

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

PETITION BY VERIZON FLORIDA, INC.
TO REFORM INTRASTATE NETWORK ACCESS
AND BASIC LOCAL TELECOMMUNICATIONS
RATES IN ACCORDANCE WITH SECTION
364.164, FLORIDA STATUTES.

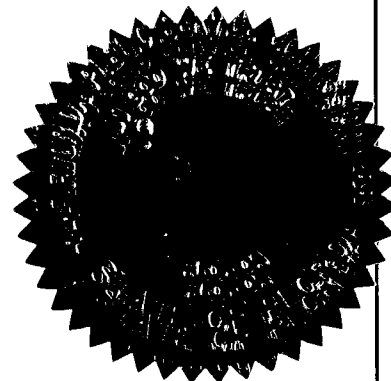
DOCKET NO. 030867-TL

PETITION BY SPRINT-FLORIDA,
INCORPORATED TO REDUCE INTRASTATE
SWITCHED NETWORK ACCESS RATES TO
INTERSTATE PARITY IN REVENUE-NEUTRAL
MANNER PURSUANT TO SECTION
364.164(1), FLORIDA STATUTES.

DOCKET NO. 030868-TL

PETITION FOR IMPLEMENTATION OF
SECTION 364.164, FLORIDA STATUTES,
BY REBALANCING RATES IN A
REVENUE-NEUTRAL MANNER THROUGH
DECREASES IN INTRASTATE SWITCHED
ACCESS CHARGES WITH OFFSETTING
RATE ADJUSTMENTS FOR BASIC SERVICES,
BY BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 030869-TL



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PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 5**

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

1 DATE: September 30, 2003
2
3 PLACE: Betty Easley Conference Center
4 Room 148
5 4075 Esplanade Way
6 Tallahassee, Florida
7
8 REPORTED BY: JANE FAUROT, RPR
9 Chief, Office of Hearing Reporter
10 FPSC Division of Commission Clerk
11 Administrative Services
12 (850) 413-6732
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1 PARTICIPATING:

2 CHARLES BECK, ESQUIRE, and H. F. MANN, ESQUIRE,
3 representing the Office of Public Counsel.

4 RICHARD CHAPKIS, ESQUIRE, and ALAN CIAMPORCERO,
5 representing Verizon Florida Inc.

6 JOHN FONS, ESQUIRE, representing Sprint-Florida.

7 NANCY WHITE, ESQUIRE, representing BellSouth
8 Telecommunications, Inc.

9 MICHAEL B. TWOMEY, ESQUIRE, representing AARP.

10 BETH KEATING, ESQUIRE, and PATTY CHRISTENSEN,
11 representing the Commission Staff.

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P R O C E E D I N G S

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CHAIRMAN JABER: Item 5.

MS. CHRISTENSEN: Commissioners, Item Number 5 is staff's recommendation on OPC's motions to dismiss the petitions of BellSouth, Verizon, and Sprint. The parties are present and are ready to address the Commission, and staff is available to answer any questions.

CHAIRMAN JABER: Thank you, staff. This is OPC's motion to dismiss.

Mr. Mann, we will start with you and then go down the line.

Mr. Twomey, you have joined in?

MR. TWOMEY: Madam Chair and Commissioners, we filed -- AARP filed a motion, a separate motion to dismiss which is essentially in support of Public Counsel's motion.

CHAIRMAN JABER: Okay. Then we will come to you right after Public Counsel and then we will let the petitioners respond.

MR. TWOMEY: Yes, ma'am.

MR. MANN: Thank you, Commissioners. My name is Rick Mann, I am with the Office of Public Counsel representing the citizens of the State of Florida. I would like to make some comments regarding our motion as well as the responses by the petitioners; however, I do want to make it clear up front that we do agree with staff's primary recommendation. Their

1 analysis is well thought out and articulates well our position
2 in regard to the companies' responses to our motions to
3 dismiss. And more importantly, they give to you cogent and
4 sound advice for your ruling here today.

5 The companies have petitioned this Commission to
6 reduce intrastate switched network access rates in a revenue
7 neutral manner pursuant to Section 364.164, Subsection 1 of
8 Florida Statutes. This is the authority under which they come
9 to you, the authority under which they must satisfy certain
10 criteria to be granted what they seek. No other section is
11 involved, not Subsection 2, not Subsection 3. Subsection 2
12 limits the number of times that the petitioners may make
13 adjustments in a given year if their petitions are granted.
14 Subsection 3 defines the time frame to be used for their
15 historical pricing units to support their individual
16 adjustments if their petitions are granted.

17 Our motion raises as a question of law the
18 sufficiency of the facts alleged by the companies to state a
19 cause of action under their filing authority for their
20 petitions, and that is 364.164, Subsection 1. The Commission
21 is charged under that section with considering four criteria,
22 and the Commission is given broad authority to consider these
23 criteria. But the consideration here is limited to only these
24 criteria at this time while considering our motion to dismiss.
25 Are the facts alleged by the companies sufficient to state a

1 claim? We don't get into the merits of the case, we don't get
2 into other sections of the statute that deal with procedures
3 and guidelines imposed only if those petitions are granted.
4 The only issue today involves the one subsection for which the
5 petitioners have failed to allege sufficient facts to sustain
6 their cause.

7 Subsection 1(c) addresses access rate reductions and
8 whether they will be made over a period of not less than two
9 years. These are the words chosen by the legislature. Any
10 suggestion that over a period of not less than two years
11 actually means two annual filings or two annual installments
12 ignores the fact that if that is what it meant to say the
13 legislature would surely have chosen those phrases, but the
14 legislature did not.

15 The companies all but admit that they have not
16 satisfied Subsection 1(c). The companies do not dispute the
17 words of Subsection 1(c) in that it states over a period of not
18 less than two years. They do not dispute that the dates of
19 their proposed implementation of their two rate adjustments is
20 January 1, 2004 and January 1, 2005. What they wish to do is
21 replace the clear and unambiguous phrase selected by the
22 legislature after its deliberations for Subsection 1(c) with an
23 entirely different one; that is, they assert that over a period
24 of not less than two years really means two annual filings or
25 two annual installments.

1 The companies confirm with the facts that they have
2 alleged that their two rate adjustments are to be implemented
3 over a period of just one year. Consequently they have not
4 alleged facts sufficient to satisfy 1(c), and they cannot
5 change those facts here this morning. As a result, they have
6 not complied with the statutory requirements of 364.164,
7 Subsection 1 under whose authority they have filed, and have
8 thus failed to state a cause of action for which you may grant
9 them relief.

10 Our motion to dismiss is procedurally ripe for
11 consideration at this time. This is not something to put off
12 until the end of the hearing process. Practically speaking,
13 everyone would benefit; the companies, the Commission, the
14 citizens if the Commission will rule now on this motion rather
15 than wait for all of us to incur the time and expense of a
16 hearing process before the cases are then subject to dismissal
17 at the conclusion of that process.

18 Nothing will change during that process with the
19 alleged facts that the companies have filed in their petitions.
20 Over a period of not less than two years will not magically
21 become transformed into over a period of one year. The sole
22 focus here this morning is on Subsection 1(c) regardless of the
23 companies' attempt to draw attention to other sections and to
24 make you believe that these plain ordinary words have some
25 hidden meaning.

1 The courts have given us specific direction in this
2 regard. The Supreme Court in 1998 in McGlothlin versus State
3 says when the language of a statute is clear and unambiguous
4 and conveys clear and definite meaning there is no occasion for
5 resorting to the rules of statutory interpretation and
6 construction. The statute must be given its plain and obvious
7 meaning. In 2001, in the Florida Department of Revenue versus
8 Florida Municipal Power Agency, the Supreme Court said a
9 court's function is to interpret statutes as they are written
10 and give effect to each word in the statute. And, finally, in
11 Green versus State in 1998, the Supreme Court said, if
12 necessary, the plain and ordinary meaning of a word can be
13 ascertained by reference to a dictionary. That is what we have
14 provided in our motion to dismiss is a dictionary definition of
15 a year.

16 Now, Verizon agrees that 364.164, Subsection 1(c)
17 does say over a period of not less than two years. Verizon,
18 though, does not dispute that its implementation dates of its
19 two proposed rate adjustments are January 1, 2004, and January
20 1, 2005. Verizon is in denial over the plain meaning of
21 Subsection 1(c) over a period of not less than two years. They
22 claim that the phrase does not really possess the clear and
23 unambiguous meaning it would appear to. Verizon wants this
24 Commission to believe that the legislature gives meaning to
25 that unambiguous phrase in a different subsection, Subsection

1 2. However, that subsection addresses the number of times,
2 one, that an adjustment may be made in any given year if the
3 company's petition is granted. Verizon asserts that the
4 legislature did not actually mean not less than two years when
5 it specifically said it, but rather the phrase is properly read
6 to mean not less than two annual installments.

7 Neither Verizon nor the other two companies have the
8 right to roam through the rest of the statute trying to create
9 the concept of clarifying language for the phrase in 1(c) that
10 is unambiguous on its face. BellSouth and Sprint repeat the
11 same refrain of Verizon that the legislature somehow could not
12 say what it meant in Subsection 1(c). The companies wish to
13 reach beyond Subsection 1 and bring in what they label as
14 clarifying language of Subsection 2. They argue that in other
15 words over a period of not less than two years actually means
16 in not less than two annual installments. They argue that if
17 they follow the directive of Subsection 1(c) by filing rate
18 reductions over a period of not less than two years, they could
19 not make the second rate adjustment until the second year had
20 elapsed.

21 Their conclusion of this perceived dilemma, this is
22 not the result contemplated by the act since Subsections 2 and
23 3 clearly contemplate that annual filings on anniversary dates
24 in two different 12-month periods constitutes in not less than
25 two years. This, of course, is an improper reach to other

1 sections and is also an erroneous conclusion as your staff has
2 so aptly explained for you in their recommendation to you.

3 This also is a good example of the companies'
4 tortured reading of the statute to which staff refers in its
5 primary analysis. If the legislature had wished for the filing
6 of two rate adjustments over a period of not less than one
7 year, the legislature would have said just that. They did not.
8 Instead they chose to clearly say over a period of not less
9 than two years.

10 Finally, these two companies argue that the
11 Commission should err on the side of considering at hearing the
12 factor, that is Subsection 1(c), and the petitioners' proposed
13 methods of addressing it. But the Commission should not and
14 does not have to err at all. The companies' proposal is clear
15 on its face. Two rate reductions one year apart. The
16 companies have not alleged facts sufficient to satisfy the
17 requirements of 364.164, Subsection 1. They thus have failed
18 to state a cause of action for which you may grant them relief.
19 They should accordingly be dismissed at this time with leave to
20 refile and allege facts to sustain their petitioned relief.
21 Thank you.

22 CHAIRMAN JABER: Thank you. Mr. Twomey.

23 MR. TWOMEY: Madam Chair, Commissioners, Mike Twomey
24 appearing on behalf of the AARP, formally known as the American
25 Association of Retired Persons, who are intervening in these

1 cases to represent the interests of their approximately 2.6
2 million members in the State of Florida. With me today is Ms.
3 Lynn Bodiford, who is the AARP's state affairs coordinator, who
4 has a little handout that I will ask her to give to you and the
5 Commissioners now.

