

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of

PETITION BY VERIZON FLORIDA INC. DOCKET NO. 030867-TL
TO REFORM INTRASTATE NETWORK ACCESS
AND BASIC LOCAL TELECOMMUNICATIONS
RATES IN ACCORDANCE WITH SECTION
364.164, FLORIDA STATUTES.

PETITION BY SPRINT-FLORIDA, DOCKET NO. 030868-TL
INCORPORATED TO REDUCE INTRASTATE
SWITCHED NETWORK ACCESS RATES TO
INTERSTATE PARITY IN REVENUE-NEUTRAL
MANNER PURSUANT TO SECTION
364.164(1), FLORIDA STATUTES.

PETITION FOR IMPLEMENTATION OF DOCKET NO. 030869-TL
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 BELL SOUTH TELECOMMUNICATIONS, INC.

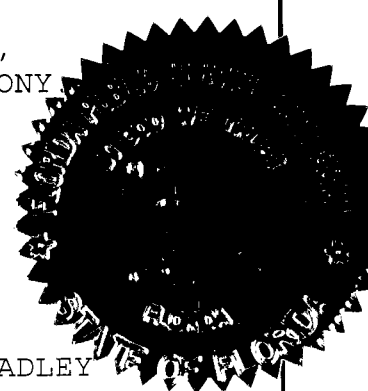
FLOW-THROUGH OF LEC SWITCHED DOCKET NO. 030961-TI
ACCESS REDUCTIONS BY IXCs,
PURSUANT TO SECTION
364.163(2), FLORIDA STATUTES.

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PROCEEDINGS: SPECIAL AGENDA

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

DATE: Monday, May 03, 2004



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TIME: Commenced at 11:00 a.m.
Concluded at 12:20 p.m.

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

REPORTED BY: JANE FAUROT, RPR
TRICIA DeMARTE, RPR
Official FPSC Reporter
(850) 413-6732

1 PARTICIPATING:

2 CHARLES BECK, ESQUIRE, Office of Public
3 Counsel, c/o The Florida Legislature, 111 West Madison Street,
4 Room 812, Tallahassee, Florida, 32399-1400, appearing on
5 behalf of the Office of Public Counsel.

6 RICHARD CHAPKIS, Verizon, Florida, Inc., 201 N.
7 Franklin Street, FLTC0007, Tampa, Florida 33602, appearing on
8 behalf of Verizon Long Distance.

9 JOHN FONS, ESQUIRE, Ausley Law Firm, P.O. Box
10 391, Tallahassee, Florida 32302, appearing on behalf of Sprint
11 LP, and Sprint Florida, Incorporated.

12 NANCY WHITE, ESQUIRE, BellSouth
13 Telecommunications, Inc., c/o Ms. Nancy H. Sims, 150 South
14 Monroe Street, Suite 400, Tallahassee, 32301-1556, appearing on
15 behalf of BellSouth Telecommunications, Inc.

16 CHARLIE CRIST, ESQUIRE, and JACK SHREVE,
17 ESQUIRE, Office of the Attorney General, PL-01, The Capitol,
18 Tallahassee, Florida 32399-1050, appearing on behalf of the
19 Office of the Attorney General.

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1 APPEARANCES CONTINUED:

2 FLOYD SELF, ESQUIRE, Messer Law Firm, P.O. Box
3 1876, Tallahassee, Florida 32302-1876, appearing on behalf of
4 AT&T Communications and MCI WorldCom.

5 MICHAEL B. TWOMEY, ESQUIRE, P.O. Box 5256,
6 Tallahassee, Florida, Florida 32314-5256, AARP, Sugarmill
7 Woods Civic Association, Inc., and Common Cause of Florida.

8 PATRICIA CHRISTENSEN, ESQUIRE, BETH KEATING,
9 ESQUIRE, LEE FORDHAM, ESQUIRE, and FELICIA BANKS, ESQUIRE,
10 FPSC General Counsel's Office, 2540 Shumard Oak Boulevard,
11 Tallahassee, Florida 32399-0850, appearing on behalf of
12 Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN BAEZ: Good morning, everyone. Is it still
3 morning? We are convening a special agenda on a motion for
4 reconsideration. Thank you all for coming out. And we can get
5 right into it.

6 I'm trying to look around and see if we have any
7 housekeeping initially. No? None that we can think of.
8 Great. All right.

9 We have a couple of moving parties now. We want to
10 welcome the Attorney General who is here today, and I think we
11 are going to take the Attorney General's comments up first.

12 Commissioners, the suggestion has been -- I'm trying
13 to go down the issues. We should take up the request for oral
14 argument first and get that out of the way. Is there a motion
15 on --

16 COMMISSIONER JABER: Move staff's recommendation.

17 COMMISSIONER DEASON: Second.

18 CHAIRMAN BAEZ: Moved and seconded. Commissioners,
19 without objection we will show Issue 1 approved.

20 And I believe we have agreed to twenty minutes per
21 side. General Crist, we will let you start off. And then Mr.
22 Beck and Mr. Twomey going to the right of me, I guess. Go
23 ahead.

24 MR. CRIST: Thank you very much, Chairman Baez,
25 members of the Commission. Thank you for giving me the

1 opportunity to explain why I believe the Commission should take
2 another careful look at your decision to grant the phone
3 companies' petitions to increase local rates of the people of
4 Florida by nearly \$350 million.

5 The 2003 Telecommunications Competition Act is
6 premised on the view that competition in the local phone market
7 is a good thing. I believe we can all agree that a truly
8 competitive market is a good thing. It can bring a host of
9 benefits to consumers, including downward price pressures,
10 improved technology and improved service. I assume it is
11 because of these potential benefits that our legislature passed
12 this Act which allowed some increase in local rates, if the
13 result will actually be to increase the level of competition in
14 local service.

15 But contrary to the view taken by the phone companies
16 in this proceeding, the legislation is not an automatic ticket
17 to a rate increase. It rightly places certain burdens on the
18 companies who seek to increase their local rates. It is not
19 enough for the companies to show hypothetical theoretical
20 benefits that might occur. This Act requires the companies to
21 demonstrate as a matter of record that real competition will
22 actually increase and that residential customers will actually
23 benefit, while simultaneously ensuring that basic local
24 telephone service remains available to all consumers at
25 reasonable and affordable prices.

1 This leads me to our first concern on
2 reconsideration, that in issuing the final order the Commission
3 failed to take into account its overriding duty in Florida
4 Statutes, Section 364.01(4)(a), to, quote, protect the public
5 health, safety, and welfare by ensuring that basic local
6 telecommunications services are available to all consumers in
7 the state at reasonable and affordable prices, end quote.

8 Any suggestion that requirements of this section are
9 superseded or replaced by the narrow provisions of the 2003 Act
10 is absurd. Section 364.01 is the first section of the chapter
11 on telecommunications. It is the Commission's mission
12 statement, the bedrock principle upon which this Commission was
13 created. It sets out the legislature's intent in forming the
14 Commission and identifies the Commission's jurisdiction and
15 powers.

16 It is not only possible to simultaneously satisfy
17 this mission while implementing the 2003 Act, it would be an
18 abuse of the Commission's jurisdiction to fail to do so. Yet
19 there is no mention in the final order of the Commission's
20 obligation to ensure reasonable and affordable rates.

21 And you cannot just go back and change the order
22 after the fact to say that this requirement was considered when
23 it plainly was not. On this record it is impossible to
24 conclude that the petitions would make basic local phone
25 service available to all consumers at, quote, reasonable and

1 affordable prices, end quote. The companies and Commission
2 staff seem to assume that this requirement is the same as the
3 requirement of the 2003 Act that the petitions benefit
4 residential consumers. They are not the same.

5 The price of local service referred to in the
6 introductory section refers to the price of local service only,
7 nothing else. It does not contemplate taking into account the
8 price of long distance service or the availability of, quote,
9 bundled services, or any other so-called qualitative factors
10 the Commission or staff may seek to include in an overall net
11 benefit analysis. So you must look at the price of local
12 service by itself to consider whether an increase of \$3 to \$7
13 per month, or \$4 to \$8 when tax is taken into account, is both
14 reasonable and affordable for all customers.

