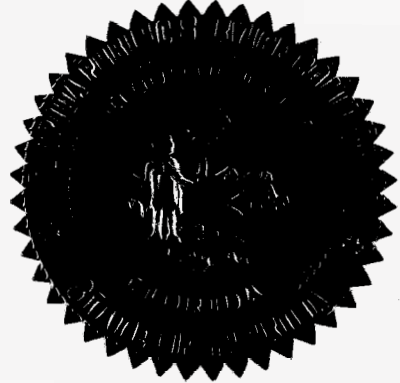


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040156-TP

In the Matter of:

PETITION FOR ARBITRATION OF
AMENDMENT TO INTERCONNECTION
AGREEMENTS WITH CERTAIN COMPETITIVE
LOCAL EXCHANGE CARRIERS AND
COMMERCIAL MOBILE RADIO SERVICE
PROVIDERS IN FLORIDA BY VERIZON
FLORIDA INC.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 6

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

DATE: Tuesday, June 29, 2004

TIME: Commenced at 9:37 a.m.
Concluded at 10:25 a.m.

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

REPORTED BY: LINDA BOLES, RPR
Official FPSC Reporter
(850) 413-6734

1 PARTICIPATING:

2 MICHAEL SLOAN, ESQUIRE, representing the Competitive
3 Carrier Coalition, participating telephonically.

4 RICHARD CHAPKIS, ESQUIRE, representing Verizon
5 Florida Inc.

6 SUSAN MASTERTON, ESQUIRE, representing Sprint.

7 MATTHEW FEIL, ESQUIRE, representing Florida Digital
8 Network.

9 DULANEY O'ROARK, III, ESQUIRE, representing MCI
10 WorldCom Communications, Inc.

LEE FORDHAM, ESQUIRE, representing Commission Staff.

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P R O C E E D I N G S

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2 MR. FORDHAM: Commissioners, Item 6 is Docket Number
3 040156, petition for arbitration of amendment to
4 interconnection agreements with certain competitive local
5 exchange carriers and commercial mobile radio service providers
6 in Florida by Verizon Incorporated. The attorneys for the
7 petitioner and several of the movants are present to address
8 the Commission, and Attorney Mike Sloan representing the
9 Competitive Carrier Coalition will be appearing by telephone.

10 CHAIRMAN BAEZ: Mr. Sloan, are you there?

11 MR. SLOAN: I am here. This is Michael Sloan.

12 CHAIRMAN BAEZ: Mr. Sloan, can you hear us okay?

13 MR. SLOAN: I can hear you fine. And thank you very
14 much for letting me participate by phone.

15 CHAIRMAN BAEZ: Quick question. Do you have comments
16 to make?

17 MR. SLOAN: Very briefly. Very briefly. We -- the
18 competitive carriers that I represent obviously support staff's
19 recommendation to dismiss this arbitration filing. We argued
20 in our moving papers that the filing was procedurally
21 defective, and it appears that the staff recommendation agrees
22 with those grounds. I read the staff recommendation as
23 preserving most, if not all, of the other arguments that were
24 raised in those papers for a later day if Verizon does refile.
25 And although I believe that there are merits to those

1 arguments, as long as, as long as they're preserved for a later
2 late, I won't belabor them this morning.

3 I would just say this, Your Honors, Commissioners,
4 that we, we now have -- we've received an original filing, an
5 amendment from Verizon, and I understand that another amendment
6 is on its way. And as you also know, the FCC is going to be
7 issuing interim rules shortly. I think that whatever and
8 however this docket proceeds forward, formal litigation should
9 wait until we have interim rules from the FCC, and you are
10 empowered to stay all proceedings until that occurs. That's
11 all I have to say. Thank you.

12 CHAIRMAN BAEZ: Thank you, Mr. Sloan. Mr. Chapkis,
13 I'm sorry. I let Mr. Sloan go ahead. But if you have
14 comments.

15 MR. CHAPKIS: Excuse me. Richard Chapkis for
16 Verizon. I'll go to Issue Number 1 first.

17 Staff's recommendation says that Verizon's petition
18 should be dismissed without prejudice because Verizon didn't
19 comply with the procedural requirements of Section 252(b)(2),
20 and staff's recommendation says further that Verizon should be
21 granted leave to refile a corrected petition within 20 days of
22 the Commission's vote on this issue. And as we've made clear
23 in response to the CLECs' motion to dismiss, our existing
24 petition is lawful and is proper. The formal procedural
25 requirements of Section 252(b)(2) apply only to a petition to

1 arbitrate a new agreement. They don't apply to a petition to
2 amend an existing agreement. And Verizon did, in any event,
3 comply with Section 252(b)(2) to the extent possible. But
4 since most of the CLECs didn't reply to our negotiations
5 request, it was impossible to know what their petitions, pardon
6 me, their positions were before we filed our petition.

