you
19 look at BellSouth and Verizon, there are some obvious
20 demographic differences that are related to density
21 and intensity, or sparsity, which makes for a
22 differential as it relates to how we build and define
23 respective zones for each ILEC.

24 Short of us working with staff to try and create
25 some incentives to encourage the ILECs to move into

1 these residential areas and to move into these areas
2 that have less intensity, I don't think that -- at
3 least I can't right now think of anything that can be
4 done.

5 And I share your concerns, and I'm just wondering
6 if there's any research maybe that we could look to
7 that exists within other states that have sparsity to
8 maybe give us some indication as to maybe some things
9 that they have done in order to create a more
10 competitive environment. But, you know, as I said
11 earlier, there are some obvious differences between
12 the ladders or the territories that these respective
13 phone companies serve.

14 And by all means, there's a tremendous amount of
15 competition within the business sector but very little
16 within the residential, and I just don't -- I don't
17 know how we get there. But I do share your concern.

18 THE CHAIRMAN: Commissioner Deason. And we'll
19 pose those questions to staff in a minute and see if
20 we can get some assistance.

21 COMMISSIONER DEASON: I feel compelled to at
22 least kind of express where I am on this. I
23 understand what's been said here and I understand the
24 concerns, and I share in those concerns, to an extent.
25 But my bottom line position is I don't think that this

1 rises to the level -- it certainly doesn't rise to the
2 level that we should grant a reconsideration that's
3 been filed by the parties. Neither do I think it
4 rises to the level that we should reconsider it on our
5 own motion.

6 I am compelled by the argument that -- this
7 received a lot of attention. We made a decision. I
8 think it was well founded. We need to let it go into
9 effect and see what results. UNE rates, in my
10 opinion, are always kind of a work in progress, and
11 we're going to have the ability to look at this in the
12 future -- not only the ability, but probably the
13 obligation, the responsibility to look at it again in
14 the future.

15 We can try to change the bands to try to promote
16 competition. And I think it is a goal of ours to
17 promote competition, but at the same time -- this is
18 expressed in Issue 10 -- we have an obligation to
19 follow the law. And we have to set UNE rates based
20 upon cost. And we cannot deviate from that. And
21 while we may can change the bands, that's within our
22 discretion, it's a matter of giving to one and taking
23 away from the other. We might can increase the number
24 of wire centers in Band 1, but it's going to increase
25 the rate. And if you include more, lower-cost wire

1 centers in Band 1, you're going to be taking away some
2 of those lower-cost wire centers in Band 2, which is
3 going to increase the average cost for those.

4 I don't know what the magic formula is to try,
5 that's going to result in the most entry into these
6 markets. I'm satisfied with the proposal that we
7 adopted, and I would be satisfied to see that
8 implemented and see what the results are. That's just
9 my position.

10 THE CHAIRMAN: Staff, let me ask you this. You
11 gave us four alternatives with the first
12 recommendation, and two alternatives had thirty-two
13 wire centers in Band 1, two had four wire centers in
14 Band 1. I'm assuming since you recommended all four
15 as alternatives, that each of those alternatives
16 covered costs.

17 MR. DOWDS: Yes.

18 THE CHAIRMAN: And with respect to how many wire
19 centers were going to be in Band 1, that was purely a
20 policy decision of where we wanted to break out, based
21 on the 20 percent criterion?

22 MR DOWDS: Yes.

23 THE CHAIRMAN: Okay. Commissioners, maybe at the
24 end of the day we end up not changing our decision at
25 all. I'd like -- this is a request. I want some

1 feedback from the Commissioners. If I am the only one
2 that would like additional alternatives with respect
3 to making Zone 1 more characteristic of Sprint
4 customers overall, then I'll stand down and just
5 dissent on this issue. But I think there's a benefit
6 in having a discussion of the fact that the four wire
7 centers in Zone 1 are representative of the Capital --
8 of this place. Is that what you're talking about,
9 David? This is the Capital City complex? Or are you
10 talking about the downtown area?