15 Of course the increases do not affect consumers
16 uniformly. This is important. One witness testified for
17 Verizon that the increase will be more than five times greater
18 for seniors over the age of 76 than for people 26 to 35 years
19 old. The witness wasn't certain why, but suspected it was
20 because, quote, younger customers buy more features. This is
21 unreasonable on its face.

22 A Sprint witness testified that when Sprint increased
23 its local rate by \$4 in Ohio, about one percent of the
24 residential customers dropped off the network. In Florida that
25 would mean nearly 80,000 residential customer would no longer

1 have basic local phone service. That kind of drop-off rate
2 would not suggest to me that our local rates were reasonable
3 nor affordable. And even if the drop-off rate was not as high
4 as one percent, the evidence suggests that this would be
5 because consumers consider basic phone service such an
6 essential item that they will adjust other spending to continue
7 to be able to pay for it.

8 So the mere fact that consumers may not drop off
9 their phone service when faced with an increase does not mean
10 that the service is affordable, instead it means that consumers
11 are a captive market who have no other choice but to forego
12 spending on food and medicine in order to continue to pay for
13 basic phone service. This is precisely why the Commission is
14 tasked with keeping rates reasonable and affordable for all
15 consumers. It is because phone service is, as the economists
16 say, price inelastic, that there is a real danger of consumers
17 being exploited, and this Commission is charged with preventing
18 that from happening.

19 At the public hearings the vast majority of speakers
20 opposed the rate increase. In fact, a full third of the more
21 than 200 who spoke said they were on a fixed income and could
22 not afford the rate increases. Similarly, nearly 1,000
23 citizens took the time to send written letters or e-mails to
24 the Commission, and those comments were overwhelmingly
25 negative.

1 Having affirmatively sought public comment, and
2 having carefully selected the hearing locations throughout the
3 state to reflect the state's diversity, the Commission cannot
4 just wave away these comments by saying that they were not
5 representative of the citizens as a state as a whole. In fact,
6 this Commission's own survey a few years ago regarding
7 reasonable and affordable rates found that in order to pay for
8 a \$2 increase in phone rates, 26 percent of consumers said they
9 would need to reduce spending in other areas. And seven
10 percent of customers said they would discontinue service.
11 These statistics do not suggest that a \$3 to \$7, or \$4 to \$8
12 with taxes included, in local rates would be reasonable and
13 affordable for all consumers. Quite the contrary.

14 Lifeline can't be relied upon as a safety net to help
15 consumers afford the increases because the Act only suspends
16 the increases on Lifeline customers for a short time. Nor can
17 the Commission rely on the companies' last-minute efforts to
18 increase the eligibility threshold or hold rates stable for a
19 Lifeline customer for four years, because the companies did not
20 offer these amendments until after the evidentiary portion of
21 the proceeding was over and the parties were not given an
22 opportunity to fully evaluate the implications of those
23 amendments.

24 Many people with fixed incomes or low incomes do not
25 qualify for Lifeline. These people are already bearing the

1 brunt of the cost of many luxury services they don't use such
2 as caller ID and call waiting because the cost of the local
3 loop is not allocated to these luxury services, but instead is
4 borne by people who use basic service only. To increase the
5 price that these people must pay so that people who can afford
6 bundled and luxury services might possibly someday have the
7 option of several service providers to choose from is anything
8 but reasonable or affordable.

9 Our second area of concern regarding the Commission's
10 decision is with respect to BellSouth and Verizon's proposal.
11 They propose to increase the rates of its customers who
12 subscribe to basic service only, and not to increase the rates
13 of customers who subscribe to basic service along with
14 additional vertical or bundled services.

15 The problem with this proposal is that it keeps
16 Verizon and BellSouth's prices for bundled services low, thus
17 encouraging customers to stay with them instead of going to a
18 competitor. This discourages competitors from entering the
19 market for bundled services which, of course, is the very
20 purpose of the legislation. In effect, those two companies are
21 leveraging its market dominance by protecting its customers who
22 purchase bundled services, a result that is directly at odds
23 with the goal of the Act.

24 Even if there was a possibility that when the
25 Commission issued its decision last December that BellSouth and

1 Verizon's proposal would enhance market entry, that possibility
2 was eliminated when the District of Columbia Court of Appeals
3 decided the U.S. Telecom Association vs. FCC last month. The
4 practical effect of that decision, if implemented, will be to
5 make UNE-P lines so prohibitively expensive for competitors so
6 as to eliminate the possibility of UNE-P or local service-based
7 competition.

8 Of course this Commission had no way of knowing in
9 December that the landscape of the local competition was about
10 to radically change. But the fact that it has now, and now
11 this Commission has a duty to reconsider its decision also in
12 light of the U.S. Telecom Association case. And the record in
13 this case demonstrates that competition will not occur if there
14 is a rise in those local rate services.

15 The testimony established that a competitor's
16 decision to enter a new market is driven by profitability and
17 that UNE-P costs are a significant factor affecting
18 profitability. This Commission's own report on competition
19 characterizes the availability and price of UNE-P as key
20 determinants of market entry by competitors. AT&T's witness
21 couldn't have said it any more clear, quoting, certainly if UNE
22 rates increase, the likelihood of market entry decreases
23 proportionately, end quote.

24 BellSouth and Verizon's conduct in the wake of U.S.
25 Telecom Association bears out AT&T's concern. In this

1 proceeding BellSouth sought to increase its local rates by
2 about \$3, and argued that this increase would make the local
3 market more attractive to potential competitors. Yet at the
4 same time they were arguing in the District of Columbia case
5 that it should not have to make its lines available to
6 competitors at regulated rates.

7 Following its victory in D.C., BellSouth has publicly
8 attempted to increase the UNE-P costs charged to its
9 competitors by \$7 per line. Obviously this increase in UNE-P
10 cost will swallow the \$3 increase in local rates, negatively
11 affecting competitors potential profit margin and making the
12 local market less, not more, attractive to competition.

13 While different factions of the telecommunications
14 industry have different views about the correctness of U.S.
15 Telecom's case, there seems to be universal agreement that it
16 has thrown local competition into a state of turmoil. The
17 National Association of Regulatory Utility Commissioners, which
18 each of you are members of, wrote a letter to President Bush
19 stating that the decision, quote, threatens the foundation of
20 local telecommunications competition, end quote. And
21 Commissioners Bradley and Davidson signed on to a separate
22 letter to the U.S. Solicitor General stating that the delay
23 caused by an appeal of the D.C. ruling would, quote, keep the
24 industry in a prolonged state of uncertainty and flux, end
25 quote.

1 So no matter what your view of the rightness or
2 wrongness of the U.S. Telecom Association decision, you must
3 agree that at the very least it represents a substantial change
4 in the state of local competition from when you made your
5 initial decision back in December. When a key determinant of
6 market entry is in a state of uncertainty and flux, this
7 precludes a finding that the petitions will bring about an
8 increase in local competition. For this reason alone, among
9 the others, you should reconsider your decision to grant the
10 petitions.

11 And there is yet another factor at play. It has been
12 reported in the last month or so that local and long distance
13 companies have been meeting secretly to try to reach an
14 agreement, in fact, since last August, to eliminate interstate
15 access fees in exchange for an increase in the subscriber line
16 charge of the local bill. If this occurs, there will be yet
17 another increase in the consumer's local bill by as much as
18 \$3.50. We have been trying to learn more about this agreement
19 as has the national utility consumer organization, but neither
20 of us have been successful as yet.

21 What is relevant for the purposes of this hearing is
22 that the telephone companies' statements and conduct outside
23 this proceeding are not entirely consistent with their
24 representations within the proceeding. And there are several
25 significant factors at play that may significantly affect the

1 local telephone market from the perspective of both consumers
2 and competitors.

3 Another concern with the final order is with the
4 impact on residential customers. The Act requires that the
5 petitions benefit residential consumers. Not only do the
6 petitions not benefit residential consumers, but if implemented
7 they actually will cause irrevocable injury to many Florida
8 citizens.