7 Now that the CLECs have replied to our petition,
8 we're better able to identify the issues in dispute. And,
9 importantly, and I want to stress this, this means that we're
10 willing to refile the petition as staff has recommended,
11 including the information that staff describes. So we are
12 willing to file in the manner that staff describes.

13 In fact, in response to the staff's recommendation,
14 we're in the process of reevaluating hundreds of contracts in
15 Florida, paying particular attention to change of law
16 provisions and alternative dispute clauses to ensure that no
17 CLEC is unnecessarily included in the arbitration. That effort
18 should allow us to reduce the number of parties to the
19 arbitration because we now intend to arbitrate with only those
20 parties that didn't agree to contracts that are self-effecting.

21 We should also be able to reduce the scope of the
22 arbitration. Now that the mandate is issued, we can simplify
23 the amendment because it was drafted to account for
24 contingencies that have now transpired. And we should be able
25 to account for the FCC's interim rules so long as they're

1 issued in the near term, as the FCC has stated that they will
2 be.

3 The only real problem with staff's recommendation for
4 us is that it doesn't afford us enough time to complete these
5 tasks, that is, to review the interconnection agreements and to
6 revise the amendment itself before we refile our petition.
7 We'd like to ask for 60 days rather than 20 days to file a new
8 petition, and we ask for this for two simple reasons. First,
9 we have to review hundreds of interconnection agreements in
10 Florida, and it's going to take more than 20 days to carefully
11 review these contracts. Second, it's going to take some time
12 to revise the amendment. And, in addition, extending the
13 filing window will make it much more likely that the amendment
14 will be able to take account of the FCC's interim rules which
15 the FCC is committed to releasing in just a few weeks.

16 So to sum up, we agree with staff, albeit for
17 different reasons, that we should dismiss our existing petition
18 and refile a new petition at a future date. However, for the
19 reasons that I've just articulated, we ask that we be given
20 60 days from the date of the order to complete this task.

21 With respect to Issue 2, and I don't know if you want
22 me to proceed to that now, I read that slightly differently
23 than counsel for the CCC. As I read Issue Number 2, staff was
24 saying, and I'll just quote it, "Staff recommends that the
25 Commission consider and vote on this issue so as to have these

1 matters settled for purposes of future pleadings in this
2 docket." And so it was my understanding that staff was asking
3 the Commission to consider and rule on these issues. To the
4 extent that the Commission has a similar interpretation, I can
5 go through Verizon's petition on each of them or I can, I can
6 hold off.

7 CHAIRMAN BAEZ: Commissioners, what's your pleasure?
8 Do you want to reserve discussion of Issue 2? It's possible
9 that we may diverge from the recommendation. I don't know what
10 your feelings on that are, but we can save ourselves some time.
11 Commissioner Davidson.

12 COMMISSIONER DAVIDSON: My thought is reserve
13 discussion on that issue because if we -- depending on how we
14 resolve Issue 1, we may not get to Issue 2.

15 CHAIRMAN BAEZ: Yeah. Exactly. There's a mootness
16 point. That's the only reason I pointed it out.

17 So, Mr. Chapkis, if you can just reserve Issue
18 2 discussion for when the time comes, we are going to go issue
19 by issue.

20 MR. CHAPKIS: Thank you, Chairman Baez.

21 CHAIRMAN BAEZ: Thank you, Mr. Chapkis.

22 MR. CHAPKIS: And that concludes my presentation.

23 CHAIRMAN BAEZ: Very well. Ms. Masterton.

24 MS. MASTERTON: Good morning, Commissioners. Sprint
25 respectfully disagrees with Verizon regarding its compliance

1 with the Act. We believe that Verizon failed to comply with
2 the Act both in refusing to engage in meaningful negotiations
3 with Sprint on the amendment initially so that the parties
4 could identify and narrow the issues in dispute, and also in
5 filing its arbitration petition insufficiently identifying and
6 defining the issues that were in dispute.

7 That said, Sprint does support staff's recommendation
8 on Issue 1 that the petition be dismissed, but that Verizon be
9 allowed to refile with the information that the staff has
10 suggested. We believe that that would -- that's reasonable and
11 that it would result in a fair and more effective arbitration
12 petition because we'd all know what issues we were dealing
13 with. And it's my understanding that a similar approach to
14 Verizon's petition has been adopted in other states. I'm not
15 sure about Verizon's suggestion to wait for 60 days. That
16 seems, given the amount of time that's already passed and the
17 time that's left in implementing the mandate, I think that's a
18 little long. Sprint would object to that, that delay. But we
19 do support the staff's recommendation. We'd ask that the
20 Commission grant Sprint's motion to dismiss and approve the
21 staff recommendation on Issue 1.