11 MR. DOWDS: I think the downtown area, but I
12 don't have my cheat sheet to translate exactly which
13 wire center this is. There's two in Tallahassee that
14 are in Zone 1. There's another one in Maitland, which
15 I'm pretty sure is the business district.

16 THE CHAIRMAN: I would benefit from having that
17 discussion come back to us, Commissioners. But if I'm
18 the only one, I'm not going to stand in the way of a
19 vote.

20 COMMISSIONER BAEZ: Well, Madam Chair, if this is
21 a way of looking at things, or currently a
22 consideration that should have been taken -- that
23 should have part of the mix -- I mean, on some level I
24 share Commissioner Deason's view in that, you know,
25 we've made a decision, and I think we had contemplated

1 seeing what the results of that decision were before
2 we again revisited it as part of the course of our
3 business. I would tend to agree with him.

4 However, your way of looking at it, and if what
5 you're suggesting is that maybe we missed a wrinkle in
6 our analysis that would have yielded a more
7 representative result, then maybe it is something that
8 we need to look at, if merely for the fact that what
9 we thought we were -- the way that we thought that we
10 were looking at it may not have been entirely
11 accurate. If this is a consideration that we didn't
12 pay enough attention to or that wasn't thrown into the
13 mix, then I'd support looking at it.

14 Again, I don't know that my questions have been
15 answered. What are our options about going about
16 that? Because I, too, don't think that that
17 necessarily rises to the level of reconsideration,
18 which is why I had originally asked what kind of
19 options do we have on our own motion, what can we do
20 from this point to look at things, without actually
21 having to hand down a decision on the motion before
22 us.

23 THE CHAIRMAN: Ms. Christensen, Mr. Dowds, can we
24 not vote on Issues 3 and 10, if that's what the
25 majority of the Commissioners want to do, and have you

1 come back and address my concern? And Commission
2 Baez, just so you know, speaking for myself, I naively
3 looked at numbers of wire centers, and I did not --
4 and again, the spirit of my decision, speaking for
5 myself, was that that wire center was going to be a
6 cross section of customers, and the goal of keeping at
7 least status quo, in terms of levels of competition
8 for the Sprint territory, but hopefully increasing --
9 I am not comfortable that the spirit of my decision
10 has been met.

11 Saying that, can we defer ruling on Issues 3 and
12 10 and let you come back with a revised recommendation
13 that addresses my concern, but also gives us a couple
14 of more options with respect to Zones 1 and 2 in
15 particular?

16 COMMISSIONER DEASON: Madam Chairman, with all
17 due respect, I think before we do that, we need to
18 vote up or down whether we're going to reconsider it
19 on our own motion, because by directing staff to come
20 back with other options, that is a decision to
21 reconsider.

22 THE CHAIRMAN: No problem, Mr. Deason. But the
23 question posed is, what are our options? Do we need
24 to vote to reconsider up and down before we even
25 discuss what our options are?

1 COMMISSIONER DEASON: That's my nonlegal advice.

2 THE CHAIRMAN: Mr. McLean, help us out here.
3 Because certainly, I don't mind doing that.

4 MR. MCLEAN: I understand you're asking if we
5 vote to reconsider, could you do that, and I think the
6 answer is yes. But that's a separate issue from
7 whether you should reconsider.

8 THE CHAIRMAN: But I think Mr. Baez's question
9 also goes to if we want to reconsider on our own
10 motion, what does that also get us? Will you come
11 back with other options?

12 MS. CHRISTENSEN: Yes. Well, I think if you vote
13 to reconsider the item, we could come back and address
14 the questions that you've raised today, and then
15 ultimately, in deciding on whether or not you stick
16 with the decision you made originally, or change that
17 decision, and how that would impact the rest of the
18 order. But I think you would need to vote, as
19 Commissioner Deason said, to go ahead and reconsider,
20 and then we could go ahead and address those issues
21 raised today. And I would also suggest that we would
22 need to have a vote on the parties' motions for
23 reconsideration. Another option, of course, is to
24 just go forward today, and you always have the option
25 of revisiting the cost study at a future time.

1 THE CHAIRMAN: But isn't this also an option,
2 where we leave the motion for reconsideration on the
3 table and you come back with an option that we can
4 reconsider on our own motion?