6 The AARP supports the Public Counsel's motion to
7 dismiss, and I won't -- I will adopt Mr. Mann's excellent
8 argument without reiterating the points made therein.
9 Additionally, the AARP support your staff's well-reasoned
10 recommendation that the petitions, all three of them, be denied
11 with leave for the companies to refile them in the appropriate
12 manner.

13 The handout Ms. Bodiford is giving you consists of
14 the first page, one page from the Senate analysis of the access
15 fee legislation. The second page is the corresponding page in
16 the House analysis on the House bill. You will see,
17 Commissioners, that in selling this legislation to the
18 legislature, the companies respectively offered the following
19 in order to reduce rate shock to their customers. They told
20 the legislature and their customers -- BellSouth said their
21 increases would be spread over three years. Sprint and Verizon
22 said four years each. This affects their credibility here
23 today, or it should.

24 Now they are here asking to impose the rate shock
25 over their customers in a mere 12 months, although they are

1 calling it two years. So, they sold the bill to reduce rate
2 shock based upon spreading it over three to four years, now
3 they are here saying it is two years, but, in fact,
4 Commissioners, it is only 12 months. Twelve months because the
5 impact of these 35 to 90 percent rate increases, the largest in
6 the history of this state, will begin if you approve these
7 petitions on January 1st, 2004, and they will get the second
8 jolt 366 days later on January 1st, 2005. Twelve months, one
9 year, 366 days if you approve these petitions.

10 So without going through the arguments again, we
11 support the Public Counsel, the AARP does. We support your
12 staff's well-reasoned recommendation. We would urge you to
13 dismiss the petitions, make the companies get it right in their
14 refiling, and as your staff recommends, restart the 90-day
15 clock. The 90-day clock is completely and totally inadequate
16 to begin with, although we are faced with it as a matter of
17 law.

18 Having the companies dismiss these cases and refile
19 would give the Commission extra time, which would be
20 advantageous for several reasons. One, it would allow the
21 parties the ability to continue their discovery. To date not
22 all of the Public Counsel discovery has been responded to, not
23 all of your staff's discovery has been responded to. Testimony
24 is due in several days, this Thursday, of intervenors and
25 Public Counsel. Having additional time would allow us to

1 receive more of the requested discovery, allow us more time to
2 fully and faithfully prepare our testimony. And lastly, if the
3 Commission were to choose to hold additional public service
4 hearings there would be more time for that.

5 So in conclusion, AARP would ask respectfully that
6 the Commission dismiss these three petitions with leave for the
7 companies to come in and file in a manner that is consistent
8 with the statute so they have to spread it over two full years,
9 not 12 months. Thank you.

10 CHAIRMAN JABER: Commissioners, do you have any
11 questions at this point or can we move forward?

12 Mr. Fons.

13 MR. FONS: Good morning, Madam Chair. My name is
14 John Fons, I'm representing Sprint-Florida. And at this point
15 in this proceeding in response to OPC's motion to dismiss,
16 Sprint-Florida and BellSouth jointly filed a response in
17 opposition. And in that response, in opposition we pointed out
18 the fact that on a motion to dismiss the Commission must take
19 as given the facts alleged in the petitions. What is happening
20 here is that Public Counsel and AARP are attempting to change
21 the facts.

22 Our petitions very clearly state that we will be
23 making two increases, if the Commission sees fit to grant the
24 petitions. Those are two increases in two separate years. As
25 Mr. Twomey has just said, they are 366 days apart; 366 days is

1 two different years. And despite what Public Counsel says that
2 you can't look beyond just 364.164(1)(c), you do have to look
3 at Section 2 if you are going to look at the practical
4 application of the grant of any petition. You have to look at
5 what will actually happen after the petition is granted, and
6 that is that the companies are allowed to make one increase
7 every 12-months apart, and 12 months equals two years. I mean,
8 one year. The second is the second. 12 months is the second
9 year. So, in effect, when it says not less than two years, it
10 is not less than annual installments. Otherwise, it would make
11 no sense to say that not less than two years means three years,
12 which is the practical effect of what Public Counsel and AARP
13 would have happen here. And that is not what was contemplated
14 by the statute.

15 Not less than two years means not less than two
16 years, which in any parlance means if it is less than two years
17 then it is one year. And there is nothing in the petitions
18 that indicate that the companies would make their adjustments
19 in one year.

20 CHAIRMAN JABER: I should let you start all over
21 because I didn't understand anything that you said. After you
22 said 12 months equals two years you lost me.

23 MR. FONS: Well, I apologize for --

24 CHAIRMAN JABER: Candidly, Mr. Fons, your point -- is
25 your point that you begin the rate increases in January, but

1 that they will be implemented for the full year, year one, and
2 then another increase for year two?

3 MR. FONS: Yes.

4 CHAIRMAN JABER: Okay. But address the concern for
5 me that the Statute 364.164(1)(c) appears to indicate that that
6 incremental increase will not begin until the two-year mark.
7 That is where you have lost me. You haven't addressed that for
8 me.

9 MR. FONS: Well, it says that the increases shall not
10 be made in a period of less than two years to four years. And
11 it says not less than two years. It doesn't say in two years
12 up to four years. It says not less than two years, which means
13 that if you make it in two annual installments you are making
14 the adjustments in two different years, so you have satisfied
15 the requirements of the statute that you have not done it in
16 less than two years. Less than two years would mean one year,
17 and the companies have not made their proposal to adjust the
18 rates in one year.

19 We have made our proposal to adjust the rates in two
20 separate years and, therefore, we have satisfied the plain
21 meaning of the language. When you read it by itself or when
22 you read it in context with 364.164(2), which says if the
23 petition is granted the companies may increase the rates not
24 more than once in any 12-month period, and that is what we have
25 done. We have not done it twice in one 12-month period, we

1 have done it once in one 12-month period, and we have done it
2 the second time in the second annual period.

3 We believe that any other reading would be improper
4 and we do not believe that the motions to dismiss should be
5 granted.

6 CHAIRMAN JABER: Ms. White.

7 MS. WHITE: Nancy White for BellSouth
8 Telecommunication. We joined in the filing with Sprint, so I
9 concur in the remarks of Mr. Fons, and I have nothing
10 additional to add.

11 MR. CHAPKIS: Good morning, Commissioners. Richard
12 Chapkis for Verizon. The Commission should deny Public
13 Counsel's motion to dismiss. Public Counsel's motion
14 misconstrues Section 364.164. That section allows Verizon to
15 make one set of annual rate adjustments during the first year
16 after its petition is granted, and another set of annual rate
17 adjustments during the second year after Verizon's petition is
18 granted.

19 Subsection 1(c) of Section 364.164, which is the
20 section that Public Counsel has cited to you, provides that the
21 Commission shall consider whether Verizon's rate rebalancing
22 plan takes place, quote, over a period of not less than two
23 years or more than four years, end quote. Now, to properly
24 construe Section (1)(c), unlike Public Counsel suggests, it is
25 necessary to refer to the other subsections under

1 Section 364.164 to give meaning to the phrase not less than two
2 years.

3 Now, Subsection 2 of Section 364.164 provides that
4 Verizon shall adjust its rates, quote, once in any 12-month
5 period. In other words, it makes clear that Verizon should
6 make one set of annual rate adjustments during the first annual
7 period, and another set of rate adjustments during the second
8 annual period, but that it cannot make two sets of annual
9 adjustments during that first one-year period.

10 Subsection 2 --

11 COMMISSIONER DEASON: Mr. Chapkis, let me interrupt
12 here for just a moment. I'm having difficulty following that
13 logic because under the statute you are given discretion and
14 this Commission was given the discretion to allow the increases
15 over a period of years, two to four. And if you had chosen to
16 do it over a period of three years or four years, wouldn't it
17 be clear that this is what this is referring to, that you could
18 not do more than one in any 12-month period? Don't you think
19 that is what this language refers to, if you had chosen that
20 option of three or four years?

21 MR. CHAPKIS: I think that this language is
22 suggesting that we cannot do more than one in any annual period
23 as you suggested, but I think it also does help to imbue the
24 phrase not less than two years with meaning, and there are
25 other sections that I intend to go through that I show as a

1 collection suggest that not less than two years means two
2 annual adjustments.

3 Subsection 3 also refers to each annual filing. In
4 addition, the overall legislative scheme demonstrates that the
5 legislature contemplated that Verizon would make two annual
6 adjustments, one in the first year and another in the second
7 year. Now, the rate changes that are subject to the two-year
8 limitation in Section (1)(c) have to be revenue neutral. If a
9 rate change is made in the beginning of a year, it does not --
10 the revenue neutrality does not occur until the end of that
11 year. That is because there is differences in demand for basic
12 local services and for access services. For example, there may
13 be a difference in demand, there might be a spike in demand for
14 access services during the holiday season.

15 Therefore, if Verizon were required to make its
16 annual adjustment at the beginning of the third year, as Public
17 Counsel and the AARP suggest, Verizon would not achieve revenue
18 neutrality until the end of the third year, and that is a full
19 year after the two year time frame conceived of by the
20 legislature.

21 Now, Public Counsel is ignoring the subsections that
22 I pointed out and are ignoring the overall legislative scheme.
23 Instead, Public Counsel is relying on a dictionary definition
24 of a year in an attempt to manufacture a result that deviates
25 from the legislature's intent.

1 Public Counsel's reliance on that dictionary
2 definition is misplaced, however, given that 364.164 itself
3 imbues the phrase not less than two years with the meaning not
4 less than two annual adjustments. Thank you.

5 CHAIRMAN JABER: Thank you. Commissioners, do you
6 have questions? Commissioner Bradley.

7 COMMISSIONER BRADLEY: No, I have a statement. I
8 will wait until after questions.

9 CHAIRMAN JABER: Okay. Let's take up questions
10 first. Commissioner Davidson.

11 COMMISSIONER DAVIDSON: Yes, Madam Chair. Thank you.
12 For the parties, if you could look at the second page
13 of the handout that Mr. Twomey's assistant handed out. In the
14 middle of the page there are three bullets that refer to
15 BellSouth, for Sprint-Florida, and for Verizon, and it
16 estimates what the rate adjustment would be over a period of
17 years. Three years for BellSouth, four years for
18 Sprint-Florida, and four years for Verizon. Could each of the
19 parties address, if you know, where those numbers came from?
20 Is that just -- are these just hypotheticals by attorneys in
21 the House, or is this based upon statements made by the parties
22 during the proceedings as to what they would estimate their
23 rate increases would be?

24 MR. FONS: I believe it is a combination of things.
25 The first is that this legislation was before the legislature

1 in 2002 at which time there was another -- several analyses of
2 what might take place. I believe that the numbers that were in
3 existence in the first year that the legislation was considered
4 were carried over by the Senate staff in their analysis. But
5 if you will notice that these are hypotheticals, these are not
6 actual commitments of any company to make their reductions or
7 increases over a particular period of time.

8 COMMISSIONER DAVIDSON: I understand the legal
9 distinction. I understand it is not necessarily a commitment
10 or an admission, but I am curious as to where the data came
11 from, if this came from the companies or if this was just sort
12 of created in the heads of the analysts in the legislature.