22 COMMISSIONER JABER: Ms. Masterton, if 20 days is too
23 short and 60 days is too long, what -- do you have, do you have
24 a suggestion?

25 MS. MASTERTON: I mean, I would say maybe 30 to 45

1 days would be reasonable.

2 COMMISSIONER DEASON: I have a question for Ms.
3 Masterton.

4 CHAIRMAN BAEZ: Go ahead, Commissioner.

5 COMMISSIONER DEASON: Sprint's position seems to
6 indicate that there's a concern for a lack of the, a lack of
7 negotiation that apparently failed to take place prior to
8 Verizon's petition being filed, and now you're saying 20 days
9 is not enough. I mean, 20 days is about -- 60 days is too
10 long. And my question is are you, are you -- do you wish time
11 to negotiate or is that no longer part of your concern?

12 MS. MASTERTON: Well, it's my understanding that
13 the -- and I'm not the one who's been doing this. People in
14 our corporate have been negotiating since the petition was
15 filed. So I'm not sure that that -- and that's one of the
16 reasons why we support the staff recommendation. I think the
17 negotiations have occurred during that period of time,
18 subsequent to March 16th when we filed our original motion to
19 dismiss. And so I don't know that, I don't know that an
20 additional 60 days to negotiate is going to result in any more
21 agreement than, than the parties have already agreed to.

22 COMMISSIONER DEASON: Well, I guess my concern was
23 that part of your basis for dismissing was that there was
24 inadequate negotiations that took place, and now you seem to
25 want this thing speeded up as quickly as possible. And so are

1 there not going to be any more negotiations? Do you agree that
2 negotiations are not needed at this point or should there be
3 time for further negotiations?

4 MS. MASTERTON: I'm not -- no. I mean, I think
5 negotiations are always beneficial. I'm just saying that since
6 we originally made that argument, we have been negotiating.
7 That was back in March. You know, this is June. That's three
8 months. I think negotiations will continue even after the new
9 petition is filed because in arbitration generally the parties,
10 you know, continue to negotiate and try to resolve issues even
11 after the arbitration process is started. But --

12 COMMISSIONER DEASON: Well, then once the arbitration
13 is filed, are we required to comply with the strict time limits
14 under the federal statute or what -- you say there's time for
15 negotiation. Usually that seems to be a very time-constrained
16 process and very specifically prescribed by law as to the time
17 frame.

18 MS. MASTERTON: I guess I'm not understanding because
19 the parties have been negotiating. I'm not sure -- at some
20 point there are issues that are going to be in dispute, and
21 that's, I think, our major problem with both the lack of
22 negotiation and with the way the petition was filed was that
23 there was no way to really focus on what issues were in
24 dispute. And are you saying -- I mean, if you're saying we
25 need more time to continue to identify it, I'm not sure that

1 that's the case. I'm not going to say -- I mean, I really
2 didn't have an opportunity to, to discuss that proposal with
3 the negotiators, so I don't want to argue too strongly because
4 I can't say for certain. It just seems that if you wait
5 50 more days to even begin the process, it's going to delay it
6 unnecessarily long. But I'm not going to --

7 COMMISSIONER JABER: May I jump in, Commissioner
8 Deason, and ask your question a different way because I --

9 CHAIRMAN BAEZ: Go ahead, Commissioner.

10 COMMISSIONER JABER: Ms. Masterton, I think -- let me
11 rephrase the question. There are time lines in the
12 Telecommunications Act that govern arbitrations and the time
13 period that state commissions have to resolve arbitration
14 petitions. Do you agree with that?

15 MS. MASTERTON: Yes.

16 COMMISSIONER JABER: Do you believe that if we allow
17 this supplemental petition, that we are still bound by those
18 time lines when this comes back to us?

19 MS. MASTERTON: I mean, I really can't answer that
20 because I'm not really sure where the time frames stand at this
21 point given the October 2nd date, really initiating things
22 under the TRO, and all this time that's passed it was held in
23 abeyance. I mean, I'm not really sure where -- I don't know if
24 --

25 COMMISSIONER JABER: Mr. Chapkis, is that a question

1 you can answer?