9 In fact, the only people the increases will hurt are
10 residential consumers. This is the direct opposite effect of
11 what the Act intended. For those of us fortunate enough to
12 have access to the documents designated as confidential in this
13 proceeding the record is crystal clear that increases in local
14 rates will be borne 90 percent by residential customers while
15 the vast majority of decreases in long distance rates will flow
16 to businesses. The Commission seems to have overlooked this
17 fact. Yet it is perfectly clear that right out of the box
18 residential consumers as a class are not benefitted but, in
19 fact, are financially harmed by these petitions.

20 All the record testimony regarding potential
21 nonfinancial benefits to residential consumers that might
22 offset this financial harm was purely theoretical and
23 hypothetical. The testimony of the ILECs' and the CLECs'
24 witnesses on this point can be summed up as a simplistic
25 concept we all learned in ECON 101 that, quote, in the long-run

1 competition brings about many good things.

2 While this view is hard to argue with on a
3 theoretical level, the Act requires the Commission to look
4 beyond the theoretical and look to the actual market to
5 determine whether as a practical matter the rate increases will
6 cause any of the theoretical benefits of competition to be
7 realized. It simply defies common sense to say that even
8 though we know consumers will be financially harmed, they might
9 still end up better off because economic theory indicates in
10 the long-run they will have more services to choose from, all
11 the more expensive than the services they now have.

12 And so I conclude in the same way I began. This
13 issue you must decide is not whether competition as an abstract
14 concept is good, or regulation as a general proposition is bad.
15 Instead you must decide whether the companies have met their
16 burden of proving that the specific petitions will actually
17 bring about real competition with concrete benefits to the
18 residential consumers of Florida while ensuring reasonable and
19 affordable basic local service to all consumers.

20 On behalf of the residential customers of this state
21 who will not benefit but will be harmed by the implementation
22 of these petitions, we urge you to reconsider the decision.
23 And there are three basic grounds that I will reiterate. This
24 law says that whatever decision you make as it relates to rates
25 must be in the public interest, it must be revenue neutral, and

1 it must benefit residential customers. In the Attorney
2 General's office, we believe that it fails on all three.

3 Thank you very much.

4 CHAIRMAN BAEZ: Thank you, Mr. Attorney General. And
5 by my count, Mr. Beck and Mr. Twomey, you have got about ten
6 minutes to split between each other, and I look forward to
7 seeing how you are going to negotiate that.

8 MR. BECK: Mr. Chairman, my name is Charlie Beck with
9 the Office of Public Counsel; very briefly. Harold McLean, the
10 Public Counsel, had planned to be here. His mother-in-law
11 passed away just a couple of days ago, and he is at the funeral
12 with his wife, Pam. But he asked me to appear and express our
13 strong support for both the motions by the Attorney General and
14 the AARP here today.

15 CHAIRMAN BAEZ: Thank you, Mr. Beck. Please send
16 along our sympathies to Mr. McLean and his family.

17 Mr. Twomey.

18 MR. TWOMEY: Good morning, Mr. Chairman,
19 Commissioners. Mike Twomey on behalf of the AARP, Sugarmill
20 Woods Civic Association, and Common Cause of Florida.

21 First of all, I would like to verbally adopt and join
22 in the Attorney General's notice of supplemental authority
23 which, as you all know, was his submission to you, the March
24 2nd D.C. Court Opinion reversing the FCC. As well I would like
25 to adopt the Attorney General's arguments on the impact that

1 decision has had on the ability of consumers in the State of
2 Florida, particularly residential consumers, to achieve any
3 meaningful level of competition without the availability to the
4 competitive companies of UNE-Ps at low cost regulated prices
5 which you all know from your own 2003 Report on Competition to
6 the Florida Legislature is the backbone, the foundation of the
7 ability for there to be any competitive local service in the
8 state.

9 That is how AARP and the others see your report.
10 There can be no local service competition without the
11 availability of low cost UNE-P service, and your report bears
12 that out by showing that to the extent that there was 9 percent
13 residential service competition across the State of Florida in
14 the year 2003, fully 14 percent of that was in BellSouth's
15 service area. BellSouth being the only major LEC that had
16 reasonable low cost UNE-P rates established by this Commission.
17 Verizon's, as you will recall, having been on appeal and not
18 charged.

19 So, as the Attorney General said, it is a
20 significantly changed circumstance that occurred subsequent to
21 your decision in this case. And effectively, as we tried to
22 argue to the legislature, it is a changed circumstance that
23 makes the ability of residential customers receiving the value
24 of competition, which we say, as the Attorney General did, is
25 ephemeral, literally impossible.

1 Now we took -- we brought to you five points for your
2 reconsideration of the order. I'm only going to mention three
3 of them, and I will be brief for the lack of time. Your Staff
4 has addressed a number of them suggesting to you that you
5 should clarify your order in order to take care of the concerns
6 that we raised. So I won't address the first two.

7 The third I want to address briefly is the allocation
8 of the cost for the local loop. On this point the residential
9 consumers that I represent say you misunderstood the facts in
10 reaching the wrong conclusion. That is to say, in short, that
11 you decided to give all the other ancillary services of these
12 three companies which provide to these companies' shareholders
13 large sums of revenues, you decided to give those services a
14 complete and total free ride on the backs of local service.

15 Now, we think that financially and economically that
16 doesn't make any sense. They get very large revenues annually
17 from caller ID, voicemail and the others, and you elected,
18 based upon the testimony you heard and your prior decision, not
19 to charge any of the costs of operation of these local
20 companies on those services. That was a mistake, and that
21 mistake, in turn, led to your decision on the next item which
22 was whether there was the support you found in Item 3 that we
23 complain of, support for the residential rates by other
24 services that you found unfair led you to conclude that that
25 support, that subsidy was a barrier to competition.

1 We think, Commissioners, that was flawed, as well.
2 Not only the foundation that there is support, but even if
3 there was, finding that there was a barrier there to
4 competition is not borne out by the facts. Again, let's go
5 back to one of the exhibits in this case, your 2003 Report on
6 Competition to the Florida Legislature said that, and, again,
7 due almost entirely to the availability of low cost regulated
8 UNE-P rates that competition in the State of Florida had been
9 increasing somewhat dramatically even with the current rates.
10 Even with the current rates. Your report found that despite
11 the difference in support and that kind of thing, BellSouth was
12 up to 14 percent, statewide it was 9 percent.

13 Keep in mind, Commissioners, that your report also
14 said most of that competition was located in core urban areas
15 served by BellSouth. So to the extent that competition did
16 exist, it is not going to benefit, and there are benefits, if
17 there are any, it is not going to benefit people in more rural
18 areas.

19 Lastly, benefit to residential consumers, which was
20 borne out by the Attorney General. To the extent that we had
21 any facts, any numbers that you could put your hands around in
22 a financial economic sense, they said as the Attorney General
23 just told you, that residential customers are going to lose.
24 They are not going to come close to breaking even.

25 We know that 90 to 95 percent of all the local rate

1 increases are going to be paid for by residential customers.
2 That is undisputed. We know, although the actual numbers are
3 held confidential, we know that substantially less than
4 one-half of the reductions in in-state tolls will potentially
5 go back to residential customers, if, in fact, they use the
6 services that will qualify. We know that the large business
7 customers that pay no local rate increases under this
8 legislation, under this decision, will get fully more than
9 half, substantially more than half of the in-state toll
10 reductions.

11 What we are left with -- and we think, Commissioners,
12 that's wrong. Because all you found, as your Staff said in
13 their recommendation to you on this issue, is that, no, you
14 considered other testimony, economic theory as the Attorney
15 General said. This is this wispy, these benefits out there
16 that are going to be obtained in the long run. It doesn't
17 measure up to the hard facts.

18 Let me close by saying a couple of things. What we
19 are left with here, Commissioners, in these decisions is
20 unregulated local service telephone monopolies. These
21 companies have been effectively unregulated -- not effectively,
22 they have been unregulated as to their profits since the year
23 1995. As a result of the decision that you might approve or
24 reaffirm today they are going to be effectively unregulated as
25 to their prices. Not only do we know that this decision will

1 allow them to have the largest rate increases by far in the
2 history of the State of Florida, it will allow them within two
3 to three years to begin charging 20 percent per year
4 effectively without even having to come to you to ask
5 permission, 20 percent per year which they say competition will
6 stop them from doing, will reign them in. It's not going to
7 happen.