5 MS. CHRISTENSEN: Well, those would --

6 THE CHAIRMAN: You've got -- I've seen
7 recommendations --

8 MS. CHRISTENSEN: -- we could do that -- Yes.
9 But whether or not -- could we do that and go ahead
10 and address those arguments, probably --

11 THE CHAIRMAN: I've seen plenty of --

12 MS. CHRISTENSEN: -- because those were not
13 raised, that --

14 THE CHAIRMAN: Patty. Patty. I have seen plenty
15 of staff recommendations that have a primary where you
16 say, motions for reconsideration should be denied, and
17 the alternative is, the motion for reconsideration
18 should be denied, however, the Commission, on its own
19 motion should -- And that comes to us together. So
20 my question is, why can't it come back to us together?

21 MS. CHRISTENSEN: I think it could.

22 THE CHAIRMAN: Commissioners, what's your
23 pleasure?

24 COMMISSIONER BAEZ: And just so that I'm clear,
25 in that scenario, Madam Chairman, what we get as

1 concerns a motion of reconsideration on the
2 Commission's motion would include -- would already
3 include options based on this discussion? Is that
4 what you're anticipating?

5 THE CHAIRMAN: It would be my hope that an
6 Option 2 or an alternative would be, the Commission
7 can reconsider on its own motion, and here is
8 additional information that addresses the concerns
9 I've raised, and the Commissioners may have other
10 concerns. But the concerns I'm raising relate to
11 what's the nature of the four wire centers in Zone 1,
12 and is that a reasonable place to have a break,
13 between Zone 1 and 2? Are there other legitimate
14 options for the break between 1 and 2?

15 It's what you offered to do, David, that we
16 didn't take you up on.

17 COMMISSIONER BAEZ: And for purposes of that, and
18 maybe this is just housekeeping, for purposes of that,
19 we'd have to leave the motion before us open?

20 COMMISSIONER JABER: Probably not, but I --

21 COMMISSIONER DEASON: Well then that begs the
22 question, what alternatives are we going to get that
23 we didn't already get and consider at the original
24 vote?

25 THE CHAIRMAN: The alternatives I would hope that

1 we get that we didn't get, Commissioner Deason, relate
2 to all that discussion about if you deviate from the
3 plus or minus 20 percent, what does it look like.

4 From the tape -- I can only tell you what I heard on
5 the tape -- there was some discussion with respect to
6 breaking Zone 1 into -- to reflect closer to what we
7 have currently. There are eleven wire centers in
8 Zone 1, and we spent a lot of time looking at the
9 differences between the minimum and maximum in Zone 2,
10 and that maybe there was a better natural break right
11 around the middle, around Line 14.

12 And staff said then that it's within our
13 discretion. But what I did not take into account,
14 candidly, is that if we would have taken staff up on
15 that option, that perhaps the first fourteen wire
16 centers are more reflective of the entire customer
17 base, as opposed to the first four. And if you leave
18 it around eleven wire centers, or expand it to
19 fourteen, you've got a fair representation of
20 residential and commercial, as opposed to four wire
21 centers in Zone 1, which are clearly commercial.

22 We never discussed -- I never discussed the kinds
23 of customers that were in those first four wire zones.

24 COMMISSIONER BAEZ: And potentially, after these
25 new analyses and options are presented, we'd still

1 have before us our original decision. Is that fair?

2 THE CHAIRMAN: Speaking again, on my own, I don't
3 know at the end of the day if I'll even support
4 deviating from it. I just don't have the comfort
5 level that I considered everything that I should have
6 considered. And Harold, whether that rises to a
7 mistake of fact or law, I just don't know.

8 MR. MCLEAN: I can't say, but I do have a
9 suggestion. Why don't y'all determine whether there's
10 a sense on the Commission to let the existing order
11 stand, or to reconsider. Once you have that done, if
12 it is the case that you would care to reconsider, then
13 we can bring you back a recommendation at the next
14 agenda. But it may be the case that the Commission
15 doesn't have any appetite for reconsidering, and you
16 can know that now.