2 MR. CHAPKIS: I don't think, obviously, you're going
3 to be able to complete this arbitration in the time frame
4 initially laid out in the TRO because that time is upon us.
5 However, I do think that the FCC wanted this to be decided and
6 wanted the amendments to be implemented as quickly as possible,
7 and, therefore, the Commission should use all due haste to
8 implement this amendment. I do think that perhaps when we see
9 the amendment itself, things will become more clear.

10 And one of the reasons that I would just urge again
11 for 60 days as opposed to 20 days is I can see the FCC coming
12 out with interim rules in 28 days. That would not give -- you
13 know, 30 days, 40 days would not give us enough time to
14 implement or to draft a new amendment if that were, in fact,
15 the case. I do think that 60 days is a reasonable time period.

16 COMMISSIONER JABER: Okay. And would you agree -- at
17 least I believe that whether it's 20, 30, 45 or 60, it really
18 has no impact on the time period that governs arbitrations. Is
19 that a fair assessment?

20 MR. CHAPKIS: I believe that that's correct.

21 COMMISSIONER JABER: Okay.

22 CHAIRMAN BAEZ: Commissioners? Commissioner
23 Davidson, you had a question?

24 COMMISSIONER DAVIDSON: A question for the two
25 presenters so far, and then I want to sort of pose these two

1 questions, if they can be addressed by each of the presenters,
2 and I won't reask them. And I understand right now we're just
3 on Issue 1, but if you can address as briefly as possible in
4 your presentations, and I guess for Mr. Chapkis and Ms.
5 Masterton, go ahead and address now since you've already
6 presented sort of in general terms what is at issue with this
7 petition. Are there rights and obligations that are impacted
8 by the TRO and the reversal of the TRO? That's really question
9 one. What are we talking about?

10 Question two, will those rights and obligations be
11 impacted by the interim rules that we anticipate from the FCC?

12 And then question three, if the Commission's desire
13 was somehow to maintain the status quo with regard to any
14 rights and obligations that will be impacted by the interim
15 rules, how would we do that in your view? Our goals would
16 obviously be not to sort of start a number of proceedings and
17 have issues underway and then have those reversed by the TRO
18 and have the parties sort of bearing all of these transaction
19 costs that they may have to bear again.

20 So those are the three issues: What really are the
21 issues; what's the scope of what's going to be affected by the
22 TRO; what rights and obligations will be impacted by the
23 interim rules as within the context of what's discussed in this
24 proceeding; and then, two, how could we, if it were the goal,
25 get to maintaining the status quo until such time as we have

1 interim rules?

2 MS. MASTERTON: I guess what's in dispute are just
3 implementing various provisions of the TRO, many of which, as I
4 understand the way the petition was initially filed, were not
5 affected by USTA II. There's a lot of issues in the, in the
6 TRO that were not part of that, that court case. And
7 there's -- the dispute is over, you know, implementing various
8 provisions related to definitions of elements and how they're
9 affected by the TRO and, you know, change in law provisions.
10 We have numerous issues that, or disputes over language in some
11 respects and over interpretation of the, of the TRO in others.
12 So I cannot speak to how the interim rules might affect it. I
13 really am not -- I don't have good familiarity, although I
14 guess -- I'm assuming that the interim rules are largely
15 directed to the USTA II. So many of the issues in dispute in
16 the arbitration probably won't be affected by the interim
17 rules, those that were not challenged or were upheld by, by the
18 court.

19 And as far as the status quo, it's Sprint's position
20 that until, you know, the agreements are amended, the status
21 quo applies.

22 MR. CHAPKIS: I guess in some aspects I agree with
23 what Ms. Masterton said. All the TRO rulings that weren't
24 affected by the mandate, the decisions to eliminate unbundling
25 requirements for OC-n loops, OC-n transport, enterprise

1 switching, packet switching and the various other aspects of
2 the TRO that weren't affected by USTA 2 should be quickly
3 implemented. And I think those rights and obligations are
4 impacted by this arbitration. Other rights and obligations
5 that I think are impacted -- you know, I think a key issue
6 between the parties is, or it's going to turn out, you know,
7 what does Verizon have to do to implement the TRO itself? I
8 think you're going to hear the CLECs argue that we need to do
9 various things under the change of law provisions, for example,
10 that Verizon is going to contest and say that it does not have
11 to do.

12 In terms of what we expect the FCC's interim rules to
13 do, I think it's too soon to tell. I think that those rules
14 may be designed to phase in, if you will, USTA II so that UNE
15 rates don't go up immediately. What you have to do to maintain
16 the status quo, I guess, is, you know, depends on what the
17 interim rules say, and I have trouble ordaining that at this
18 point.