13 MR. FONS: I believe that the numbers, the numbers of
14 the reductions from 45 minutes to approximately one cent per
15 minute, and two cent to one minute, and nine cents to two to
16 one minute came from the companies. The rest of it was put
17 together by the Senate staff. Another piece to this was not
18 included in the handout, and that was the economic impact of
19 this, which was based upon a hypothetical, and it would give
20 further clarification as to what this meant and where it came
21 from.

22 MS. WHITE: I would agree with those comments. I
23 think we were asked for certain information, for example, what
24 is the rate for access now, what would it go down to, and we
25 were asked for certain information to give us hypotheticals and

1 examples. And that is what this is as far as I am aware.

2 MR. CHAPKIS: I agree. I think these are
3 hypotheticals and examples. I think that at least as far as
4 the amounts 4.50 to \$5.00, those are fairly accurately and
5 those were probably given by the company as rough estimates and
6 examples.

7 COMMISSIONER DAVIDSON: For all the parties, Madam
8 Chairman, is there any evidence of what was presented to the
9 legislature in terms of at January 2004 where we would be
10 making the first adjustment, and then 12 months later comes the
11 second, or 18 months later, or 24 months later, or 36, was
12 there any discussion to any of the parties' knowledge over the
13 specific time frames that are at issue here?

14 MR. FONS: Well, I think that what is clear is that
15 what the staff did was divide the numbers by these years and
16 came up with annual. And so that the two years that we are
17 proposing would have fallen out of a division of these numbers
18 by two years.

19 COMMISSIONER DAVIDSON: Did staff actually perform
20 that analysis?

21 MR. FONS: I'm not sure, but the economic analysis
22 that is not included in this sheet did do that analysis by
23 staff.

24 COMMISSIONER DAVIDSON: Staff, do you have that handy
25 or could we get that? Hopefully someone can pull out the bill

1 analysis, and then Mr. Twomey --

2 MS. KEATING: It's not our staff, Commissioner.

3 COMMISSIONER DAVIDSON: No, I understand, but do we
4 have a copy of the analysis from the -- is this the Senate?

5 MR. TWOMEY: They are both, Commissioner Davidson,
6 they are on the Internet linked to the Senate bill and House
7 bill respectively.

8 MS. KEATING: And we do have for both years,
9 Commissioner. If you would like we can get a copy of it.

10 COMMISSIONER DAVIDSON: Well, I'm just curious on
11 this point as to whether there is something in the analysis
12 that goes to this point or not.

13 MR. TWOMEY: May I respond?

14 CHAIRMAN JABER: Hang on, Mr. Twomey. Let's take
15 care of Commissioner Davidson's question first and I'll let you
16 respond. Do you have it with you here, Mr. Shafer, or do you
17 need time to go get it? Why don't we let staff go and get
18 that. Mr. Twomey has requested to respond to your question.

19 COMMISSIONER DAVIDSON: Absolutely.

20 MR. TWOMEY: Thank you, sir. There must be something
21 in the water. There must be -- I'm surprised. There seems to
22 be widespread amnesia about how this legislation came to be
23 passed. If I may say so, and remind everybody that -- or tell
24 folks that aren't aware, this legislation was revealed, I
25 think, half or two-thirds of the way of the session last year.

1 The information was given to the -- at least in my estimation,
2 the information in the staff analysis of both the House and the
3 Senate who had to scramble to put it together, was prepared by
4 the companies and supplied by the companies. I recall hearing
5 these companies sell this legislation not just last year, but
6 this year on the basis that they would implement the rates over
7 the number of years reflected in the House and Senate staff
8 analysis. They said it. They sold it to the legislature on
9 the fact that their customers and the legislators constituents
10 would have these increases imposed so as to reduce the rate
11 shock over three years for BellSouth, four years for Sprint,
12 four years for Verizon.

13 Now, I heard it. Now, they either didn't mean it
14 when they said it back then, or if they did, they failed to
15 carry through. And I think they owe the legislators that they
16 convinced to vote for this on this level of rate shock being
17 imposed as well as their customers an explanation. But I heard
18 it. I've got the tapes.

19 COMMISSIONER BRADLEY: Question.

20 CHAIRMAN JABER: Commissioner Bradley.

21 COMMISSIONER BRADLEY: Mr. Twomey, is that a yes or
22 no answer?

23 MR. TWOMEY: That is the answer I just gave,
24 Commissioner. It wasn't a yes or no question.

25 COMMISSIONER BRADLEY: Is that a yes or no answer? I

1 would like Mr. Twomey to give me a yes or no. Either it is a
2 part of the statute or it isn't. Would you be so kind as to
3 answer that question.

4 MR. TWOMEY: I'm sorry, what is your question,
5 Commissioner?

6 COMMISSIONER BRADLEY: I think I heard Commissioner
7 Davidson ask the question, and the impression I got is this:
8 The three time frames that are underlined either are a part of
9 the statute or they aren't. You said that you think that you
10 heard that as a part of the debate. My question is is this
11 time frame incorporated in the statute or is it not?

12 MR. TWOMEY: Commissioner, I think -- I think
13 Commissioner Davidson's question more fully went to where the
14 three and four year periods in the House and Senate analysis
15 came from. And that is not really a yes or no answer. The
16 answer is that I believe it was supplied by the companies who
17 were the ones holding all the information.

18 CHAIRMAN JABER: Let me interject myself here and let
19 Commissioner Davidson speak for himself and repeat his
20 question, if necessary. But when you are done, Commissioner
21 Davidson, Commissioner Deason has questions. And I know you
22 are waiting on Mr. Shafer, too.

23 COMMISSIONER DAVIDSON: Thank you, Madam Chair. And
24 I will preface my follow-up with just a comment to staff. I
25 appreciate very much this recommendation. It lays out

1 alternatives. I think alternatives are good. It fleshes out
2 the issues, and I think all the sides here have meritorious
3 arguments. I am just struggling with trying to get at what
4 this means. And I do, as I sit here, understand the logic of
5 both sides arguments. But I am trying to sort of flesh out
6 what the legislature understood this to be. And the best
7 evidence that I think we have of that right now is the analysis
8 of staff that was presented up.

9 So I have heard from both sides that the analysis
10 supports both the arguments that staff engaged in an analysis
11 that supports the request to put in an adjustment year one,
12 beginning of it, and an adjustment year two, beginning of it.
13 And I have also heard from counsel, Mr. Twomey, that the
14 analysis, no, it is completely different based upon the
15 companies' representation. So, I mean, that is what I see as
16 our goal is trying to flesh that out.

17 CHAIRMAN JABER: And we should clarify you are
18 referring to legislative staff.

19 COMMISSIONER DAVIDSON: Yes, the legislative staff.

20 CHAIRMAN JABER: Okay. Commissioner Deason, you had
21 a question?

22 COMMISSIONER DEASON: Yes, this is for the companies.
23 Inherent in your arguments, I take that there is -- that there
24 is an argument that the rate changes have to coincide with the
25 revenue neutrality, and revenue neutrality can only be achieved

1 over a period of time. And I'm having difficulty. Where in
2 the statute do you find this correlation between revenue
3 neutrality being achieved and the time requirements of two to
4 four years, which is clear applies to rate changes? Mr.
5 Chapkis, I think you actually mentioned that terminology in
6 your argument concerning revenue neutrality.

7 MR. CHAPKIS: I'm not going to be able to point you
8 to direct language that makes that correlation. And if that's
9 the necessary nexus in your mind that says that, and this
10 specifically ties to Subsection (c)(1), that is not there. I
11 will say that Subsection 2 does say, quote, all annual rate
12 adjustments within the revenue category established pursuant to
13 this section must be implemented simultaneously --

14 COMMISSIONER DEASON: I'm sorry, can you slow down
15 for my benefit as well as the court reporter.

16 MR. CHAPKIS: I apologize. Yes, I will.

17 COMMISSIONER DEASON: Just begin again with your
18 quotation, please.

19 MR. CHAPKIS: All annual rate adjustments within the
20 revenue category established pursuant to this section must be
21 implemented simultaneously and must be revenue neutral. The
22 Commission shall within 45 days after the rate adjustment
23 filing issue a final order confirming compliance with this
24 section and such an order shall be final for all purposes.

25 So I can't say that there is an explicit nexus

1 between Subsection 2 and Subsection (c)(1). All that I can say
2 is when you look at the penumbra of all of these sections it
3 suggests, as well as, you know, as the staff dividing by three
4 when they use three years, or four when they did four years,
5 that it was meant that each year constituted, you know, one
6 annual adjustment.

7 CHAIRMAN JABER: Let me ask some questions that I
8 would like all the parties to address, as well. And just for
9 the sake of efficiency we will start with Mr. Mann and come
10 down the aisle. With regard to 364.164, Sub (1)(c), I haven't
11 heard any of the parties give any significance to the words to
12 parity, require intrastate switched network access rate
13 reductions to parity. And perhaps I am mistakenly putting too
14 much emphasis on that word, but did you think about that at all
15 in terms of how that word relates to the interpretation? Is it
16 that -- Mr. Beck, feel free to chime in. Is it that there is a
17 two to four-year period when the rate reductions have to reach
18 parity from a total perspective, not from an annual incremental
19 perspective?

20 MR. BECK: The companies allege that they reached
21 parity on their last adjustment.

22 CHAIRMAN JABER: On their final adjustment?

23 MR. BECK: Right.

24 CHAIRMAN JABER: In a second year period.

25 MR. BECK: Yes. One year after the first one.

1 CHAIRMAN JABER: And I will tell you why I'm asking
2 that, Mr. Beck. And, again, correct me if I am looking at this
3 incorrectly. But if a rate increase were to be implemented
4 January 1st, 2004, and another one January 1, 2005, might that
5 provision mean that parity can't be reached until the end of
6 January 2005? Is that interpretation not right?

7 MR. BECK: I interpret it that the parity would be
8 with their last rate change.

9 CHAIRMAN JABER: Which if we accepted the filing the
10 way it was would be January 1st, 2005.

11 MR. BECK: Yes, 2005, correct.

12 CHAIRMAN JABER: If you acknowledge that, then how is
13 (1)(c) violated?

14 MR. BECK: It says a period of not less than two
15 years. If you replace two years with 24 months, I think their
16 violation becomes apparent. That the first reduction is on
17 January 1st -- access reduction and local rate increase is on
18 January 1st, 2004. Twelve months later they have reached the
19 parity item using 12 months instead of 24 months.

20 CHAIRMAN JABER: How do you define parity? Maybe
21 that is where I'm wrong. What is your definition of parity?

22 MR. BECK: The statute defines parity.

23 CHAIRMAN JABER: Okay. How does the statute define
24 parity?

25 MR. BECK: It's in Subsection 5 of 364.164. It says

1 as used in this section, the term parity means that local
2 exchange telecommunications companies intrastate switched
3 network access rate is equal to its interstate switched network
4 access rate in effect on January 1st, 2003. And then it goes
5 on.

6 CHAIRMAN JABER: Okay. So our interruption should be
7 that parity cannot be reached prior to the end of January 2005.

8 MR. BECK: No. If the first change occurs in January
9 1st, 2004, then it would have to be at least two years or no
10 less than two years before parity is reached, which would be
11 January 1st, 2006.