17 COMMISSIONER BAEZ: Can we take them -- and
18 again, just because I'm going to get lost very soon
19 here -- can we take them up in order? Can we take the
20 motion, the parties' motion before us?

21 MR. MCLEAN: I was just thinking that you don't
22 really have to dispose of that. If you determine that
23 there is no need -- that there is no appetite to
24 reconsider on your own motion, then I would suggest
25 that you take up the parties' motion. But it may come

1 to pass that you decide to reconsider on your own
2 motion, and then later determine that that's somehow
3 consistent with their motion, or maybe not.

4 COMMISSIONER BAEZ: I see. Okay.

5 MR. MCLEAN: So I would suggest that you
6 determine whether there's any sense on the Commission
7 that you want to reconsider at all. And if there is,
8 we can go from there.

9 THE CHAIRMAN: Okay. Commissioners, is there a
10 motion for us to reconsider on our own motion?
11 Commissioner Bradley, you had a question, or you want
12 to make that motion?

13 COMMISSIONER BRADLEY: I want to make a
14 statement.

15 THE CHAIRMAN: Okay.

16 COMMISSIONER BRADLEY: I would be in favor of us
17 taking staff's recommendation as it stands, and having
18 a separate docket to do further exploration as to what
19 the nature of zones would be. And I'll tell you why.
20 I think that, just based on what I said previously, I
21 think that we -- and I don't disagree with you, Madam
22 Chair. I share your concerns. But I think that we
23 need to stay with where we are, and recognize that we
24 gave a lot of careful consideration to this particular
25 item the last time we had this in-depth discussion.

1 But that's not to say that there may not be some
2 other information out there that might cause us to
3 modify our decision. But as I said, right now, I
4 would be more in favor of us sticking with staff's
5 recommendation and having a separate docketed item to
6 deal with your concerns.

7 THE CHAIRMAN: Okay. Let's -- a separate docket
8 item would not afford us the opportunity to take
9 advantage of this record. That would be the only
10 thing that would give me concern, Commissioner
11 Bradley. I understand where you're going. Let's take
12 it a step at a time. Let's see if there's a motion --
13 there is support for a motion to have us reconsider on
14 our own motion. If there is, how we get there,
15 whether we open a docket or handle it in this, we'll
16 take up that discussion after that.

17 Are you okay with that? To me, opening the
18 docket is really more of logistics.

19 COMMISSIONER BRADLEY: Well, I guess my concern
20 is that if we're going to -- the reason why I'm
21 against reconsideration is that we need to open this
22 item up and take a look at all of the telephone
23 companies. We need to check rate, zones in general,
24 rather than just focus on the zone that Sprint
25 represents.

1 THE CHAIRMAN: Well, remember, we have -- we've
2 got the ongoing workshop and proceeding in the Office
3 of Market Monitoring that looks at all companies,
4 including Sprint. So that's not -- for me, it's not
5 going forward that gives me concern. It's, this is
6 the decision for Sprint initially, whereas BellSouth
7 and Verizon were done initially. There are some
8 things that are up on appeal and the Market Monitoring
9 group is continuing to look at the rates going
10 forward, and coming back to us with recommendations.

11 So I'm not there yet, but we need to get there.

12 For Sprint, my concern is really just, did I have
13 everything I needed in considering what Zones 1 and 2
14 should look like. And for me, the answer is no. That
15 doesn't mean at the end of the day I'm going to
16 deviate from what we did. I just feel like there's
17 additional information I need to get a comfort level.

18 COMMISSIONER BAEZ: Well, Commissioners, if I
19 could interject. Here's where I am. The way I've
20 heard the current situation presented is that the
21 rates resulting from this decision haven't been
22 implemented yet because the interconnection agreements
23 haven't been modified. So for argument's sake, if we
24 were to look at additional -- decide to, on our own
25 motion, look at additional information or reconsider

1 our decision, in order to look at additional
2 information, we're not harming -- we're not taking a
3 step back. So that gives me some comfort.