19 COMMISSIONER DAVIDSON: I understand. Chairman, a
20 couple of follow-ups, please.

21 CHAIRMAN BAEZ: Go ahead.

22 COMMISSIONER DAVIDSON: Thank you. Well, those
23 two -- those answers helped a lot. So is it fair to say that
24 this proceeding will deal with those issues and factors not
25 affected by the reversal of the TRO, not affected by USTA 2,

1 and that sort of anything impacted by USTA 2 is not being
2 addressed right now? That will be addressed with the interim
3 rules. Is that a fair sort of breakdown of the issues?

4 MR. CHAPKIS: I think that that may be the way that
5 things work out. It's hard for me to tell because this is so
6 complicated, and God knows what will be brought up. But, yes,
7 I mean --

8 COMMISSIONER DAVIDSON: I hope, I hope He does.

9 CHAIRMAN BAEZ: Somebody ought to.

10 COMMISSIONER DAVIDSON: And I guess I've got now a
11 question for, for staff. If we dichotomize between issues that
12 are not affected by the DC circuit's reversal, issues that are
13 going to remain no matter what, set one, set two are those
14 issues that will be affected and will be addressed by the
15 interim rules, can't we have a more efficient process for
16 addressing those issues that are not going to be affected? Set
17 one, the issues that we're going to have to address no matter
18 what, it doesn't seem terribly efficient to have sort of this
19 one proceeding and then perhaps another proceeding by BellSouth
20 and then perhaps another proceeding by Sprint. I know there
21 are going to be unique implementation issues, but hopefully the
22 definitional issues, the more standard issues will apply
23 across, across the industry. We're not going to have different
24 definitions apply to different companies. And I guess I'm not
25 understanding -- I want, I want to hear legal's view on how we

1 manage this process because we could easily start -- we could
2 easily have this proceeding and then we could easily have
3 another proceeding involving BellSouth and, and the CLECs, and
4 then a third proceeding possibly involving Sprint and CLECs
5 with which it does business. I just don't have a feel for how
6 this process is being managed at the staff level.

7 MR. FORDHAM: Commissioner, we can only speculate, of
8 course, at this time as to what some of the issues are, and
9 that was one of the failings of the petition because the issues
10 were not specifically identified.

11 Under the theory that staff is proceeding under, if
12 the issues are clearly identified, we would expect to see the
13 same issues for each of the companies which we're dealing with
14 who have agreements with Verizon.

15 Now as far as BellSouth, any of the other LECs, we
16 really have not discussed any interrelationship between these
17 proceedings and the proceedings with BellSouth because their
18 entire theory of, of business in Florida may be different from
19 Verizon's. We're dealing in this docket only with Verizon and
20 the roughly 100 companies with which they have agreements.

21 If Verizon in filing their new petition follows the
22 direction and the recommendation, then those issues would be
23 very specifically identified, and I would expect to see a great
24 deal of uniformity from CLEC to CLEC, from agreement to
25 agreement as to what those issues are. Also, staff feels that

1 the interim rules will go a long ways in clarifying whether
2 they truly are issues or whether they're, they're matters which
3 would be resolved by virtue of the publication of the interim
4 rules. That's going to happen before Verizon refiles. And we
5 had suggested even the mechanics of the new petition to lay it
6 out in matrix form so that they're all clearly identified. At
7 this point we can only guess what the issues are, and sometimes
8 we're not that good at guessing.

9 CHAIRMAN BAEZ: Commissioners, we have Mr. Feil, who
10 has been waiting patiently. You do have a couple of questions
11 of Commissioner Davidson and --

12 MR. FEIL: Thank you, Mr. Chairman. I really didn't
13 have much to add. I think Commissioner Davidson's questions
14 are driven from a standpoint of judicial economy: What's the
15 best way of approaching incorporating the changes from TRO,
16 USTA II and subsequent interim rules? His first question was
17 what's at issue in the petition? I think the answer to that is
18 what's at issue in the petition seems to be evolving. It's
19 already been amended once because of the USTA II decision. It
20 would probably have to be amended again depending on what the
21 interim rules say.

22 In terms of the rights impacted by the interim rules,
23 as Mr. Fordham said, I don't know if anybody knows for sure
24 what the interim rules are going to say at this point in time.

25 In terms of the status quo, I think that's, that's a

1 whole other ball of wax. There are several other petitions
2 pending before the Commission now, including those from XO,
3 Allegiance, FCCA, AT&T, MCI, regarding what the status quo
4 should be while this petition is pending. So that is an issue
5 that's going to be presented to you, I think, in another few
6 weeks.