12 CHAIRMAN JABER: 2006, all right. And, again, I want
13 all parties to address this. Mr. Mann, go ahead.

14 MR. MANN: Commissioner, I'm sorry, if I may, too.
15 Let me point out that in looking at this revenue neutrality,
16 the garnering of the revenues after the rate adjustments, and
17 the rate adjustments, keep in mind, is specifically what is
18 addressed by (1)(c). Subsection 1 deals with rate adjustments.
19 And while the rate adjustments go into effect January of that
20 first year, in January of that second year, notwithstanding the
21 companies' argument that revenue neutrality is not reached
22 until the end of that second year, so that they can put
23 their -- they can implement their rate adjustments at the
24 beginning of that second year. As Mr. Chapkis pointed out, the
25 statute says that you issue your final order regarding that

1 second rate adjustment 45 days after that rate adjustment is
2 implemented January 1, 2005, not at the end of that year when
3 you have determined for yourselves explicitly that there has
4 been revenue neutrality reached. You are taking their
5 proposals on faith that revenue neutrality will be reached at
6 the end of the period.

7 CHAIRMAN JABER: But revenue neutrality is not the
8 same as parity. And I feel like we are all ignoring the words
9 to parity. And I don't know if there is an important
10 distinction there or not, but the two are not the same. And
11 (1)(c) doesn't talk about revenue neutrality, but (1)(c) talks
12 about to parity, rate adjustments to parity.

13 MR. MANN: And that is what we need to look at are
14 the rate adjustments to achieve parity. The companies proposed
15 to you that by implementing a rate adjustment, number one, they
16 will reach 50 percent of parity with it; by implementing the
17 second rate adjustment in their proposals January of 2005 they
18 will reach parity at the end of that time.

19 CHAIRMAN JABER: At the end of that time, which
20 doesn't that calculate to January 1st, 2006?

21 MR. BECK: They reach parity instantaneously when
22 they change the rates. So under their proposal they are
23 proposing to reach parity on January 1st, 2005.

24 CHAIRMAN JABER: I guess I'm thinking about it from a
25 complete billing year is when the total amount is reached, but

1 you are saying, no, that is not the case.

2 MR. BECK: No. And parity is a rate level, and the
3 rate levels happen instantaneously.

4 CHAIRMAN JABER: Okay. The second question to you,
5 Public Counsel, is do you think the Commission has the
6 discretion to deny these petitions on the failure to show any
7 of the Criteria A through D? I understand you want us to
8 address the dismissal of the petitions now, but setting that
9 aside, do you agree that if at the end of this hearing we find
10 that (c) has been violated, we have got the discretion to deny
11 these petitions?

12 MR. BECK: Yes.

13 CHAIRMAN JABER: Okay. Mr. Twomey is the only one
14 that mentioned readjusting the cycle for the hearing process
15 here. I don't think he used the words starting the clock over,
16 but what is your position on if we dismiss the petitions at
17 this stage, do you believe that automatically starts the clock
18 over?

19 MR. BECK: Yes, it would have to start over again
20 once the companies refiled.

21 CHAIRMAN JABER: Mr. Fons, the first question related
22 to what significance do you put on the words "to parity."

23 MR. FONS: The parity issue addresses the access
24 charges. Parity, we are to reduce access -- well, we have to
25 demonstrate to you that it will reduce access charges to

1 parity, and that interstate period, over a period of not less
2 than two years. So this whole section addresses parity. It
3 does not address the rate increases. The rate increases are
4 found in 364(1)(d), that it be revenue neutral. So (d) and (c)
5 can be read together.

6 There is information in both of those that is
7 important to this decision. We believe that the two-year
8 reduction is just as it says, once in any annual period as is
9 set forth in (2). That is both for the access reductions as
10 well as for the rate increases. So they have to go together,
11 and we believe that we have met that.

12 COMMISSIONER BRADLEY: Madam Chair?

13 CHAIRMAN JABER: Okay. A follow-up on that, or do
14 you want me to finish?

15 COMMISSIONER BRADLEY: No, go on and ask your
16 question.

17 CHAIRMAN JABER: The second question, Mr. Fons, was
18 do you agree that regardless of the positions taken by Public
19 Counsel and Mr. Twomey, if we move forward that any violation
20 or finding that (a) through (d) have not been met can result in
21 denial of your petitions?

22 MR. FONTS: Yes.

23 CHAIRMAN JABER: Okay. And you haven't spoken about
24 starting the clock over, the time period over if we dismiss
25 your petitions at this stage.

1 MR. FONS: We would agree with Public Counsel that if
2 the petitions were dismissed or in any way amended at this
3 point in time that the 90 days would start over. And I suppose
4 that this is probably as good a time as any to address that.
5 If the Commission were to decide to dismiss, the companies
6 would prefer in order to keep what we have already gotten in
7 this proceeding, if you would, to grant us leave to amend our
8 petitions so that we could refile them as quickly as possible,
9 recognizing that if an amendment like that were made that you
10 would still start the 90-day clock over. But in order to
11 preserve all of these other portions of the docket that have
12 already taken place, that they would be able to go forward.

13 Our concern is if you dismiss it, everything is gone
14 at that point in time, and we have got to start over filing
15 everything anew. Everything that has been done to date may or
16 may not be lost, but there is a risk that it would be lost.

17 CHAIRMAN JABER: I guess I understood Public Counsel
18 and Mr. Twomey to recommend dismissal without prejudice.

19 MR. FONS: We understand the without prejudice. We
20 would certainly -- even if the case were to be dismissed by you
21 at this point in time, we would refile the same time, the same
22 docket.

23 CHAIRMAN JABER: So you are concerned with closing
24 out the docket and starting over.

25 MR. FONS: Yes.

1 CHAIRMAN JABER: Ms. White, do you want to answer the
2 questions I had posed earlier?

3 COMMISSIONER DEASON: Madam Chairman, can I real
4 quickly follow up?

5 CHAIRMAN JABER: Commissioner Deason.

6 COMMISSIONER DEASON: Do you agree that discovery
7 that has already been filed would continue in effect?

8 MR. FONS: We believe it would continue in effect if
9 we were granted leave to amend our petitions at this point in
10 time rather than a dismissal.

11 MS. WHITE: In the same docket.

12 CHAIRMAN JABER: Commissioner Bradley and then
13 Commissioner Baez.

14 COMMISSIONER BRADLEY: Yes. You used the term amend,
15 and I think the petition is to dismiss. Have we changed what
16 we are dealing with now? Are we amending or dismissing?

17 CHAIRMAN JABER: I think what Mr. Fons is asking us
18 to do is in making a motion that we consider in the dismissal
19 giving specific leave for the companies to amend their
20 petition. What they are concerned with, Commissioner Bradley,
21 and they can correct me if I'm wrong, it sounds like what they
22 are concerned with is our closing the docket and starting all
23 over as opposed to keeping the discovery alive as it stands,
24 keeping the public hearings alive as they stand, and just
25 allowing them to correct the time period if that is what we

1 direct them to do.

2 COMMISSIONER BRADLEY: And that was one of my
3 questions, and I think that has been cleared up. But my other
4 question is the issue of the hearings. If we dismiss the
5 petitions, do we still have a valid reason to have public
6 hearings if the companies have not refiled in a time -- if they
7 don't refile in a timely fashion. Because the first hearing, I
8 believe, is tomorrow, Wednesday?

9 CHAIRMAN JABER: The first hearing is tomorrow.

10 COMMISSIONER BRADLEY: So what would the substance
11 of the hearing be if we don't have a refile by tomorrow?
12 Would we be under an assumption?

13 CHAIRMAN JABER: From our standpoint we have to go to
14 the hearing tomorrow, even if it is to show up and say we don't
15 have a petition. But I think that is a better question to pose
16 to the companies. If you dismiss these petitions, the
17 companies need to give us a better understanding of when they
18 would refile.

19 MR. FONS: If you were to either dismiss the
20 petitions or grant us leave to file an amended petition, we
21 would do it probably in the next 24 to 48 hours.

22 COMMISSIONER BRADLEY: And how would that fit into
23 our time frame for the first public hearing?

24 MS. CHRISTENSEN: I believe, Commissioner, that that
25 could be accommodated at the hearing. If the only thing that

1 they would be addressing is the timing or the sequencing of the
2 monetary payments, but the overall monetary amount would remain
3 the same, I think that those can be quickly addressed at the
4 public hearings and the public be made aware of that without
5 having to lose the value of having all the public hearings
6 currently set.

7 CHAIRMAN JABER: Commissioner, just from the
8 Commission calendar perspective, I think it is too late for us
9 to cancel any of those public hearings that first week.

10 COMMISSIONER BRADLEY: Oh, I don't disagree with
11 that, but if we don't have an official petition, you know, the
12 question that we are going to be confronted with is what we are
13 really discussing. You know, is it that we are under the
14 assumption that the companies are going to refile and we are
15 here to discuss that assumption if we don't have a valid
16 petition. But my question also is this: If we restart the
17 clock, what is the rationale behind restarting the clock? I
18 would like to hear from Mr. Twomey, and Mr. Beck, and the
19 companies.

20 MR. FONS: From the companies' standpoint, we think
21 that restarting the clock is required by the statute. It says
22 that you have 90 days to determine any petition. If we were to
23 refile an amended petition, that would be the same as filing a
24 new petition, so it would be another 90 days. We believe that
25 what we already have is one cloud, we do not want to create a

1 second cloud on this. And so we would be willing to amend our
2 petitions to remove that cloud with the understanding that the
3 90-day clock would start when we file.

4 CHAIRMAN JABER: So did you just agree informally to
5 amend your petition?

6 MR. FONS: If you will grant us leave to amend our
7 petition, yes.

8 COMMISSIONER BRADLEY: Is that something that --

9 CHAIRMAN JABER: Wait. You have just agreed to amend
10 your petition?

11 MR. FONS: We will amend our petitions, yes.

12 CHAIRMAN JABER: Doesn't that make Public Counsel and
13 Mr. Twomey's motion to dismiss rather moot?

14 MR. FONS: Well, in order to amend a petition we must
15 seek leave of the Commission in order to do that. We could not
16 just walk in and amend our petition. That is why I indicated
17 earlier if you will grant us leave to amend, we will amend our
18 petition.

19 CHAIRMAN JABER: Commissioner Bradley, I will let you
20 finish and then we are going to get back to my question.

21 COMMISSIONER BRADLEY: Yes. The time frame, 90-day
22 time frame, would there be any change in how that 90-day time
23 frame would be used?

24 MS. WHITE: I would think it would have to be.

25 COMMISSIONER BRADLEY: How would you use that 90-day

1 time frame?

2 MR. BECK: I agree basically with everything that the
3 attorney said regarding the time frame about leave, granting
4 them leave to refile. I think the public hearings are
5 important to go forward, particularly with the representation
6 we just heard that they are going to file in 24 to 48 hours,
7 or, you know, one or two days. And the clock is starting anew.
8 I think we would agree we would have a new case that we would
9 have to respond to, and so there would have to be a new
10 procedural schedule. But I think we agree basically with the
11 procedure that the companies just outlined.

12 COMMISSIONER BRADLEY: Okay.

13 CHAIRMAN JABER: Mr. Chapkis, I want you to respond
14 to the three questions I posed and to Commissioner Bradley's
15 questions. And then, Mr. Twomey, you do the same. And it
16 sounds like there is a lot we have to discuss up here, too.