8 Quality of service. Where do we stand on quality of
9 service? Is there any evidence that if there is no actual
10 quality of service out there that these people won't reduce the
11 quality of service, won't show up late, won't attempt to cheat
12 their customers. We don't think that's going to happen.

13 I want to caution you, Commissioners, please, if, in
14 fact, as your staff recommends that you reaffirm your decision
15 here and you not modify the rates, you not deny them and not
16 reduce them, I want to urge you that when these companies come
17 back to you within a matter of weeks and ask you to lift the
18 stay on the rates going into effect, that you not even consider
19 granting it for this reason: As we just said, residential
20 customers are going to pay 90 to 95 percent of all of these
21 massive rate increases. The in-state toll reductions are going
22 to go from the LECs to the AT&Ts and the MCIs of the world.
23 They, in turn, are going to give those increases, as we know
24 from the confidential exhibit, to their large business
25 customers that will pay no rate increases.

1 If, in fact, the Attorney General and the Public
2 Counsel, Harold McLean, are successful on their appeal to the
3 Supreme Court and the Court comes back and says you have to
4 refund the monies improvidently paid by the residential
5 customers, if you don't maintain the stay during the pendency
6 of the appeal and you go looking for a refund, BellSouth,
7 Verizon, and Sprint are going to say we don't have the money.
8 We gave the reductions -- it was revenue neutral to us, we
9 passed the reductions along to AT&T, MCI, and others. And when
10 you go looking to those people, those companies, they are going
11 to say we didn't keep it either. In accordance with the
12 statute, we gave it mostly to our big business customers.

13 It will be Southern States all over again,
14 Commissioners, and we don't want to have that for the
15 Commission. We particularly don't want to have it for
16 residential customers. I will close on that and say that AARP
17 and the others think that there was substantial infirmaries in
18 your order, and we would urge you to reconsider them.

19 Thank you.

20 CHAIRMAN BAEZ: Thank you, Mr. Twomey.

21 Commissioners, if it's all right with you, we would
22 like to get all the oral argument out of the way and then we
23 can have the full question and answer.

24 To the telecom, the opposite side. I'm sorry, I'm
25 drawing a blank on the word. If you all haven't discussed how

1 you are going to allocate your time -- I'm assuming you have,
2 but, you know, Ms. White, you can go ahead and fill us in on
3 how you are going to do that.

4 MS. WHITE: Yes, sir. I will go first and then Mr.
5 Chapkis, Mr. Fons, and I believe Mr. Self has some things to
6 say.

7 CHAIRMAN BAEZ: Great. Thank you. You are on the
8 clock.

9 MS. WHITE: Thank you. Nancy White for BellSouth
10 Telecommunications and BellSouth Long Distance.

11 After what we just heard from Mr. Twomey, let me
12 remind everybody we are here on the AG and AARP's motions for
13 reconsideration, not motions to lift a stay. And in looking at
14 those motions, there are two overriding principles that govern
15 your deliberations here today. First is the standard of review
16 for reconsideration. You know that the standard is very high.
17 You have mentioned that a number of times.

18 The Florida Supreme Court in Diamond Cab versus King
19 states that the motion has to identify a point of fact or law
20 that was overlooked or which the Commission failed to consider,
21 that it is inappropriate to reargue matters that have already
22 been considered. That is exactly what has just happened here.
23 For the most part the AG and AARP's motions are arguing matters
24 that you already decided, you already considered, you analyzed,
25 and you deliberated and voted on in your original order. And

1 those matters are substantiated by cites in the order and cites
2 to the record.

3 One of the few things that is not, that is a new
4 argument is the AG's argument that BellSouth's petition is
5 anticompetitive because bundled services are exempt from the
6 proposed increase in basic rates. But let me remind you that
7 bundled services are not basic services as that term is defined
8 in the Florida Statutes.

9 In addition, that piece of BellSouth's proposal was
10 contained in its petition that was filed at the beginning of
11 this case and the Attorney General was very aware of it from
12 the beginning and they will never raised an argument about it.
13 So this is a new issue that can't be raised on reconsideration.

14 The other standard that governs what you do here
15 today is the fact that the Florida Supreme Court relinquished
16 jurisdiction back to the Commission solely for the purpose of
17 ruling on the AG and AARP motions to reconsideration that were
18 filed on January 8th, 2004. Nothing more and nothing less.

19 The bottom line here is that the petition you
20 approved, the petitions you approved were consistent with
21 Florida law. You considered those positions consistent with
22 Florida law. The Office of Public Counsel asked for public
23 hearings. You gave them 14 of them around the state. You
24 attended those hearings; you took recognition of the
25 transcripts upon their request. The AG, and the OPC, and the

1 AARP asked you to look at the flowthrough issue with regard to
2 the long distance companies. You did that. You considered it
3 with the hearings on the ILECs' petitions.

4 You listened to the technical witnesses on all sides.
5 You weighed the evidence and you ruled that granting the
6 petitions would meet the requirements of the statute. At the
7 end of the day the Attorney General and the AARP simply do not
8 like the result. And that, as we all know, is not sufficient
9 to grant a motion for reconsideration.

10 One thing I would like to say about the D.C. Circuit,
11 as Mr. Fons will go into more detail on that, but the fact is
12 that the D.C. Circuit decision did not eliminate UNE-P. In
13 fact, it was the third time in eight years that the courts told
14 the FCC that they got the law wrong. So it is not a big
15 surprise to anybody. It doesn't change the fact that your
16 decision met the requirements of the Florida law, and it
17 doesn't change the fact that the Florida law is to encourage
18 all types of competition, not just one type of competition.
19 Thank you.

20 COMMISSIONER DEASON: Thank you, Ms. White.

21 Mr. Chapkis.

22 MR. CHAPKIS: Good morning, Commissioners. Richard
23 Chapkis for Verizon. Verizon, like BellSouth, supports the
24 Staff's recommendation. The Attorney General and AARP's
25 motions for reconsideration should be denied because neither

1 motion identifies a mistake of fact or law in the Commission's
2 decision.

3 As Ms. White stated, the Commission has previously
4 considered and rejected most of the arguments in these motions,
5 often on more than one occasion; and the remaining arguments
6 don't raise an error of fact or law, and thus are properly
7 rejected.

8 I would like to first delve into the Attorney
9 General's arguments. The first argument that the Attorney
10 General made was that the Commission didn't comply with its
11 statutory mandate under Section 364.01(a) to ensure that basic
12 services are available to customers at reasonable and
13 affordable rates. First I would like to note that this
14 argument has been previously considered and rejected by the
15 Commission and, therefore, isn't the proper subject of a motion
16 for reconsideration.

17 Moreover, the record flatly contradicts this
18 argument. The record shows that pricing reform in other states
19 did not negatively affect universal service. It shows that
20 existing basic local rates in Florida are quite low relative to
21 the same rates in other states, and it shows that low income
22 customers will be among the biggest beneficiaries of pricing
23 reform because they will receive the benefits of reduced access
24 rates, but the Lifeline customers, the low income customers
25 will not be subject to basic rate increases. Accordingly, this

1 argument made by the Attorney General should be rejected
2 because it is both improper and it is wrong.

3 Second, the Attorney General has argued that Verizon
4 and BellSouth's petition is anticompetitive because these two
5 companies' rate rebalancing proposals do not encompass bundled
6 packages. It is evident from the face of the Attorney
7 General's reconsideration motion that the Commission has
8 considered this issue before. In fact, about one-third of the
9 Attorney General's reconsideration motion is an excerpt from a
10 Commission hearing at which the Commission was questioning the
11 Staff about this very issue.

12 What is more, this argument makes no sense. As Ms.
13 White stated, the statute provides that the Commissioners must
14 rebalance basic rates. Given that bundled packages are
15 nonbasic services, they are appropriately excluded from the
16 rebalancing equation here.