7 In terms of FDN's approach to this, I think that the
8 staff recommendation on Issue 1 probably should be issued. I
9 think the -- I can't sit here and say that Mr. Chapkis' request
10 is unreasonable. I think that perhaps the proper approach is
11 to, you know, permit Verizon to refile as they see fit, but
12 without prejudice as to the issues mentioned in Issue 2 in the
13 staff recommendation so that if somebody wants to raise later
14 that it was not filed within the proper time frame or
15 negotiations were not had in good faith or what have you, they
16 can raise those issues at that time.

17 CHAIRMAN BAEZ: Mr. O'Roark. Thank you, Mr. Feil.

18 MR. O'ROARK: Thank you, Mr. Chairman. Very briefly.
19 MCI has perhaps a little bit different perspective on this
20 matter. As you know, MCI has responded to Verizon's petition.
21 We did not file a motion to dismiss and, in fact, opposed the
22 motions to dismiss. That said, we're not opposed to staff's
23 recommendation and having Verizon refile a proceeding in that
24 way.

25 To Commissioner Davidson's point, there are important

1 matters that were decided in the TRO that were not appealed in
2 USTA II that are important to MCI, and that's why we'd like to
3 proceed particularly on those matters as soon as we can;
4 matters relating to EELs, commingling and so forth, not the
5 things that have made the headlines, but things that are
6 important to our business. Provided that we move ahead, we're
7 fine with what staff has recommended. I just wanted to note
8 that it is important to us that we move forward with these
9 matters that are decided undisputed and I think relatively
10 uncontroversial that we ought to be able to get nailed down
11 pretty quickly.

12 CHAIRMAN BAEZ: Mr. Sloan, do you have any response
13 to Commissioner Davidson's questions?

14 MR. SLOAN: I have nothing to add.

15 CHAIRMAN BAEZ: Thank you, sir. Commissioners, any
16 other questions?

17 COMMISSIONER DEASON: I just feel compelled to follow
18 up with Mr. O'Roark's last statement that these, these matters
19 that are not further contested are not subject to the interim
20 rules, these matters should be able to be resolved by the
21 parties. Is that your position? But yet you want this
22 arbitration filed as quickly as possible.

23 MR. O'ROARK: Commissioner Deason, if we can work
24 those out with Verizon, we would be happy to do that, get those
25 incorporated into an amendment and done without the need for

1 Commission involvement. I don't think we're there yet.

2 COMMISSIONER DEASON: So you think that the, the
3 filing of the arbitration, whether it's, you know, this
4 petition, whether -- and at least arbitration, whether it's
5 done in 20 or 60 days, that that will facilitate your further
6 negotiations or will it be an impediment to further
7 negotiations?

8 MR. O'ROARK: It will be necessary if we're not able
9 to complete the negotiations. I don't think it'll --

10 COMMISSIONER DEASON: It won't be either one; it
11 won't facilitate or impede?

12 MR. O'ROARK: I suppose it will facilitate in that we
13 know there's a backstop. If we can't get it done by
14 negotiations, we know that there's a means of making sure that
15 we get these amendments into our agreements.

16 CHAIRMAN BAEZ: Commissioners, questions or a motion?
17 Actually I have one question quickly to staff. There was --
18 there's some disagreement on the part of Verizon whether there
19 was compliance with 252. How much of our decision, assuming,
20 assuming the Commissioners are willing to accept staff's
21 recommendation on Issue 1, how much does that finding that
22 there wasn't compliance or using that as grounds for dismissal,
23 even though it's without prejudice, how much weight does that
24 carry? How much legal effect does it have?

25 MR. FORDHAM: Well, staff believes the

1 252 requirements, at least to the extent where the specific
2 issues or the specific items of disagreement are identified,
3 are essential for this Commission to proceed. And it's -- for
4 example, in its present form this Commission is left to just
5 somehow guess what the specifics are. So I think to that
6 extent that provision of 252 does apply.

7 CHAIRMAN BAEZ: Just so that I can understand. By,
8 oy, by fixing those grounds, all right, by outlining what items
9 or what type of information is missing, we're fixing for
10 everyone on down the line what kind of information needs to be
11 provided to the Commission in similar instances. And to
12 Mr. Chapkis, would that settle whatever objections you have to
13 whether -- to answering the question of compliance? Are you
14 willing to accept that as --

15 MR. CHAPKIS: I'm sorry, Chairman Baez. I'm not
16 quite sure I understood the question. My apologies.

17 CHAIRMAN BAEZ: I think, I think I heard you disagree
18 with the compliance question, whether you were in compliance
19 with the requirements of the section. To the extent that staff
20 is saying, and perhaps this Commission may wind up saying that
21 compliance in terms of what issues and what information has to
22 be provided, how clear the petition had to be, et cetera, is
23 that an acceptable -- I think by your willingness maybe this is
24 not a, maybe this isn't an issue for you anymore.