17 MR. CHAPKIS: You will have to forgive me, a lot has
18 transpired. Could you please repeat the three questions?

19 CHAIRMAN JABER: Sure. What significance do you put
20 on the word parity on (1)(c); and do you acknowledge, do you
21 agree that we can deny your petitions based on any finding that
22 (a) through (d), any one of those criteria were not met?

23 MR. CHAPKIS: I agree that you have that authority.
24 I, like Mr. Fons, would counsel you to grant us leave to amend,
25 and I would also reaffirm that Verizon would be willing to

1 refile within 48 hours.

2 CHAIRMAN JABER: And I guess that answers the last
3 question about starting the clock over. You do acknowledge,
4 though, that the discovery can remain, the discovery already
5 filed can remain and go forward with the public hearings?

6 MR. CHAPKIS: Correct. I think that would be the
7 best approach. I think it would be inefficient to restart
8 everything, to have them propound the same discovery, to cancel
9 the hearings. I think, you know, that there is a lot of water
10 under the bridge, and a lot of people put a lot of effort into
11 what has been done, and it makes sense to keep the public
12 hearings on, and to keep the discovery in the case that has
13 already been propounded, and to let things go forward and to
14 restart the 90-day clock.

15 CHAIRMAN JABER: Mr. Twomey.

16 MR. TWOMEY: Thank you, Madam Chair. To the first
17 question, what does not less than two years mean, AARP would
18 suggest to you that a very reasonable and very necessary
19 interpretation is that it means not less than two full years,
20 not 365 days or 367 days as suggested by these companies. Not
21 less than two full years.

22 CHAIRMAN JABER: I guess I wasn't clear with regard
23 to my question. You make the point using (1)(c) that the rate
24 increases can't occur in not less than two years. And my
25 question is this says network access rate reductions to parity

1 cannot be made for a period of less than two years or more than
2 four years. You don't put any significance on the words to
3 parity, why?

4 MR. TWOMEY: Yes, ma'am, I do in the sense that AARP
5 takes the position that you can't start the -- since the
6 changes have to be dollar-for-dollar, the reductions matched,
7 then you can't start the increases and you can't start the
8 decreases until the end of the second year, end of the second
9 full year, not end of the first day of the second year. That
10 is when you would -- I would hope they would refile and say we
11 are going to seek to increase the rates of our customers by X
12 on January 1st, 2004, a couple of months from now; and that we
13 are going to seek to get the rest of it -- if they stick with
14 the two-year business -- the rest of it two years later on
15 January 1st, 2006. Since parity is tied -- since the rate
16 increase is tied to the access fee reductions going to parity,
17 that would be our position.

18 Does the Commission have the discretion to deny based
19 on the failure to meet any of the four criteria, we would agree
20 with the rest of the parties, yes. We agree that the clock
21 needs to be restarted for the statutory reasons given to you by
22 Mr. Fons and the others. We are in agreement that the company
23 should be allowed to amend their petitions as opposed to them
24 being dismissed. The change will be slight. They have said
25 they can do this in -- we don't care when they do it. They

1 could wait three or four months if they want. They say they
2 are going to do it in 24 to 48 hours. When we go to the
3 hearings tomorrow night, Commissioner Bradley, I think we will
4 all know what is being sought, and we can make sure because the
5 companies can tell us, and we will know what we are going to
6 suggest to our clients is wrong with what is being sought.

7 And then specifically in terms of starting the clock,
8 we would need to have a new procedural schedule as suggested
9 by -- as requested by Mr. Beck. And the first thing would be
10 to excuse us from the requirement to file testimony this
11 Thursday. I think I answered all of your questions, or I tried
12 to.

13 COMMISSIONER BRADLEY: One other.

14 CHAIRMAN JABER: Commissioner Bradley.

15 COMMISSIONER BRADLEY: Yes, a question of staff.
16 What does what is being proposed do to the November the 4th
17 hearing date?

18 MS. CHRISTENSEN: Commissioner, it really depends on
19 what the parties, the companies refile. If we are talking
20 nominal changes, then I believe at the Commission's discretion
21 you can keep those hearing dates. The Commissioners may also
22 want to, at their discretion, lengthen some of the time for the
23 initial filing of testimony by a couple of days, and that can
24 be accommodated, I think, without impacting the rest of the
25 schedule generally. And I suspect, given the short time frame

1 with which the companies have pledged to amend their petitions,
2 that they would be nominal changes, and we could retain those
3 hearing dates.

4 COMMISSIONER BRADLEY: Mr. Twomey.

5 CHAIRMAN JABER: Mr. Twomey was doing to address your
6 question.

7 MR. TWOMEY: Yes, Madam Chairman, Commissioner
8 Bradley. AARP's view would be that if you stick with any of
9 the current procedural deadlines, and I don't include the
10 hearings in those, because they accommodate your schedule and
11 you have gone to great lengths to schedule them thus far, but
12 if you stick with any of the other procedural dates, there is
13 no real value, in our estimation, to restarting the clock. So
14 that said, we think that you ought to shift -- examine your
15 calendar, which is at the chair's discretion, I think, shift
16 the hearing, the final hearing to as close to the end of the
17 90-day period as possible to give yourselves time to make your
18 decision and have your staff write the order. That would be
19 our request.

20 COMMISSIONER BRADLEY: One other question.

21 CHAIRMAN JABER: Commissioner Bradley.

22 COMMISSIONER BRADLEY: How many days are we into
23 this hearing?

24 MS. CHRISTENSEN: I'm not exactly sure what day we
25 are into the proceeding. They filed on August 28th, so we are

1 approximately a month into the proceeding thus far.

2 And I guess just to answer the question regarding
3 what benefit it would to be leave the hearing dates, it would
4 allow the Commission additional time on the back end of the
5 hearing for the Commission to make their decision and might
6 allow for the Commission to receive briefs on a particularly
7 difficult issue. So, I mean, there is that benefit to not
8 moving the hearing and allowing the Commissioners additional
9 time at the end of the process to make its final decision.

10 MR. BECK: May I address that?

11 CHAIRMAN JABER: Commissioner Deason had a question.
12 I can't tell who is speaking, I'm sorry.

13 MR. BECK: Commissioner, I would like to address the
14 issue of the hearing dates of November 4, 5, 6.

15 CHAIRMAN JABER: Go ahead. Commissioner Deason has
16 got a question.

17 COMMISSIONER DEASON: I will ask my question after
18 Mr. Beck.

19 MR. BECK: We would strenuously object to leaving the
20 hearing dates where they are. We have numerous motions
21 concerning discovery disputes that haven't been ruled on. As
22 we sit here today, we do not know what the companies would file
23 in the next day or two, so we would need the time to see what
24 they file, to evaluate it, to respond to it, and then file
25 testimony. We couldn't possibly go forward on those November

1 4th, 5th, and 6th dates, in my mind.

2 CHAIRMAN JABER: Have your discovery disputes -- the
3 time periods for those motions and responses have run?

4 MR. BECK: Most if not all, I believe so. Most of
5 them. I'm not sure every one of them has.

6 MS. CHRISTENSEN: Only within the past couple of
7 days.

8 COMMISSIONER BRADLEY: Madam Chair.

9 CHAIRMAN JABER: Commissioner Bradley.

10 COMMISSIONER BRADLEY: I would ask Commissioner
11 Deason to yield.

12 Mr. Beck just brought up a valid point. Not knowing
13 what the companies are going to file. And I, too, like
14 certainty. And by all means I'm willing to -- and I do intend
15 to keep -- we have a hearing tomorrow in Jacksonville. By all
16 means I intend to be there. But I would respectfully request
17 that the parties who are going to be there also be respectful
18 of this uncertainty and our commitment to have these hearings
19 and to go in tomorrow, tomorrow into a hearing without having
20 certainty as to what the filing is going to be. Mr. Beck, Mr.
21 Twomey, the companies.

22 MR. BECK: I agree we can deal with that.

23 MR. FONS: Yes, we can deal with it at the public
24 hearings, as well.

25 COMMISSIONER BRADLEY: So how are we going to deal --

1 I mean, just some understanding as to how we are going to deal
2 with this uncertainty. You know, I don't like surprises, not
3 even at Christmastime.

4 MS. WHITE: Commissioner Bradley, Nancy White for
5 BellSouth. The hearing tomorrow is in Jacksonville, which is
6 in the BellSouth area. To the extent we can, we will have
7 something with us. It may not be that we can make the filing
8 tomorrow, but we will try to have some kind of summary with us
9 that says as far as we know this is what it is going to look
10 like when it gets filed, as far as the dollar amount.

11 CHAIRMAN JABER: But you also need to share that --

12 MS. WHITE: Yes. I would get it to the staff, and
13 Public Counsel, and AARP as soon as possible. But in light of
14 the fact that everybody is probably going to be traveling
15 tomorrow, it may be the hour before the public hearing, but we
16 will sure do the best we can.

17 COMMISSIONER BRADLEY: Thank you.

18 CHAIRMAN JABER: Commissioner Deason.

19 COMMISSIONER DEASON: On that note, I believe I will
20 be chairing the hearing tomorrow, I think that it will be
21 advantageous for BellSouth to have a representative prepared to
22 provide an oral presentation, concise but thorough, to
23 adequately inform all customers in attendance as to what has
24 transpired today, and the fact that you would be filing an
25 amendment and what that amendment would do to the original

1 application, and in terms where customers can understand it.

2 MS. WHITE: Yes, sir, I understand. And Mr. Criser
3 and I will fight among ourselves about who gets that duty.

4 COMMISSIONER DEASON: Very well.

5 CHAIRMAN JABER: Well, since he doesn't do nearly as
6 much as you do, and if we can -- (Laughter.)

7 COMMISSIONER BAEZ: Mr. Criser has reason to fear.

8 CHAIRMAN JABER: But I think in addition to what Mr.
9 Deason said, to the degree this Commission gives you leave to
10 amend your petition, we need to be clear that the only leave we
11 are giving you is an amendment of the time period that was
12 initially filed. I mean, a lot of the confusion can be avoided
13 if you limit your amendment to that very specific thing.

14 And I guess I'm not as concerned at the end of the
15 day with regard to the information passed on to the consumers
16 at the public hearing, because the total amounts don't change.
17 So as far as I'm concerned, we go this week to public hearings
18 with the worst-case scenario. And anything post your filing
19 has got to be better by definition. I think the testimony we
20 receive this week from public hearings will be based on a
21 worst-case scenario in terms of the time period. Mr. Twomey.

22 MR. TWOMEY: Yes, ma'am. I think what you are saying
23 is, and I agree, is that we don't hear them saying they are
24 going to ask for less money, which is clearly their right.

25 MS. WHITE: Thank you.

1 CHAIRMAN JABER: Commissioner Baez, you had a
2 question and then Commissioner Deason.

3 COMMISSIONER BAEZ: Actually, yes, but a lot of my
4 questions you kind of stole my thunder there. We had been
5 talking a lot about, you know, what is going to happen tomorrow
6 at the hearing and how clear we can be, and I was just hoping
7 that we can nail down exactly what everybody's understanding of
8 what is going to get addressed by an amended filing, if that is
9 the way that this winds up being styled, and if we are all
10 under a correct impression that all we are discussing here is a
11 sequencing issue and that the sequencing issue is going to get
12 addressed in a manner consistent with what may have been a
13 recommendation by the staff on a motion that may be moot.