17 Finally, this argument is wrong. The record shows
18 that rate rebalancing will be of particular benefit to CLECs
19 offering bundled packages. CLECs offering bundles that include
20 both basic services and long distance services will benefit
21 from the basic rate increase and from the decreased terminating
22 access rates. Therefore, the Commission should reject this
23 argument that Verizon and BellSouth's packages make their
24 petitions anticompetitive because it is illogical, it is
25 improper, and it is erroneous.

1 Third, and finally, the Attorney General argues that
2 elderly and low income customers will be harmed if prices are
3 brought more into line with their costs. Like the previous
4 arguments, this argument has been considered and rejected, and
5 thus it doesn't meet the legal standard for a motion for
6 reconsideration that Ms. White laid out.

7 This argument, like the other arguments, is also
8 substantively incorrect. The record makes clear that rate
9 rebalancing will benefit all customers, including the low
10 income and elderly customers. It also makes clear that low
11 income customers, those that participate in the Lifeline
12 program, will be shielded from the rate increases because
13 Lifeline customers are not subject to those rate increases
14 under the law. And it makes clear that any rate increases
15 experienced by the elderly will be squarely within their zone
16 of affordability. As a result, the Attorney General's claims
17 regarding low income and elderly customers should be rejected.

18 And now I would like to turn briefly to the AARP's
19 arguments. The AARP asserts that there are several points of
20 fact that this Commission overlooked in rendering its decision.
21 For example, the AARP argues that the Commission erred by
22 assigning the entire cost of the basic local loop to local
23 service. The AARP attacks the Commission for relying on its
24 fair and reasonable report in support of its conclusion.

25 Not only is this pure reargument and therefore

1 improper, it is both legally and it is factually incorrect. It
2 is legally incorrect because it is not a mistake of law for the
3 Commission to cite persuasive nonbinding authority.

4 To the contrary, it is common practice for this
5 Commission in its decision to relay on opinions such as the
6 fair and reasonable report that are factually similar and
7 address the same or similar issues as the case at hand. And it
8 is an factually incorrect because the fair and reasonable
9 report is well-reasoned, it is economically sound, and it is
10 consistent with the real world realities of operating an ILEC's
11 network. The cost of the local loop is incurred in its
12 entirety in gaining access to the network and getting basic
13 service.

14 In any event, as Staff's recommendation makes clear
15 on this point, the Commission didn't rely solely on the fair
16 and reasonable report. It relied on the testimony of both ILEC
17 witnesses and IXC witnesses that made clear that the local loop
18 is properly attributed to basic local service.

19 So as you can see, the purported factual errors that
20 are raised by AARP are nothing of the kind. The AARP is merely
21 rearguing points that have been rejected by this Commission and
22 rejected for good reason.

23 And lastly, I would like to turn to the argument that
24 the Commission should reverse its decision in light of the D.C.
25 Circuit's recent USTA II decision. This argument is also

1 wrong, and wrong for several reasons. First, the Florida
2 Supreme Court's March 3rd order prevents this Commission from
3 reserving its decision on reconsideration on these grounds. In
4 that order, the Supreme Court relinquished jurisdiction to this
5 Commission for the limited purpose of deciding the Attorney
6 General's and the AARP's January 8th reconsideration motions.
7 The D.C. Circuit's order was not mentioned in either of those
8 motions, and indeed it was decided after those motions were
9 filed. And, therefore, that decision can't serve -- the D.C.
10 Circuit Opinion can't serve as the basis for granting the
11 reconsideration motions.

12 Second, the mandate has not issued from the D.C.
13 Circuit and further appeals are still possible.

14 Third, the D.C. Circuit's opinion is not going to
15 impair competition as evidenced by industry negotiations and
16 agreements that have been reached to date. It is wrong to
17 conclude that competition from UNE-P providers will evaporate
18 in the wake of the D.C. Circuit's decision. Verizon and
19 BellSouth have made clear the they are going to continue to
20 offer a full complement of service at commercially negotiated
21 rates.

22 And, fourth, no matter what affect the D.C. Circuit
23 opinion -- how it affects UNE prices, moving basic service
24 rates in line with our costs is going to be good for
25 competition, especially from facilities-based providers likes

1 Knology.

2 Therefore, the D.C. Circuit's opinion is no basis for
3 reversing yourself in this case. And I would like to conclude
4 by saying in light of everything that I have said today, there
5 is no good reason to grant either AARP's or the Attorney
6 General's reconsideration motions. Just the opposite, the
7 motions should be denied in their entirety.

8 Thank you.

9 CHAIRMAN BAEZ: Thank you, Mr. Chapkis.

10 Mr. Fons.

11 MR. FONTS: Good morning. My name is John Fons and I
12 am representing Sprint Florida. And I will be very brief. Let
13 me just first echo the comments that Ms. White and Mr. Chapkis
14 have made towards the petitions for reconsideration. I won't
15 go into those. I will address only the issue of changed
16 circumstances.

17 And let me make it very clear that there are no
18 changed circumstances. The changed circumstances are put at
19 the feet of the D.C. Circuit's opinion in the U.S. Telecom
20 case. That particular decision did nothing more than reverse
21 the FCC and remand to the FCC on two issues. The first issue
22 was whether or not the FCC had authority to delegate to the
23 states the issue of impairment, and the U.S. District, or the
24 D.C. District Court said they did not have that authority. But
25 the court didn't close the door on the commissions, the local

1 state commission's abilities to participate in those
2 proceedings. In fact, the court suggested that the FCC could
3 look to the states as a fact gatherer.

4 But more importantly, the U.S. District Court's
5 decision addressed only one element of all the many UNE
6 elements available, and that element was the mass market
7 switching. That is the only element that the court addressed,
8 and the only one that they sent back to the Commission. And
9 they didn't say to the Commission you cannot ever have mass
10 market switching and it is not impaired, but your rules that
11 you wrote are not following the Act. So you are going to have
12 to go back and look once again at how you are going to
13 construct your rules to address the issue of mass market
14 switching.

15 So the matter is back in the FCC hands. Regardless
16 of what happens with the stay, and the stay has been extended
17 once to June 15th, and could be extended again, but more
18 importantly, there are still the potential for appeals. And
19 regardless of where the appeals come out, it is still going to
20 be back at the FCC.

21 So, there is nothing that has been changed. UNE-P is
22 still there. As a matter of fact, if you look at what the
23 financial community is saying, they are clear that UNE-P is not
24 dead. Indeed, that is the headline of the analysis that was
25 made by Morgan Stanley. They said UNE-P is dead, long live

1 UNE-P. And then they go on to conclude that UNE-P is not dead.

2 Let me also indicate that Merrill Lynch in its
3 analysis of the impact on the financial community of this
4 decision is that UNE-P will continue to exist for many
5 different reasons. But more importantly, because UNE-P is only
6 one method of market entry, and in their opinion it is not the
7 best method. Facilities-based is the best, and that is
8 happening as we speak.

9 The telecom industry is changing. The
10 Voice-Over-Internet Protocol is coming into the marketplace and
11 providing options for market entry. So to say that UNE-P is
12 the key ingredient, that is absolutely wrong. As a matter of
13 fact, there was nothing in this Commission's decision that said
14 that UNE-P was the pivotal reason for granting the petitions.

15 So on bottom line, there is no changed circumstances.
16 And the people that lend the money, the people that provide the
17 money to the new entrants are saying that UNE-P is not dead.
18 There has been no changed circumstances.

19 MR. TWOMEY: Mr. Chairman. I apologize for
20 interrupting Mr. Fons, but his second reference to what the
21 investment community is or is not doing vis-a-vis UNE-P and so
22 forth is clearly outside the record and hasn't been provided as
23 supplemental authority, in part because it would not be, but I
24 would object to the continued recitation of what Wall Street is
25 going to do here. Thank you.