4 Secondly, if in fact there is a way of analyzing
5 or drawing the lines based on certain considerations
6 that we weren't -- that we did not benefit from the
7 last -- when we made our original decision, and as I
8 recall, it's something that Commissioner Bradley had
9 raised, as well -- then I'm in favor of taking this
10 opportunity, it being probably the best opportunity to
11 get it right, to look at that, again, in light of the
12 fact that this decision hasn't, in a practical sense,
13 been implemented yet.

14 THE CHAIRMAN: Hypothetically speaking, if the
15 Commission does choose to reconsider on its own motion
16 and you bring back a recommendation, just
17 hypothetically, can this come back for the August 5th
18 agenda? I'm hoping that that's, you know, a final
19 vote, and there is no need for an additional docket.

20 MR. DOWDS: (Inaudible) say yes.

21 COMMISSIONER BAEZ: Well, I can then -- if I can
22 get some help as to how we have to -- you know, how
23 the motion for reconsideration has to be styled, I
24 would just put it out there so we can take a vote on
25 it, up or down, I would move reconsideration on our

1 decision. And I don't know if it's a particular
2 issue, but certainly with respect to the issue of
3 where we have divided or drawn the lines on the tiers.

4 THE CHAIRMAN: Harold, what do you need?

5 COMMISSIONER BAEZ: -- to entertain additional
6 information, based on our conversations.

7 THE CHAIRMAN: Are you suggesting we consider a
8 motion to reconsider on our own motion and direct
9 staff to come back with a modified recommendation?

10 MR. MCLEAN: Yes, essentially. Any Commissioner
11 who wants to could move that you reconsider your
12 decision in the issues, either one or both of them,
13 before the Commission now. Does that make sense? I
14 mean, you're simply reconsidering on your own motion
15 your decision earlier, rendered in the order.

16 COMMISSIONER BAEZ: In order to take a -- in
17 order to entertain additional information, additional
18 analysis on the part of staff, consistent with our
19 discussion.

20 MR. MCLEAN: That would be part of the motion,
21 yes, to direct staff to come back at an early agenda
22 with all the options that you've talked about today.

23 COMMISSIONER BAEZ: Correct.

24 THE CHAIRMAN: But it's clear that one of the
25 options that remains on the table is not modifying our

1 decision at all.

2 MR. MCLEAN: Of course.

3 COMMISSIONER BAEZ: Yes, ma'am. It should be
4 clear, yeah.

5 THE CHAIRMAN: Commissioner Bradley, you had a
6 question?

7 COMMISSIONER BRADLEY: Question of counsel. But
8 if we make that decision, basically what we're doing
9 is to only deal with the zones as it relates to
10 Sprint. Is that correct?

11 MR. MCLEAN: Yes, sir. You'd still be restricted
12 to the record that's before you now. Just to
13 reconsider it is not to develop new evidence or look
14 outside that record. I hope that's responsive to your
15 question.

16 COMMISSIONER BRADLEY: Yes. And I'll tell you
17 what my concern is. You know, when I look at
18 competition throughout the state -- and I share your
19 concern about what's happening within Sprint's data --
20 but I also have concerns about what's happening in
21 general, across the state. And I think that
22 basically, what we're discussing here is a smaller
23 version of what's happening in the State of Florida.
24 I don't know what the research points to, but I would
25 suspect that if you took a look at the state of

1 competition, that you would find that throughout the
2 entire state, there's very little competition within
3 the residential sector of our market place. That's
4 why I would be more in favor of supporting staff's
5 recommendation and opening up a separate docket to
6 revisit, to take a look at competition in general, and
7 competition within the State of Florida, looking at
8 what needs to be done in order to jump start
9 competition within the residential market and move it
10 away from this dominant place within the business
11 sector.

12 THE CHAIRMAN: Commissioner Bradley, I
13 wholeheartedly agree with you, as you know. You're
14 preaching to the choir. But we do have that
15 proceeding going on, is the point I'm not being very
16 articulate with right now. We do -- remember, we do
17 have to report to the legislature on the status of
18 competition. And you're right, while the residential
19 level of competition is lower than the business side,
20 it has increased, relatively speaking. But there is
21 that ongoing proceeding, and perhaps at a future
22 internal affairs, staff can come back and tell us what
23 the status of it is, because I really don't know. I
24 don't know what the status of those workshops are. So
25 it's time for a briefing.