25 MR. CHAPKIS: Perhaps I can clarify and hopefully

1 this will make it easier for you. Verizon disagreed with the
2 rationale for staff's recommendation; however, Verizon is
3 willing to comply with staff's recommendation in terms of how
4 they want it laid out, all the specifics that they want. We
5 are willing to put those specifics in a corrected petition.

6 CHAIRMAN BAEZ: Enough said. Commissioners, I think
7 we can probably take a motion now.

8 COMMISSIONER JABER: I'm ready.

9 COMMISSIONER DEASON: Let me ask one further question
10 of staff.

11 CHAIRMAN BAEZ: I'm sorry, Commissioner Deason.

12 COMMISSIONER DEASON: This was alluded to earlier, I
13 think, in Commissioner Davidson's question about judicial
14 economy and how we proceed in an expeditious and efficient
15 manner.

16 Do you have any indications or a feel for how these
17 matters are going to be addressed by BellSouth and in what time
18 frame?

19 MR. FORDHAM: Commissioner, I don't. I have not been
20 involved in the BellSouth docket. I just know that in, in many
21 major issues such as this we have treated each ILEC
22 independently because of their differing business philosophies
23 and so forth. And, indeed, they may have different concepts as
24 to what their agreements should contain. So staff did discuss
25 the fact that perhaps this was another of those situations

1 where we should treat each ILEC independently, and all of the
2 CLECs affiliated are agreeing, contracting with that particular
3 ILEC.

4 COMMISSIONER JABER: You know, I don't, I don't know,
5 and this is sort of just throwing a comment out there, not
6 passing judgment on whether that's the right approach or not, I
7 don't know that that's a decision that appropriately --

8 CHAIRMAN BAEZ: We get to make.

9 COMMISSIONER JABER: -- comes in our arena. I would
10 much rather see the flexibility within the companies. You
11 know, to the degree that there is room to maximize similarities
12 for the purpose of judicial economy and just good business
13 sense, then we should allow the competitors and the ILECs the
14 opportunity to discuss that. I don't, I don't know that those
15 differences matter all that much anymore. I just don't know.
16 I throw that out there for the companies to think about as
17 well.

18 CHAIRMAN BAEZ: I was, I was just going to mention
19 this seems to be a petition-driven process anyway, so it's
20 not -- I don't see it as an issue that we can drive
21 necessarily.

22 COMMISSIONER JABER: Or that we want to.

23 CHAIRMAN BAEZ: Or that we want to.

24 COMMISSIONER DAVIDSON: I agree, I agree with that.
25 My concern is just the definitional part. If there are issues

1 out there that are truly sort of generally applicable
2 definitions and then maybe we address that. If a petition
3 raises it, then other companies may intervene.

4 CHAIRMAN BAEZ: Well, and, Commissioner, the second
5 part, the second part of my comment was actually going towards
6 that. If we do a good enough job on definitional issues, I
7 think, I think the outliers can take, can take those decisions
8 for what they're worth. And to the extent that it's a
9 universally applicable decision, I don't see why we would
10 suggest or even hold out any hope for anyone else that we would
11 change our minds on something as basic as that, whatever that
12 may be.

13 So even, even though we're not, we're not taking a
14 generic approach even to the universal issues, our votes will
15 sort of guide, set some kind of guidance, I have to believe,
16 for whatever comes, whatever may come later. But I do believe
17 that this process, certainly the arbitration process is
18 something that's industry driven in the sense they're the ones
19 that bring the disputes to, to us. And there may be
20 progressively less and less disputable points based on what
21 we're already taking along in the process. So, you know, for
22 what it's worth, maybe it works out. Maybe there's an
23 efficiency there. I hope the companies can, can appreciate
24 that.

25 COMMISSIONER DEASON: Mr. Chairman, I have two more

1 questions for staff, and then I have a comment or observation.

2 CHAIRMAN BAEZ: Go ahead, please.

3 COMMISSIONER DEASON: First of all, two questions to
4 staff. Do you have a position on 20 versus 60 days? And then
5 second of all, what is, what is the time sensitive nature of
6 this proceeding and the question of status quo, and what
7 changes, if anything, you know, whether we take 20 or 60 days
8 or 120 days or whatever comes out of this, what's going to
9 change or what is at risk depending upon the time frame chosen?