14 MR. FONS: You are correct, Commissioner Baez. We
15 will only be addressing the time frames in which the two to
16 four years will be addressed.

17 COMMISSIONER BAEZ: But I guess to go a little
18 further, Mr. Fons, I would assume that they would be addressed
19 in a manner that is not going to raise additional questions as
20 to -- do you see what I'm saying?

21 MR. FONS: Absolutely. And that is our goal, as
22 well. We want to remove this cloud so that it is not going to
23 interfere with this case.

24 CHAIRMAN JABER: Mr. Chapkis.

25 MR. CHAPKIS: Verizon is in a little different

1 position. Verizon was going to update the units by a month or
2 two. I think we were a month behind the other companies in
3 terms of our latest units. We were just going to update the
4 minutes to accommodate the last two months so you would have
5 the most recent 12-month period. I don't think that is going
6 create any huge changes. It was just going to allow it to be
7 the most recent time frame.

8 COMMISSIONER BAEZ: Mr. Chapkis, from my part my only
9 concern is that we have -- it seems to me that there has been
10 some kind of agreement as to what needs to be done has been
11 reached. And my only concern for Verizon is that they, you
12 know, whatever their amended filing turns out to be, that it be
13 something consistent with the issue that we have been dealing
14 with here. If it is a sequencing issue that was a problem for
15 Verizon, that that is what is going to get addressed, and
16 nothing more and nothing less, I guess, as the Chairman
17 suggested.

18 CHAIRMAN JABER: Nothing more.

19 MR. CHAPKIS: If you would prefer us not to update
20 the units for those months, we will not do that.

21 COMMISSIONER BAEZ: That is not what I am saying.

22 MR. CHAPKIS: I'm sorry. I misunderstood.

23 COMMISSIONER BAEZ: I don't know that your updating
24 units was an issue that caused a sequencing problem. Do you
25 see what I mean?

1 MR. CHAPKIS: Is your net concern that it is going to
2 change the amount that we are seeking to offset? I think it
3 would do that nominally. I'm not even sure which direction.
4 And if you would prefer us not to do that, we won't.

5 COMMISSIONER BAEZ: To the extent that you are
6 updating your units, what you were proposing to do caused an
7 inconsistency with what we have been talking about, if that
8 became part of the reason that a motion to dismiss based on a
9 statute's interpretation was filed, then you need to make the
10 changes that are necessary. If it is only a question of what I
11 sense has been discussed here as what the interpretation of the
12 statute is, you know, when the sequencing, when the rate
13 increases can start, how far apart they can be, so on and so
14 forth, then that is what you need to be addressing. If it is
15 all of it, it is all of it. I'm not professing to say I
16 understand exactly what your particular issue is, but that it
17 gets addressed consistent with --

18 MR. CHAPKIS: My issue is not related to sequencing.

19 COMMISSIONER BAEZ: -- your motion.

20 MR. CHAPKIS: I'm sorry, I didn't mean to --

21 COMMISSIONER BAEZ: That's all right, you go ahead
22 and clarify.

23 MR. CHAPKIS: My issue is not related to sequencing.
24 I thought it would make the petition more accurate. I'm happy
25 not to do it if that is your preference, and I will limit it

1 solely to sequencing.

2 CHAIRMAN JABER: Mr. Ciamporcero, do you need a
3 microphone?

4 COMMISSIONER DAVIDSON: And I would like to jump in
5 at some point with a comment. I may be in the minority view
6 here, but I would like an opportunity to sort of throw that
7 comment out, in all fairness to the parties. My view is --

8 CHAIRMAN JABER: Hang on, Commissioner Davidson. The
9 reason I invited you up, Mr. Ciamporcero, you seem to
10 understand Commissioner Baez's point, so why don't I let you
11 address that and then we will come back to Commissioner
12 Davidson.

13 MR. CIAMPORCERO: What Richard was discussing has
14 nothing to do with the sequencing issue at all, it was just an
15 attempt to be a little more precise. But it doesn't make a
16 hill of beans difference to what we have been discussing all
17 day. I just wanted him to -- I didn't want to change anything
18 and you guys wouldn't know about it.

19 COMMISSIONER DAVIDSON: Well, my view on this is we
20 have got a motion to dismiss, if that is granted it is up to
21 the parties to refile their petitions as they deem fit. And if
22 they do something strange in that petition, it is up to us to
23 address that. But I'm a little bit uncomfortable telling folks
24 what they need to put in the petitions. The statute speaks to
25 that, and if something needs to be done to address it, or if

1 the parties feel, hey, we want to add this point in our
2 petition, that's up to the parties to do, and it is up to us to
3 rule on any objection. So that is where I stand on the filing.

4 COMMISSIONER BAEZ: And I don't disagree with you.
5 The suggestion behind my comment was not what they need to do
6 or what they don't need to do. I guess because we are dealing
7 with a motion, as you said, because we are dealing with a
8 motion and we are somehow seeking to resolve addressing the
9 motion, there are a couple of alternatives at the end, you
10 know, when we make our decision. But that either way, whether
11 it is giving the companies leave to amend their petitions, or
12 it is an outright dismissal, that whatever the result of that
13 is somehow addresses what the reason we are here for was
14 originally. I mean, I don't think that we can just resolve the
15 petitions and then not get a response, a responsive action to
16 the petitions. Whether something new arises out of it or not,
17 that's for the four winds to decide on.

18 COMMISSIONER DAVIDSON: I agree wholeheartedly with
19 that. And I think the parties hopefully will walk away here
20 with an understanding of the ruling from the bench. But my
21 hope is that if a party, for example, sees something in its
22 next filing, hey, you know, we should have put this in, this
23 supports our petition, it goes to a statutory factor, et
24 cetera, that they are free to do that. That was really just my
25 point.

1 CHAIRMAN JABER: Commissioner Bradley and then
2 Commissioner Deason.

3 COMMISSIONER BRADLEY: Yes, just for clarification
4 here. I'm under the impression that the hearings are to inform
5 the public as to what the true nature of the legislation is,
6 and I am beginning to get a little disturbed when I hear the
7 word rate increase, because I have always been under the
8 impression that there is a rebalancing that is going to occur
9 which creates parity. In other words, switched intrastate
10 access fees are going to come down, and the cost of local phone
11 service is going to come up, which creates revenue neutrality
12 in my opinion. And I keep hearing rate increase, and that is
13 not my interpretation of what we are considering. And I would
14 respectfully request that -- you know, I need to have some
15 clarity here because that is my interpretation of what the bill
16 requires.

17 MR. TWOMEY: Madam Chair.

18 CHAIRMAN JABER: Mr. Twomey would like to address
19 your question.

20 COMMISSIONER BRADLEY: Fine.

21 MR. TWOMEY: That is one of the major things we are
22 going to talk about, Commission Bradley, is the largest rate
23 increases to hit this state ever from these telephone
24 companies, 35 to 90 percent documented, depending upon the
25 company and the geographic area. Now, our position, AARP's

1 position is that there is no support for the loop, therefore
2 there can't be any rate increases. AARP's position is there
3 are no benefits, no net benefits to be achieved or demonstrated
4 by the companies evidence to warrant rate increases, period.

5 Now, this business of rebalancing, we don't know
6 where the benefits are going to go, Commissioner Bradley.
7 There is no testimony from these people, and the long distance
8 companies aren't parties. And we would suggest to you that
9 they should be. We don't know, none of us know how AT&T, and
10 MCI, and Sprint long distance are going to distribute the
11 in-state access fee reductions amongst their various programs.
12 They could, in theory -- and we fear this -- they could, in
13 theory, AT&T, for example, reduce the minutes and programs that
14 serve big business who aren't getting rate increases here, and
15 give 99 percent of those increases to big business programs or
16 customers that make most of the day-to-day calls in the state,
17 and give one percent to the residential customers and meet the
18 definition of the law.

19 So, respectfully to you, Commissioner Bradley, we are
20 going to talk about rate increases and how we are opposed to
21 them; how huge they are; and how we don't know that there is
22 one penny of tangible benefits to be received by AARP members
23 and others or any other intangible benefits.

24 CHAIRMAN JABER: Commissioner Bradley, did you want
25 anyone else to address -- Ms. White.

1 MS. WHITE: Yes, I will add one thing to,
2 Commissioner Bradley, your question. It is a rate rebalancing.
3 The statute requires the long distance companies to do away
4 with their in-state connection fee, which I think in some
5 companies is \$1.95 a month, so that would be -- when the
6 intrastate switched access rates reach parity, that charge
7 would go away.

8 MR. TWOMEY: That is not quite correct.

9 CHAIRMAN JABER: We are not going to do this.
10 Commissioner Bradley, I think they have sufficiently addressed
11 your question. We are going to come to Commissioner Deason for
12 a question, and I've got to come back to Commissioner Davidson.

13 COMMISSIONER BRADLEY: Thank you, Madam Chair.

14 COMMISSIONER DEASON: I want to shift focus back to
15 what we are talking about several minutes ago, and it was about
16 the scheduling of the hearing. And this is a question for
17 staff. You indicated that you thought there would be some
18 merit, some benefit in keeping the current hearing schedule
19 because it would give more time on the back end.

20 And my question is I thought that we were
21 contemplating the possibility, not the necessity, but the
22 possibility of a bench decision. Has that in any way changed?

23 MS. CHRISTENSEN: No, Commissioner. I'm just
24 pointing out that there would be that additional time on the
25 end, if necessary, once you got through the hearing. But I

1 don't think that the Commissioners' position, or the
2 Commission's position has changed, that it would be any
3 different than a bench decision. And it would certainly depend
4 on what gets filed by the parties and how much change is filed
5 in those amended petitions.

6 Staff would request, though, if they are going to
7 amend their positions, if they could highlight the amended
8 portions, the portions that they amend. That would, I think,
9 make it much easier for staff to identify, for the other
10 parties to identify, and anybody else who was trying to be able
11 to differentiate between what they had previously filed and
12 what is new or amended to the petitions.

13 COMMISSIONER DEASON: And then I have one other
14 question for Mr. Beck. It is more of a procedural question,
15 I'm just trying to clarify in my own mind. You filed the
16 motions to dismiss. You have heard the companies indicate that
17 they are willing to amend, if the Commission grants them the
18 ability to amend their petitions, and I think that is what you
19 are wanting to accomplish. So I'm at a little bit of a loss.
20 Do we deny your motion dismiss, allow them to amend; or do we
21 grant your motion to dismiss with the caveat that they are
22 allowed to amend their existing petitions? How do you see it?

23 MR. BECK: I see it as granting the motions to
24 dismiss with leave to amend as they companies have asked, and
25 then they would amend as they saw fit when they saw fit. But I

1 think you would dismiss the petitions as they are, keep the
2 dockets open, and let them refile.

3 COMMISSIONER DEASON: Mr. Fons.

4 MR. FONTS: If you grant the motion to dismiss,
5 everything is over. I don't think that granting this leave to
6 amend at that point in time or leave to refile is any different
7 that the dismissal without prejudice and us having to refile
8 our cases. I think what you can do is hold the motion to
9 dismiss in abeyance until you see what we file in our amended
10 petitions. And, therefore, if there is anything that Mr. Beck
11 doesn't like about our amended petition, he can renew his
12 motion to dismiss.