1 But this item has been noticed for Sprint, and my
2 concern at this point is very narrow to what we did
3 with respect to Zones 1 through 4 for Sprint. But you
4 raise a very good point. It's time for us -- if that
5 proceeding is not going well, David and Roberta, you
6 need to come back and tell us. It may be time for an
7 internal affairs presentation. I just don't know what
8 the status of that is.

9 Commissioner Baez, did I hear a motion?

10 COMMISSIONER BAEZ: You did.

11 THE CHAIRMAN: And is there a second? If not,
12 I'm going -- Is there a second to Commissioner Baez's
13 motion? I'm going to pass over the gavel to
14 Commissioner Deason and second Commissioner Baez's
15 motion. And I want to be real clear on that the
16 motion is. It's just, right now, limited to should we
17 reconsider on our own motion what we did with respect
18 to the zones, leave on the table the final decision,
19 and come back August 5th and consider all of the
20 information I'm asking for, and the original motion
21 for reconsideration.

22 Is that correct, Harold?

23 MR. MCLEAN: Yes, ma'am. I'd add only that
24 you're going to defer the decisions on Issues 3 and
25 10, was it?

1 THE CHAIRMAN: Three and ten.

2 MR. MCLEAN: Yes, ma'am.

3 THE CHAIRMAN: And I can second that motion?

4 MR. MCLEAN: Yes, ma'am.

5 COMMISSIONER DEASON: Okay. We have a motion and
6 a second. All in favor of the motion, say aye.

7 (Responses) All opposed, say nay. (Responses) The
8 motion fails.

9 THE CHAIRMAN: The motion fails, Harold, for lack
10 of a majority. Can we just entertain a second motion?

11 MR. MCLEAN: Yes, ma'am.

12 THE CHAIRMAN: Commissioner Bradley or
13 Commissioner Deason, do you have another motion?

14 COMMISSIONER DEASON: I would move approval of
15 staff's recommendations on Issues 3 and 10.

16 THE CHAIRMAN: Is there a second?

17 COMMISSIONER BRADLEY: Second.

18 THE CHAIRMAN: All those in favor, say aye.
19 (Responses) Opposed, nay. (Responses) I've got a
20 tie vote, Mr. McLean. This is a new one for me.

21 MR. MCLEAN: I knew you were going to do that.

22 COMMISSIONER BAEZ: I think it's time we dragged
23 Commissioner Davidson into this.

24 THE CHAIRMAN: Yes. Which we can. But you know,
25 Commissioners, let me go back and try this again.

1 COMMISSIONER BAEZ: Was it something we said?

2 THE CHAIRMAN: No. I'm trying to spare him from
3 reading the entire record.

4 I am not suggesting at the end of the day I
5 deviate from the decision. What I'm suggesting is, I
6 am being candid about what I felt like I had in front
7 of us when I made a vote, and what I feel like I don't
8 -- I didn't have in front of me when I --

9 COMMISSIONER DEASON: Well, let me see now. What
10 we voted, we voted two to two. We had a motion to
11 approve staff. That recommendation is to deny the
12 petitions for reconsideration. So what we're really
13 voting on is the petitions for reconsideration. We've
14 got to vote those up or down. Is that correct?
15 That's what we're voting on. I guess my question,
16 Mr. McLean, is on a petition for reconsideration, for
17 it to be granted, don't you have to have a majority
18 vote? Otherwise, it's denied.

19 MR. MCLEAN: My sense is that the tie vote
20 sustains the status quo, but I have not researched --

21 COMMISSIONER DEASON: Well, I suggest you
22 research it because it's my nonlegal opinion that on a
23 petition for reconsideration, if you don't have a
24 majority vote, that petition fails and the issue is
25 decided.

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MR. MCLEAN: I think you're exactly correct, but I haven't done the research (inaudible).

THE CHAIRMAN: So you're thinking because of the tie vote that the parties' motion for reconsideration is denied?