1 CHAIRMAN BAEZ: And I don't think Mr. Fons was going
2 to mention Wall Street once more.

3 MR. FONS: I was not going to mention it once more,
4 and moreover I think all of this is outside the record.

5 CHAIRMAN BAEZ: Well, that is for others to decide.

6 MR. FONS: And I have concluded my remarks. Thank
7 you.

8 CHAIRMAN BAEZ: Thank you, Mr. Fons. Mr. Self, I'm
9 sorry.

10 MR. SELF: Thank you, Mr. Chairman. Floyd Self on
11 behalf of AT&T and MCI. First, we are here and we strongly
12 support the Staff recommendation and the couple of
13 modifications that are recommended in the recommendation, and
14 we also concur in the comments that have been made by the other
15 telephone companies.

16 I just have two things that I would like to say very,
17 very briefly. First, and maybe this is the fourth time you
18 have heard it now, but the standard of review in a motion for
19 reconsideration is extremely limited, and it is limited to the
20 record in this case, and to the identification and correction
21 of errors. I think, once again, in the oral comments that we
22 have heard today, as well as in the written pleadings we have
23 not heard any errors identified in any of the pleadings or
24 comments.

25 The only other matter I would like to address

1 pertains to UNEs, and the TRO, and the D.C. Circuit decision.
2 AT&T and MCI may have many disagreements with the other
3 telephone company parties in this case about UNEs, and what the
4 TRO means, and whether the -- the fate of the D.C. Circuit
5 decision should be, but there are two things that we do very
6 strongly agree on.

7 First, and you have already heard it from Mr. Fons
8 and the other attorneys, the D.C. Circuit decision is not the
9 final word on this matter. The D.C. Circuit decision is no
10 more the final word in this matter than in the same sense when
11 you were considering this case in the fall, the TRO was itself
12 the final order on this matter.

13 The future of UNEs and of the disposition of the FCC
14 rules remains to be written, and therefore it certainly is not
15 a limitation on your ability, and certainly it should not be
16 used in the ways that the Attorney General and the AARP have
17 suggested that it should be used as a basis for
18 reconsideration.

19 Second, notwithstanding the TRO, your decision is a
20 necessary and vital step for competition, especially local
21 residential competition. You have not heard any basis for
22 reconsideration and, therefore, the motion should be denied.

23 Thank you.

24 CHAIRMAN BAEZ: Thank you, Mr. Self. Commissioners,
25 we are on questions to the parties. Anybody?

1 Commissioner Jaber.

2 COMMISSIONER JABER: What about questions to staff,
3 Mr. Chairman? I don't want to jump the gun. Do you mind if I
4 go ahead?

5 CHAIRMAN BAEZ: Not at all. It's all open. It's
6 wide open.

7 COMMISSIONER JABER: Okay. Great.

8 CHAIRMAN BAEZ: Please.

9 COMMISSIONER JABER: The whole notion, staff, of the
10 reconsideration standard and what we can and cannot consider I
11 need clarification, and let me get clarification just by asking
12 you a series of questions. The Diamond Cab standard, does it
13 allow us to consider cases and decisions after our decision?
14 That's the first question.

15 And the second one, Ms. Keating or Ms. Banks, when
16 the Supreme Court remanded -- gave us -- relinquished
17 jurisdiction for the purpose of allowing us to be here today in
18 the reconsideration mode, how specific was that relinquishment,
19 and can we entertain under that relinquishment the arguments
20 made by the Attorney General and the AARP today?

21 That's hopefully broad enough, Ms. Keating, for you
22 to give us an education on what we can and cannot consider
23 today.

24 MS. KEATING: To the extent that any new case law
25 impacts the state of the law upon which the Commission had

1 rendered its decisions or otherwise impacts the legal
2 landscape, then I believe the Commission is not only allowed to
3 consider such case law, then it would have to if it changed the
4 legal landscape. Of course staff is recommending that the USTA
5 case doesn't change the legal landscape, but to that extent, I
6 think the Commission can consider cases that do that.

7 As far as the state Supreme Court's remand and the
8 specificity of that order, I, of course, defer to General
9 Counsel, but I believe that if the Commission believed that the
10 USTA decision impacted its consideration of anything that was
11 brought up in the motions for reconsideration, then I do think
12 that the Commission could consider the USTA decision. But
13 General Counsel may have a different opinion.

14 COMMISSIONER JABER: Mr. Melson, I guess what I
15 haven't heard addressed is, has the Supreme Court limited what
16 we can consider through the relinquishment of jurisdiction?
17 That's the only thing I haven't heard being addressed.

18 MR. MELSON: Okay. What the order says, and it's
19 very brief, is, relinquishes jurisdiction to the PSC for the
20 specific purpose of ruling on the January 8th, 2004 motions for
21 reconsideration. So to the extent there was a new grounds for
22 reconsideration raised today, I think that would be outside of
23 the pale. I agree with Ms. Keating though, to the extent there
24 were a decision that was relevant to one of the points on
25 reconsideration that changed the legal landscape, I believe

1 that would be within your purview to consider.

2 COMMISSIONER JABER: Thank you, Mr. Chairman.

3 CHAIRMAN BAEZ: Commissioners.

4 COMMISSIONER DEASON: I need some clarification from
5 Mr. Melson on that answer.

6 CHAIRMAN BAEZ: Me too, but you go ahead and ask your
7 questions.

8 COMMISSIONER DEASON: The language from the Supreme
9 Court is very precise, and it says it relinquishes jurisdiction
10 for the Commission to consider the reconsiderations that were
11 filed as of a certain date. Was it January the 8th?

12 MR. MELSON: January 8th, yes. Specific purpose of
13 ruling on the January 8th motions for reconsideration.

14 COMMISSIONER DEASON: Okay. And when was the USTA
15 decision issued by the D.C. Circuit?

16 MR. MELSON: I'm not sure of the date, but it was
17 after January 8th.

18 COMMISSIONER DEASON: Okay. So it could not have
19 been incorporated into the reconsiderations that were filed on
20 January the 8th.

21 MR. MELSON: That's correct.

22 COMMISSIONER DEASON: But you're also indicating, and
23 according to Ms. Keating, that normally the Commission has the
24 ability to consider during reconsideration if there has been a
25 change in the law from the time the original decision was made

1 and the time that the Commission actually entertains the
2 reconsideration. So are you saying the Supreme Court
3 relinquishment overrides the general rule and that we are
4 prohibited from considering the USTA decision?

5 MR. MELSON: No. I believe you could consider the
6 USTA decision if it bore on one of the points on
7 reconsideration. And the impact of your decision on
8 encouraging competition on the future competitive landscape in
9 Florida is really part of at least the Attorney General's
10 motion for reconsideration. To the extent the TRO affects
11 that, I believe you could consider the District Court's
12 decision.

13 I'll tell you, it's not perfectly clear and the Court
14 might disagree with you, but I think in relinquishing
15 jurisdiction to consider those motions for reconsideration
16 you've got the flexibility to consider a decision such as that
17 if it impacts on one of the specific issues that was before
18 you.

19 COMMISSIONER DEASON: So if that decision impacts one
20 of the issues that were originally raised on reconsideration.

21 MR. MELSON: Yes, sir.

22 COMMISSIONER DEASON: Okay. Thank you.

23 CHAIRMAN BAEZ: Commissioner Bradley.

24 Commissioner Davidson, do you have any questions?

25 COMMISSIONER DAVIDSON: No questions, Chairman.

1 CHAIRMAN BAEZ: Okay. And I think I got -- I just
2 want to get some further clarification on the words of the
3 order, Mr. Melson. So you're not suggesting necessarily that
4 even the specific language in the relinquishment order has the
5 effect of limiting the universe to which we -- that we can
6 consider to a fixed date -- to anything that happened before --
7 on or before a fixed date.

8 MR. MELSON: No, Commissioner. And the analogy I
9 would make would be, if the Legislature had adopted legislation
10 this session, I think you would have to consider whether that
11 legislation had any impact on the issues that were before you
12 on reconsideration. The Court didn't specifically contemplate
13 that, but had it happened, I think that would be something
14 appropriate for you to consider.

15 You need to remember though that the staff's
16 recommendation here is that even considering the TRO there is
17 no impact that warrants reconsideration.