13 CHAIRMAN JABER: Mr. Fons, I don't know if I agree
14 with that. From a procedural standpoint, we can -- and, Legal,
15 you need to correct me if I'm wrong -- grant the motion to
16 dismiss without prejudice allowing you all to refile, allowing
17 you to amend your petition within 48 hours and keeping the
18 docket open. That is the distinction. Dismissing the case and
19 closing the docket isn't what you are asking for. You want us
20 to leave the docket open and maintain the procedural schedule
21 as best we can. So the two go hand-in-hand in my mind.

22 What is wrong, staff, with granting the motion to
23 dismiss, allowing the parties to amend to address what was
24 raised in the dismissal petition within 48 hours, and leaving
25 the docket open?

1 MS. CHRISTENSEN: From staff's point of view there is
2 nothing wrong with that.

3 COMMISSIONER BRADLEY: Madam Chair.

4 CHAIRMAN JABER: I've got to get to Commissioner
5 Davidson, and I will come back to you. Commissioner Davidson.

6 COMMISSIONER DAVIDSON: Thank you, Madam Chair. I
7 have to take us back to substance, but I promise this is a
8 quick question for the parties. I just want to be clear for
9 the record. Looking at 364.14(c), the requirement that
10 intrastate switched network access rate reductions to parity
11 occur over a period of not less than two years or more than
12 four years, this is for each of the parties just so I can be
13 clear, as the petitions are now filed, would intrastate
14 switched network access rate reductions reach parity in 13
15 months or 24 months?

16 MR. FONS: In 13 months.

17 COMMISSIONER DAVIDSON: Thank you. Bell, Verizon?

18 MR. CHAPKIS: Correct.

19 COMMISSIONER DAVIDSON: Thank you.

20 CHAIRMAN JABER: Commissioner Davidson, do you want
21 to go ahead and have Mr. Shafer address your concerns?

22 COMMISSIONER DEASON: If Mr. Shafer has an answer
23 that addresses those points, that would be great, or Ms.
24 Keating.

25 CHAIRMAN JABER: Ms. Keating. Do you have it, Beth?

1 MS. KEATING: I've got the 2003 bill analysis, and I
2 believe Mr. Shafer probably has both of them. But looking at
3 the 2003 analysis from the Senate, it essentially restates the
4 chart that Mr. Twomey handed out for AARP. If you look at the
5 economic impact and fiscal note section, under Section B,
6 private sector impact, BellSouth has estimated that the total
7 reduction in revenue to reduce the intrastate switched network
8 access rates to parity is approximately 135 million. BellSouth
9 estimated that their adjustment would be in three increments of
10 a dollar to \$1.17 per year.

11 And the language is similar with regard to Sprint and
12 Verizon. It indicates Sprint estimated that their adjustments
13 would be in four increments of \$1.63 to \$1.81 per year, and
14 likewise for Verizon. Verizon estimated that their adjustments
15 would be in four increments of \$1.13 to \$1.25 per year.

16 COMMISSIONER DAVIDSON: That helps. Thank you.

17 CHAIRMAN JABER: Commissioner Bradley, you had a
18 question?

19 COMMISSIONER BRADLEY: Yes, for a question of Legal.
20 And I would note that my reading of the statutes gives us the
21 authority to grant or deny the companies' petitions, but not to
22 make any modifications. And I need to be corrected if I am
23 incorrect. Since we do not have the authority to amend the
24 time frames requested by the companies, we have no choice but
25 to, in my opinion, dismiss the petitions, which gives the

1 companies the option to refile them within the new time frame
2 which meets the statutory requirement. Is that a proper
3 interpretation of the language in the statute?

4 MS. CHRISTENSEN: Commissioner, I believe your
5 assessment is correct of what staff has recommended and would
6 agree that they are required to amend their petitions to
7 conform with the time frame that the Commission believes is
8 appropriate.

9 COMMISSIONER BRADLEY: Okay. But my question is --

10 MS. CHRISTENSEN: In other words, the answer to your
11 question is, yes, I agree with your statement.

12 COMMISSIONER BRADLEY: Okay. But is that making a
13 modification or is it not making a modification, since we only
14 have the authority to deny or to grant?

15 MS. CHRISTENSEN: Commissioners, requiring -- or not
16 requiring, allowing the parties to amend is not equivalent to
17 making a modification. That is allowing them to amend to
18 conform to what the Commission's decision would be.

19 COMMISSIONER BRADLEY: Okay.

20 CHAIRMAN JABER: Mr. Fons, did you want to address
21 Commissioner Bradley's question?

22 MR. FONTS: Well, in part. It raises the issue of
23 whether or not we have to refile our entire case or whether we
24 only amend those portions of the case affected by OPC's motion
25 to dismiss. If we have to refile the entire case, that means

1 we have to reproduce everything that is already in this docket
2 in the way of our testimony and exhibits. And what we were
3 thinking of is in granting leave to amend that we would just
4 amend those portions of our petition, and whatever exhibits
5 and testimony associated with that petition, and refile those
6 rather than the entire case.

7 CHAIRMAN JABER: Mr. Fons, I think we are all saying
8 the same thing.

9 MR. FONS: I'm not sure. If I were to just come in
10 and --

11 CHAIRMAN JABER: It is important to you, it is
12 important to you for me to tell you that I have heard Public
13 Counsel and Mr. Twomey acknowledge we should keep the docket
14 open, you shouldn't have to refile your entire case, we
15 shouldn't have to refile discovery.

16 MR. FONS: That's fine.

17 CHAIRMAN JABER: Are we in the same room?

18 COMMISSIONER DAVIDSON: They are refiling their
19 petition, not their case.

20 CHAIRMAN JABER: Yeah. You are not --

21 MR. FONS: I just want to make sure we don't have
22 another potential defect.

23 CHAIRMAN JABER: Well, Mr. Fons, and I want to help
24 you out here so that we can make sure that there is no more
25 confusion as it relates to this point. The part of your

1 petition you are perhaps going to get leave to amend relates to
2 the time period discussed in 364.164(1)(c). Are we clear on
3 that?

4 MR. FONS: Yes.

5 CHAIRMAN JABER: Okay.

6 COMMISSIONER BRADLEY: And, Madam Chair, by us
7 dismissing and allowing them to amend, the Commission itself is
8 not modifying, but accepting an amendment, is that correct, so
9 we meet the statutory requirement?

10 CHAIRMAN JABER: Legal. Nodding the head doesn't get
11 picked up. Is that correct?

12 MS. CHRISTENSEN: Yes, correct.

13 COMMISSIONER DAVIDSON: And I just want to follow up
14 on your point, Madam Chairman, that what is being refiled here
15 is not the entire case, it is the petition as amended.

16 MR. FONS: We will have to file revised testimony
17 that supports the petition and exhibits.

18 CHAIRMAN JABER: This is true. And that is why you
19 will have probably more discovery.

20 MR. FONS: Potentially.

21 CHAIRMAN JABER: Commissioner Bradley.

22 COMMISSIONER BRADLEY: A statement. I would like to
23 put some language across the journal at the appropriate time.

24 CHAIRMAN JABER: Let's do it.

25 COMMISSIONER BRADLEY: A statement, and I would like

1 for this language to become an official part of -- this
2 statement to become an official part of the record. As an
3 agency created by the legislature, the Public Service
4 Commission is required to follow the will of Florida's elected
5 representatives.

6 We can accomplish this by following the plain
7 language of the Florida Statutes whenever possible. The plain
8 language of Section 364.164, Subsection (1)(c), states this:
9 Require intrastate switched network access rate reductions to
10 parity over a period of not less than two years, but more than
11 four years. To me a year is 365 days or 12 months. Therefore,
12 not less than two years means not less than 730 days or 24
13 months.

14 The impact on the customer of implementing one rate
15 increase on January 1st, 2004 and a second on January 1st, 2004
16 (sic) is that they see rate increases in 366 days, or 12 months
17 and one day. This, to me, does not meet the definition of not
18 less than two years as expressed by the legislature in the
19 statutory language.

20 I do not find staff's alternative recommendation
21 persuasive. I think we would do a disservice to all parties
22 involved, including Florida's customers, if we were to ignore
23 the concerns of the time frame presented by the companies in
24 their petitions, waiting instead until November, the November
25 hearing to make a decision on this language. That course would

1 lead to increased costs both in dollars and time for all
2 parties involved, given the other significant issues the
3 Commission must deal with in the next several months.

4 We have no reason to postpone a decision that we can
5 make today. I would, in other words, like to support staff's
6 primary recommendation with the modifications that we have, or
7 the points of clarification that we have discussed today. I
8 would like to just put that language in as an official
9 statement.

10 COMMISSIONER DAVIDSON: If that is a motion, I will
11 second it.

12 CHAIRMAN JABER: Wait. Is your motion to approve
13 staff's recommendation, and you are not -- your motion doesn't
14 include -- if you approve staff's recommendation, then your
15 motion does not include the ability to amend the petition
16 within 48 hours. So do you want to modify the motion?

17 COMMISSIONER BRADLEY: Yes. I would modify my motion
18 to allow for the petition to be amended. I think that we have
19 cleared up anything that might be ambiguous as it relates to
20 that. Also, I have listened with interest to the hearing date,
21 which is November 4th, and, you know, I don't -- we have had
22 some good arguments here as to maybe why we should leave the
23 hearing date -- leave November the 4th in as the date of the
24 hearing, or why we should change it. I would think that the
25 parties should have an adequate amount of time to present their

1 testimony, and I would think that maybe there is some value in
2 having more time on the end of this discussion as per staff's
3 recommendation for us to make a decision and give due
4 consideration to the evidence that is presented to us.

5 CHAIRMAN JABER: Let's do it one at a time. With
6 regard to your motion, let me throw out some language and you
7 tell me if this is your motion. It would be to grant staff's
8 recommendation that OPC's motion to dismiss the three petitions
9 should be granted, and allowing the companies leave to amend
10 those portions of the relevant -- the relevant portions of
11 those petitions within 48 hours and to leave the docket open?

12 COMMISSIONER BRADLEY: Yes.

13 CHAIRMAN JABER: Have I left anything out,
14 Commissioners? Staff?

15 MS. CHRISTENSEN: I think the only other thing that
16 we would also need to address is AARP's motion, which was not
17 addressed in this recommendation because it came in afterwards,
18 but it wholly adopt OPC's motion, so I think we can address
19 them both in the same --

20 CHAIRMAN JABER: Let's do them in separate motions,
21 so we are clear on what this motion is. Let's go ahead and
22 take a vote. There was a motion. Commissioner Deason?

23 COMMISSIONER DEASON: A clarification.

24 CHAIRMAN JABER: Go ahead.

25 COMMISSIONER DEASON: The motion does not include the

1 suggestion that we keep the current hearing date. That is
2 neither -- that is not being changed or being kept in this
3 motion, correct?

4 CHAIRMAN JABER: Right. That's why I wanted to take
5 it a step at a time. I haven't forgotten about Commissioner
6 Bradley's concern, but let's address this motion first. So
7 there is a motion and a second. All those in favor say aye.

8 (Simultaneous affirmative vote.)