COMMISSIONER DEASON: That's my opinion, yes, Madam Chair.

THE CHAIRMAN: Well, let's get an answer to that. Let's take a half an hour break and come back at 11:30 with an answer, because I just don't know.

(WHEREUPON, a recess was taken)

* * *

THE CHAIRMAN: Let's get back on the record. Okay. Mr. McLean, where we left it, I asked you the procedural question. We took a vote, I think on Issue 3, with a two-two vote, and because of the lack of a majority, your initial impression was that the motion for reconsideration discussed in Issue 3 is denied?

MR. MCLEAN: That's correct.

THE CHAIRMAN: And after the break, you still believe that's the case?

MR. MCLEAN: Yes, ma'am, I do.

THE CHAIRMAN: Okay. Now, clarify for me. Were we only on Issue 3 or had we taken up -- it seems like

1 we were at some point taking up 3 and 10 together.
2 Would someone remind me? Commissioner Deason, it was
3 your motion.

4 COMMISSIONER DEASON: Madam Chairman, as I
5 recall, it was just a motion on Item 3.

6 THE CHAIRMAN: Okay.

7 COMMISSIONER DEASON: But I stand to be
8 corrected, but I believe I just formed the motion in
9 relation to Issue 3. I would believe, then, that
10 under Mr. McLean's recommendation, Issue 3 would have
11 been resolved.

12 MR. MCLEAN: That's correct, Commissioner.

13 THE CHAIRMAN: Okay. So that takes us to
14 Issue 10, then. Are there questions or a motion on
15 Issue 10?

16 COMMISSIONER DEASON: I move staff on Issue 10.

17 THE CHAIRMAN: Okay. I'm sorry. I had one
18 question. On Page 46, staff, there is an assertion
19 that neither the recommendation nor the order show any
20 comparison between the current Sprint UNE rates and
21 the Commission-approved rates. Why was that?

22 MR. DOWDS: Just to clarify, why is there no
23 reference in the order to the preexisting Sprint UNE
24 rates, as opposed to those approved?

25 THE CHAIRMAN: Right.

1 MR. DOWDS: Because they were not per se ever
2 discussed in the record. I mean, because they're
3 Commission tariffs, they're known.

4 THE CHAIRMAN: Okay. On Page 48, in responding
5 to some of the concerns, you say that it was
6 discussed, that A, some rates were higher, some rates
7 were lower, and B, current rates were not PSC approved
8 rates. Was that discussion in the order? Because I
9 thought that was a very good point, and I don't recall
10 that discussion being in the order. And that the
11 current rates were really a result of a settlement
12 reached.

13 MS. CHRISTENSEN: There was some discussion,
14 Commissioner, on Page 15 of the order. There was some
15 discussion in the body and then specifically, there
16 was more detail provided in Footnote 1.

17 THE CHAIRMAN: Okay. There was a motion to
18 approve staff on Issue 10. Was there a second?

19 All those in favor say aye. (Responses) Opposed
20 nay. Issue 10 is approved unanimously.

21 And I believe --

22 COMMISSIONER DEASON: We have Issue 12, I
23 believe. I move staff on Issue 12.

24 THE CHAIRMAN: Second? There's been a motion.
25 Is there a second?

1 COMMISSION MEMBER: Second.

2 THE CHAIRMAN: And a second. All those in favor,
3 say aye. (Responses) Issue 12 is approved.

4 Okay. That completes Item 9.

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CERTIFICATE OF REPORTER

I, BARBARA KIRKLAND GRAVES, Registered Professional Reporter, Notary Public, State of Florida at Large, Commission No. DD162385 do hereby certify that the foregoing proceedings were transcribed, from a tape recording, under my supervision; and the foregoing pages numbered 1 through 44 are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am neither related to nor employed by any party to this litigation, or their counsel, and that I am not financially or otherwise interested in the outcome of this cause.

Dated this 22nd day of ~~July~~ ^{September}, 2003.



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My Commission Expires: 1-27-07
My Commission Number: DD162385



B. K. Graves
MY COMMISSION # DD162385 EXPIRES
January 27, 2007
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