18 CHAIRMAN BAEZ: And another question, although I will
19 agree that the question of the stay is improperly before us,
20 but I'd like to get some clarification on that anyhow for
21 further -- for future reference. Is the stay generated merely
22 by the appeal? Is the stay -- what's the posture and the
23 function of the stay even beyond today?

24 MR. MELSON: The stay is automatic because of the
25 appeal by the Attorney General and Public Counsel, both which

1 are public agencies. Under the appellate rules, a party has
2 the right to come to us and ask that the stay be vacated, and
3 if and when that were to happen, we'd have to bring that to you
4 for consideration. You need to be aware the parties asked the
5 Supreme Court to specifically rule that that stay should remain
6 in effect. And the Court said, we don't have to address that
7 now, first, because nobody has even made a request to the
8 Commission, so it's simply not ripe.

9 CHAIRMAN BAEZ: Very well. Thank you.

10 Commissioners, if there are no further questions, I don't know,
11 we can enter into discussions, if anybody has got anything to
12 say or anything to add or we can start entertaining motions.

13 COMMISSIONER JABER: It's on a different subject.

14 Staff, there was a reference in your recommendation to clarify
15 that our decision did take into account 364 -- I want to say
16 .01(4)(a), Ms. Keating -- yes, .01(4)(a), Ms. Banks.

17 MS. BANKS: That's correct, Commissioner.

18 COMMISSIONER JABER: And I cannot -- forgive me, I
19 cannot remember which one of the consumer advocates brought
20 this up, but there was an allegation that it is not enough to
21 go back now and make reference to that statute. And I need to
22 have you all address that because, quite frankly, as one
23 decision-maker, I always had that statute in mind. I mean, I
24 think -- someone is going to have to go back and double-check
25 me, but I could have sworn, just as one Commissioner, I

1 discussed the public health, safety, and welfare and the
2 long-term benefits that I took into account in reaching the
3 decision. So could you please for the record address whether
4 we can now clarify that statutory reference.

5 MS. BANKS: Commissioner Jaber, if I understand your
6 question, it is whether or not the Commission can actually make
7 a clarification to its order, and it's staff's interpretation
8 that you can on your own motion make a clarification to your
9 order, which is what staff is recommending.

10 COMMISSIONER JABER: Yes, that is my question. And
11 the concern, if I could read into the concern, is we can't go
12 back and bolster our order or put something in the order that
13 wasn't the basis upon which we reached the decision. And what
14 I'm saying is it was part of the basis in which I reached the
15 decision, so.

16 MS. BANKS: And that's staff's interpretation,
17 Commissioner, that it was embodied in your decision. Just
18 for -- on a going-forward basis, we thought it appropriate to
19 make that clarification, but it is staff's interpretation that
20 your decision was premised on Section 364.01(4)(a).

21 COMMISSIONER DAVIDSON: And for what it's worth,
22 Commissioner Jaber, I distinctly recall a fairly lengthy
23 discussion on the bench on this very issue.

24 COMMISSIONER JABER: Thank you, Commissioner. It's
25 good to have a sanity check. I could have sworn we did that.

1 And, Mr. Chairman, I don't have any other questions.

2 CHAIRMAN BAEZ: Commissioners, any further comments
3 or questions?

4 COMMISSIONER DAVIDSON: None here, Chairman.

5 COMMISSIONER DEASON: Just briefly --

6 CHAIRMAN BAEZ: Go ahead, Commissioner Deason.

7 COMMISSIONER DEASON: -- on the question of the
8 additional authority. I just would like to state that I think
9 that -- I'm in agreement that that is something that we can
10 consider, but I fail to see that it changes the landscape to
11 the degree that it would be a basis for reconsideration as has
12 been brought out here. The state of UNE-P prices has been --
13 well, it's been in a state of flux, I guess, since we've even
14 had UNE-P and that existed at the time we were considering this
15 case and it exists now. And it's also the case there are other
16 means of competition other than UNE-P, and in fact, I think
17 there's testimony in the record that in the long term,
18 competition -- sustainable competition has got to be based on
19 facilities-based competition. And I think there's evidence in
20 the record that indicates -- and, staff, correct me if I'm
21 wrong, there's evidence in the record that indicates that
22 aligning prices with cost is a sound economic basis upon which
23 to promote facilities-based competition; is that correct?

24 MS. KEATING: That is correct, Commissioner.

25 CHAIRMAN BAEZ: Commissioner Davidson, I think I

1 heard you say you may have something --

2 COMMISSIONER DAVIDSON: No, I said I have no
3 additional -- I have no other comments.

4 CHAIRMAN BAEZ: Okay. I'm sorry.

5 COMMISSIONER DAVIDSON: Thank you.

6 CHAIRMAN BAEZ: Commissioners, if there are no
7 further comments, I just want to say something just to give you
8 an idea of how I've tried to look at all of this. It is true
9 that a -- the standard for reconsideration is very difficult to
10 pin down. It is also true that while there may be valid
11 arguments as to what this Commission's interpretation of the
12 statute and how they sought to implement it in the public
13 interest, there may be disagreement as to that, and I think
14 that's valid. I think reasonable people can disagree as to
15 that.

16 I don't believe that reinterpreting -- I think that
17 when you match it up to the standard on reconsideration it's a
18 little hard to reconcile certainly at this early stage. There
19 has been a lot of discussion on the part of the consumer
20 advocates, and as they are doing their job rightfully so, that
21 there is no concrete evidence, there was no concrete evidence
22 provided. I don't necessarily agree -- we can disagree as to
23 the concreteness and so forth, but I felt very comfortable that
24 there was evidence, albeit from other areas and in other
25 examples, certainly by -- what's the word I'm looking for --

1 anyway, there were other examples on the record that gave me
2 comfort in my decision.

3 The bottom line is that, in my opinion, an argument
4 that there is no concrete evidence on an issue such as this
5 when you're actually changing policy, when you're actually --
6 and I use that word cautiously because I don't believe we're
7 changing policy. I think this is a continuation of a policy
8 that started nine years ago. This decision, this conversation,
9 this debate, even this disagreement has been brewing for many,
10 many, many years. And it is only now that it was before the
11 Commission ultimately, and we tried to, at least I did, tried
12 to reconcile that with the original intent of a '95 statute,
13 which I believe was in the public interest as well. So, to me,
14 this is part of one long continuum.

15 But getting back to the disagreement as to what kind
16 of evidence. In an issue like this, it becomes very difficult
17 to point, yes, here are the hard numbers. I think the only
18 thing that we can really and truly grasp are some truisms. And
19 although we can make light of it as to their thinness and to
20 their flimsiness, we've got -- I believe that our decision,
21 certainly my vote as part of that decision, was based on what
22 is, to me, sound economic principle. This case on UNE-P, the
23 future of UNE-P and how it pans out, in my mind, doesn't
24 necessarily, although it does have an impact obviously no one
25 can deny, I don't think that you can easily bundle it all

1 together. I think that this decision can stand on its own as a
2 decision on the part of this Commission and, certainly as one
3 member of it, to try and do our duty towards competition, a
4 nine-year duty, a fulfillment of a nine-year duty towards
5 competition. This is a step along the way. And I only shutter
6 to think that if, in fact, it is -- the situation with UNE-P is
7 as gloomy as some people purport it to be, where we would be
8 without being honest to the proper alignment of costs and
9 prices. That, to me, is an independent issue; that, to me, can
10 stand or fall on its own without reference to what the future
11 of one method of competitive entry or not is going to be.

12 If the public policy that was being touted nine years
13 ago was to get -- was that truly competitive markets have
14 prices that are based on true costs, then there is no one,
15 although we can disagree as to the degree that they are
16 disaligned, there is no one that has at least disagreed with
17 the fact that they are disaligned. What degree? We can argue
18 about that and that's fine. But that they are disaligned, I
19 have no doubt in my mind that that's a fact. And if we're
20 going to be true to something -- a step that we as a state took
21 nine years ago, this was a step that we had to take. I'm only
22 sorry that the debate wasn't had sooner before all of these
23 other clouds started burgeoning because maybe we could have
24 made some real progress to have this go a little smoother.