9 CHAIRMAN JABER: With regard to Mr. Twomey's motion
10 -- Mr. Twomey, do you want to withdraw it in light of what we
11 discussed today? You just adopted OPC's position.

12 MR. TWOMEY: I'm not going to withdraw it. You have
13 effectively granted ours as far as we are concerned by your
14 vote on Public Counsel's. We support Public Counsel's.

15 COMMISSIONER BRADLEY: Or we can find your motion
16 moot in light of what we just did?

17 MR. TWOMEY: That's fine.

18 CHAIRMAN JABER: Commissioners, can I have a motion?
19 I know you don't like to be found moot, but --

20 MR. TWOMEY: I don't, but I'm trying to be agreeable.

21 COMMISSIONER BAEZ: So moved.

22 COMMISSIONER DAVIDSON: Second.

23 CHAIRMAN JABER: There has been a motion and a second
24 to find AARP's petition moot in light of our decision. All
25 those in favor say aye.

1 (Simultaneous affirmative vote.)

2 CHAIRMAN JABER: Now, with respect to -- with respect
3 the procedural schedule and the hearing, Commissioner Bradley,
4 what I would like to do is give staff an opportunity to talk to
5 you about the procedural schedule and where we go from here.
6 You are the prehearing officer, so let's get an understanding
7 of what the testimony deadlines are. I don't know what those
8 are. So my direction to staff is to work with your office,
9 understand what is due in the next few weeks, and then staff
10 can circle back around and talk to me about hearing dates. But
11 I really think that is premature right now. Commissioner
12 Deason.

13 COMMISSIONER DEASON: Let me just say that it has
14 been represented by Mr. Twomey, and I assume it is set out in
15 the schedule, the testimony is to be filed by the intervenors
16 on Thursday of this week. Is that correct, Mr. Twomey?

17 MR. TWOMEY: Yes, sir, that is correct.

18 COMMISSIONER DEASON: So it doesn't give us a lot of
19 luxury to have -- I mean, either that testimony has got to be
20 filed or else we are going to have to entertain a request to
21 extend the time of filing of testimony. It may be more
22 expeditious to just -- expedient to just go ahead and determine
23 whether testimony has got to be filed Thursday or not in light
24 of what actions we have just taken.

25 CHAIRMAN JABER: Here is my problem with that. The

1 dates were already condensed. If we do something with
2 intervenor testimony today without an opportunity to look -- I
3 don't have that CASR, Commissioner. I don't have the calendar,
4 I don't know what -- I'm not saying intervenor testimony
5 shouldn't be extended. What I'm saying is that is going to
6 create a review of the entire calendar, and I would much rather
7 let the prehearing officer do that with staff. And I think
8 while it is --

9 MR. TWOMEY: Madam --

10 CHAIRMAN JABER: Hang on, Mr. Twomey.

11 MR. TWOMEY: Sorry.

12 CHAIRMAN JABER: I think while we may not have the
13 luxury today, staff certainly has the ability to get back to
14 their office, do an order revising procedure, if necessary, and
15 get it to the prehearing officer.

16 Commissioner Bradley.

17 COMMISSIONER BRADLEY: And I think I heard you
18 correctly, but by all means I would appreciate the wisdom of
19 the full Commission as it relates to the date for refiling
20 testimony. Well, that is important to me.

21 COMMISSIONER DAVIDSON: Well, I was just going to
22 move to defer completely to the Chairman and the prehearing
23 officer for all issues.

24 COMMISSIONER BRADLEY: Why don't we defer to the
25 Chairman's -- we will defer to the Chairman's infinite wisdom.

1 CHAIRMAN JABER: You know, I am always humbled by
2 what you all are willing to defer to me, but I think there is a
3 time and place for a review of a procedural schedule. And, Mr.
4 Twomey, again, I pass no judgment on whether your testimony
5 deadline should be extended.

6 MR. TWOMEY: Yes, ma'am, but I would like to address
7 one thing.

8 CHAIRMAN JABER: Go ahead.

9 MR. TWOMEY: This is a reality problem. We are faced
10 with this company -- these companies not only refileing their
11 petitions within two days or whatever time it takes them, they
12 are, of necessity, going to have to refile their supporting
13 testimony to the extent that it is modified by changes in their
14 petition. We are right now, my client is jumping through some
15 serious logistical hoops trying to not only finish testimony
16 and have it approved, but produce the copies, file, and that
17 kind of stuff while we are going to be going to hearings.

18 CHAIRMAN JABER: That is my point exactly. That is
19 my point. To address your testimony deadline, I need to go
20 ahead and address rebuttal testimony deadlines. And I probably
21 need to go ahead and address prehearing statements, prehearing
22 conference. And what I'm saying to you is that it is more
23 efficient to give staff today and tomorrow morning to address
24 it.

25 MR. TWOMEY: Okay.

1 COMMISSIONER BRADLEY: Well, it sure would be
2 helpful.

3 CHAIRMAN JABER: You want my wisdom?

4 COMMISSIONER BRADLEY: Yes. If I had the wisdom of
5 the full Commission --

6 CHAIRMAN JABER: My wisdom would be to seriously take
7 under consideration Mr. Twomey's request and to work with staff
8 on giving AARP and the intervenors some leeway to have more
9 time for the testimony. But I'm not in the position today to
10 tell you how much time. I don't know what the procedural
11 schedule is.

12 COMMISSIONER BRADLEY: Well, is that something that
13 maybe the parties can work with staff on to see if they can --

14 CHAIRMAN JABER: Yes.

15 MR. BECK: Commissioners, we can't possibly file
16 testimony Thursday. They haven't even filed their new cases
17 yet.

18 COMMISSIONER DAVIDSON: Defer to Beth.

19 MS. KEATING: Madam Chairman, we can work with the
20 parties and work with the prehearing officer's office and get a
21 recommendation to the prehearing officer very quickly.

22 CHAIRMAN JABER: Mr. Beck, we are saying the same
23 thing. I am acknowledging it is nearly impossible for you to
24 file your testimony, but I don't know what that right date is.

25 MR. BECK: Right. So what I would ask you to do is

1 suspend the current schedule pending a new determination.

2 CHAIRMAN JABER: And that is what Ms. Keating is
3 going to take up with the prehearing officer, right? And you
4 can do that today, can't you?

5 MS. KEATING: Yes, ma'am.

6 CHAIRMAN JABER: Commissioner Bradley.

7 COMMISSIONER BRADLEY: Well, can't we get some sort
8 of ballpark figure, I mean, as to how much time you all need?

9 CHAIRMAN JABER: Get me a CASR. We are going to take
10 a fifteen-minute break. Get me a CASR, I will establish the
11 deadlines.

12 (Recess.)

13 CHAIRMAN JABER: Let's get back on the record.

14 Commissioners, I have consulted with staff on the
15 calendar in this case, and I have made some decisions I would
16 like for someone to codify in a motion. Let me just go ahead
17 and announce that I want to move the hearing. It seems like a
18 good place to start. We are going to move the hearing from
19 November 4th through 6th to the dates of the collocation
20 hearing, and those dates are December 10th -- you're right,
21 Beth, I can't read your writing -- December 10th through the
22 12th. And for of those November dates, parties, all parties,
23 all interested persons, for those November dates I'm going to
24 schedule the rest of the public hearings.

25 And for staff and intervenor testimony, that new date

1 is October 31st. Halloween seems appropriate. Rebuttal
2 testimony, November 19th. Prehearing statements, November
3 21st. And because I'm not the prehearing officer, I think the
4 prehearing conference -- staff, you need to consult with the
5 prehearing officer. It looks like November 24th, 25th, or the
6 26th might work, but you need to circle back around with the
7 prehearing officer, so I don't intend to announce that date
8 today.

9 The same would be true for the special agenda. It
10 looks like if we need a special agenda, November 15th through
11 the 17th are open, but you need to circle back around, 15th
12 through the 17th, but staff will need to circle back around and
13 consult with my office to make sure those days are not reserved
14 for anything.

15 COMMISSIONER BAEZ: November or December?

16 CHAIRMAN JABER: I said November. December. For the
17 special agenda date, if we need it, we are looking at -- we are
18 looking at December 15th through the 17th. But, Beth, consult
19 with JoAnn and make sure that is available. The important
20 dates for today's vote, Commissioners, again, staff and
21 intervenor testimony, October 31st. Rebuttal testimony,
22 November 19th. Prehearing statements, November 21st. The
23 hearing will now be December 10th through the 12th. The
24 November 4th through November 6th dates will be used for the
25 rest of the public hearings. I need a motion.

1 COMMISSIONER DEASON: You're looking for a motion
2 then to approve the procedural schedule as you have just
3 described, is that correct?

4 CHAIRMAN JABER: Yes.

5 COMMISSIONER DEASON: And outstanding discovery
6 would continue to be valid and subject to responses and
7 objections and things of that nature as already set forth,
8 correct?

9 CHAIRMAN JABER: I think so. And just to make sure
10 we are doing this in the cleanest and most efficient way
11 possible, we should probably go ahead and include that whatever
12 other provisions were used in the order establishing procedure
13 are affirmed in all other respects.

14 COMMISSIONER DEASON: That would be my motion,
15 Madam Chair.

16 COMMISSIONER BAEZ: Second.

17 CHAIRMAN JABER: There has been a motion and a
18 second. All those in favor say aye.

19 (Simultaneous affirmative vote.)

20 CHAIRMAN JABER: That addresses the procedural
21 schedule. What else? Commissioner Bradley.

22 COMMISSIONER DAVIDSON: Yes, Madam Chair. I would
23 like to respond to a statement Mr. Beck made and have staff
24 tidy that area up. Mr. Beck made the statement that we have
25 some discovery that has not been ruled upon or ruled on,

1 discovery that is that -- discovery with objections. And,
2 staff, I need you to bring that to my attention so that we can
3 expedite that, those rulings.

4 MS. KEATING: Oh, certainly, Commissioner. We are
5 actually in the process of working on that. I believe, if I am
6 not mistaken, the time for response has only run on his first
7 set, and we are still actually trying to clarify what has
8 actually been responded to, because responses did come in to
9 some of his discovery. So we are working with the parties on
10 that, and we will be bringing you a draft order as soon as we
11 can.

12 COMMISSIONER BRADLEY: Thank you.

13 CHAIRMAN JABER: And, again, as clean up,
14 Commissioners, I wanted you to know during the break Mr. McLean
15 asked me to just repeat the result of that first motion, which
16 is we voted to keep this docket open to allow that 48 hours, to
17 allow the companies to amend their petition to address the time
18 periods that were a concern to Public Counsel and AARP.
19 Anything else that needs to come before us, Legal?

20 Mr. Twomey, you have a question?

21 MR. TWOMEY: No, I was just going to say thank you.

22 CHAIRMAN JABER: Okay. Ms. White, did I see you go
23 for your microphone?

24 MS. WHITE: No, ma'am.

25 CHAIRMAN JABER: Okay. Are we all on the same page

1 now? Great.

2 Commissioners, that concludes Item 5. And let's take
3 a half-hour lunch and come back and take up Item 15.

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STATE OF FLORIDA)

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CERTIFICATE OF REPORTER

COUNTY OF LEON)

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

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

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

DATED THIS 8th day of October, 2003.



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