25 It's not a clean process, gentlemen. I don't think

1 it's -- personally, I don't think, and, Commissioners, you may
2 disagree with me, I don't think we are the forum to be -- even
3 though reconsideration obviously is part of our process, I
4 don't think this is where we have to -- we have a fundamental
5 disagreement. I think the consumer advocates certainly, the
6 Attorney General and others have a fundamental disagreement on
7 what the interpretation of that statute is. Well, in my mind,
8 the Commission has spoken, or at least I as one Commissioner, I
9 said what my interpretation was. And I think there's a higher
10 court -- fortunately for all of us there is a higher court
11 where this ultimately gets decided.

12 I've gone on way, way longer than I intended,
13 Commissioners, but I think this was a time to kind of step out
14 and say what's on my mind.

15 COMMISSIONER JABER: I can give you a motion.

16 CHAIRMAN BAEZ: Commissioner.

17 COMMISSIONER JABER: And in giving that motion,
18 Mr. Chairman, really, for the benefit of the parties that
19 appear in front of us today and, frankly, for my colleagues, I
20 want you to know the manner in which I came at this
21 reconsideration, just to get it all out on the table, frankly.

22 I do share the concerns with regard to the effect of
23 the Triennial Review Order and the U.S. Circuit Court appeal.
24 I would be remiss in not saying publicly that I have concerns
25 about the uncertainty that is created through no one's fault by

1 an appeal of the Triennial Review Order and by the Court's
2 decision and what might ultimately come out of the Court
3 decision. Not passing judgment on one way or the other whether
4 that particular platform should continue or not because we have
5 a pending case, and I don't want to prejudge the outcome, but
6 my concern is this, and no one touched on it today, whatever
7 the appellate court does will have the effect of changing
8 behavior by all carriers, and that's not necessarily a bad
9 thing. People will adjust their business strategies regardless
10 of the outcome of that decision. That's the problem I have
11 with considering the TRO and the appeal today. I can't
12 speculate how that behavior will change.

13 I asked Mr. Melson and our legal staff whether we had
14 the flexibility or if the relinquishment of jurisdiction tied
15 our hands because, frankly, going forward I would hope that
16 relinquishment of the Court's jurisdiction for the purpose of
17 our entertaining reconsideration doesn't tie our hands in the
18 future to consider a case that comes out in the meantime, you
19 know, before we're able to address reconsideration. So I was
20 pleased with your answer in that regard and, frankly, am
21 comforted by the fact that the Triennial Review appeal was
22 pending when we made our decision on this case. So, by the
23 same token, nothing has really changed. We knew there might be
24 a decision by the U.S. Circuit Court of Appeals.

25 So that's the manner in which I approached

1 reconsideration today, Mr. Chairman, and for all of the things
2 you and Commissioner Deason articulated, I can --

3 COMMISSIONER BRADLEY: Before you make your motion --

4 COMMISSIONER JABER: Go ahead, Commissioner.

5 CHAIRMAN BAEZ: Go ahead, Commissioner Bradley.

6 COMMISSIONER BRADLEY: -- I'd like to ask a question.
7 And I know that no one has a -- some people may have a crystal
8 ball, but I don't think that there's anyone in this Commission
9 chamber who does have one, but I'm going to ask this question
10 anyhow. And this is a legal crystal ball question. What might
11 happen over at the Supreme Court if reconsideration is denied
12 and this is remanded back to them? Can anyone --

13 MR. MELSON: Assuming you deny reconsideration today
14 and -- or the relinquishment of jurisdiction is over, we issue
15 an order reflecting today's decision; that then goes back up to
16 the Court, the appeals resume. At that point the Public
17 Counsel and the Attorney General will have the opportunity to
18 file their briefs laying out what they believe any legal or
19 factual errors we may have made. Presumably AARP may choose to
20 file an appeal. At some point I expect the Court will grant
21 oral argument, and we'll all be up there with 20 minutes to a
22 side, but probably a real 20 minutes to a side. They'll cut us
23 off after the end of 20.

24 CHAIRMAN BAEZ: What's your point, Mr. Melson?

25 What's your point?

1 COMMISSIONER JABER: So who's our general counsel,
2 Mr. Chairman?

3 CHAIRMAN BAEZ: I thought it was Mr. Melson.

4 COMMISSIONER JABER: I thought it was Mr. Melson.

5 MR. MELSON: We'll make our arguments and the Court
6 will rule, and they will either affirm the order, which then
7 would clear the decks to move forward with implementation, or
8 presumably they could find an error in some aspect of it and
9 remand it back to us for further proceedings. We will do our
10 best to defend whatever order, an order on reconsideration you
11 enter.

12 COMMISSIONER BRADLEY: So everybody gets another bite
13 at the apple if it goes to the Supreme Court, and the Supreme
14 Court will have the sole function of determining -- or
15 interpreting the law and the proceeding that has occurred here
16 at the Commission.

17 MR. MELSON: The Court will review your order both
18 for law and for facts. There are different standards of
19 review, and we may disagree with some of the appellants about
20 what that standard of review is. So I really don't want to try
21 to articulate today what that -- what I believe it will be.
22 But I think our order goes up typically with a great deal of
23 deference, and the Court will in most cases defer to our
24 interpretations.

25 COMMISSIONER BRADLEY: Thank you.

1 COMMISSIONER JABER: Commissioner Bradley brings up a
2 good point. We fulfilled a responsibility to implement the
3 legislation, and the appropriate review and stop now rests with
4 the Court. And in that regard, Mr. Chairman, I can make a
5 motion to approve staff's recommendation.

6 CHAIRMAN BAEZ: There's a motion.

7 COMMISSIONER DAVIDSON: Second.

8 CHAIRMAN BAEZ: And a second. All those in favor say
9 "aye."

10 (Simultaneous affirmative vote.)

11 CHAIRMAN BAEZ: Show the motion -- I'm sorry. Show
12 the motion approved.

13 Ladies and gentlemen, I do want to thank you all for
14 coming out. I think that this is -- again, it's a very -- it's
15 not the cleanest process, but I think that at every turn where
16 everyone gets to nail down and drive their points home it's
17 always a good thing, and I guess Mr. Melson at this point looks
18 forward to seeing you all at the Supreme Court, 20 minutes a
19 side, a real 20 minutes, I will add. But, really, thank you
20 all. Your comments are greatly appreciated. The special
21 agenda is adjourned.

22 We do have one remaining issue on agenda, and I
23 think -- I'm trying to find what the time -- I'm sorry.

24 COMMISSIONER DEASON: Take a short break.

25 CHAIRMAN BAEZ: Yeah, Commissioners, if you don't

1 mind, I don't think that the issue is going to take much longer
2 to resolve. Let's just take a short break and not break for
3 lunch and we can probably get this finished. So we'll call it
4 five minutes so the people can line up. Is that all right,
5 Commissioner?

6 COMMISSIONER DEASON: Yes.

7 CHAIRMAN BAEZ: All right. Five minutes. Thank you.

8 A real five minutes, yes.

9 (Special agenda concluded at 12:20 p.m.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

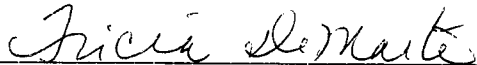
4 WE, JANE FAUROT, RPR, and TRICIA DeMARTE, RPR,
5 Official Commission Reporters, do hereby certify that the
6 foregoing proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that we stenographically
9 reported the said proceedings; that the same has been
10 transcribed under our direct supervision; and that this
11 transcript constitutes a true transcription of our notes of
12 said proceedings.

13 WE FURTHER CERTIFY that we are not a relative,
14 employee, attorney or counsel of any of the parties, nor are we
15 a relative or employee of any of the parties' attorneys or
16 counsel connected with the action, nor are we financially
17 interested in the action.

18 DATED THIS 4th DAY OF MAY, 2004.

19 
20 _____
21 JANE FAUROT, RPR
22 FPSC Official Commission Reporter
23 (850) 413-6732

24 
25 _____
TRICIA DeMARTE, RPR
FPSC Official Commission Reporter
(850) 413-6736