10 MR. FORDHAM: Commissioner, I think as far as the
11 252 direction on time, that's an impossible time frame to keep
12 if we adhere to the TRO's proposed starting date for
13 negotiations. We can't possibly meet that. I think the
14 companies involved agree with that. In fact, Verizon expressed
15 it here this morning.

16 As far as staff is concerned, if the difference
17 between 45 days, say, and 60 days would mean a much improved
18 product, staff would prefer the improved product. I think that
19 in light of the fact that the interim rules would not be out
20 timely for the 20-day time frame, then staff certainly agrees
21 that 20 at this point would not be sufficient.

22 The interim rules would give great guidance, I
23 believe, in the new petition. So staff does not feel strongly
24 about putting a time frame so short as to create a less than,
25 than proper product in the new petition. So, consequently,

1 that's a long way of saying that really staff would defer to
2 the Commission, but we feel that Verizon's proposal is not
3 unreasonable.

4 COMMISSIONER DEASON: Well, I guess to rephrase the
5 question, what is the importance of moving along with this
6 rapidly? I mean, you indicated that if a better product is to
7 be provided in the form of the petition, if it takes 60 days,
8 you know, you're probably in agreement with that. But what if
9 there's a better product that's filed 90 days or 120 days? I
10 mean, what is the constraint under which we're operating?

11 MR. FORDHAM: Well, only that the TRO emphasized that
12 we should proceed expeditiously. The TRO has indicated that
13 they wish this process to be concluded as rapidly as possible,
14 so I think we have to strike some reasonable balance. Can you
15 reasonably do a new petition in 60 days, given the fact that
16 the interim rules won't be published until almost halfway
17 through that time period? That just seems from a subjective
18 perspective to be maybe about the maximum that would be
19 appropriate, judging on how long it normally would take. But
20 this would be a complex petition because they have to address
21 specific issues as they relate to each of their 100 or so
22 CLECs. So just subjectively, there is no objective criteria
23 for how long we ought to recommend. Subjectively, staff
24 believes that 60 might be an outside figure of a compromise
25 between a good product and adequate time, time constraints to

1 somewhat show that we want to move it ahead.

2 COMMISSIONER DEASON: Mr. Chairman, the comment that
3 I have is one that I've expressed time before, and that is
4 that -- first of all, let me just say that I was concerned when
5 I read in the recommendation about Sprint's assertion that
6 there was a lack of negotiation before the petition was filed.
7 And I guess my comment is not judging that one way or the
8 other, but there seems to be an overreliance upon arbitrations
9 and getting things filed before the Commission and starting
10 that process, starting that clock; whereas, it seems to me that
11 if there were more emphasis on the negotiations on the front
12 end and a refinement of the issues, which I don't think was
13 done here before this petition was filed, that we would all be
14 better served.

15 CHAIRMAN BAEZ: There's a lot of good time being
16 wasted out there, Commissioner. I would agree with you.

17 My, my main concern in terms of the timing, just so
18 that you know where I'm at, is that going back to, to a
19 long-held gripe of yours which I also share is this whole back
20 and forth. And we do have -- or the stop and start of the
21 process, and we do have interim rules that are anticipated
22 sometime, as most people have agreed, I think, have interim
23 rules anticipated sometime in the middle of this, this new
24 process that we're trying to fix.

25 I'd like to try and rope that in. I don't know if 30

1 days -- what the net time for that, for allowing for that being
2 roughly 30 days is enough or not too much. I'm comfortable
3 with Verizon's suggestion of 60 days because I think they're
4 the ones that, they're the ones that best know what they've got
5 in their hands to, to address, it would seem to me. And they
6 probably have the, the bulk -- they're the ones that have to
7 deal with the 100 odd agreements. So I guess I would be
8 comfortable with 60 days in that sense in anticipation of
9 interim, whatever effect the interim rules may have.

10 Commissioners, any other comments or --

11 COMMISSIONER JABER: I can make a motion and tell you
12 that in an effort to piggyback on the good statements that both
13 Commissioners Deason and Davidson have already articulated, I
14 can make a motion to accept staff's recommendation in Issue 1
15 with a modification to allow the 60-day time period that
16 Verizon has requested. But I would further modify the motion
17 for two reasons. One, Mr. Chapkis, I think that the 60 days
18 should ensure a much improved product in a reasonable amount of
19 time, and we're going to keep you to your word. But the other
20 reason, Mr. Chapkis, is I think that you have a very special
21 opportunity here to think about the procedure that would govern
22 a case when it comes before us to address the issues that you
23 want us to address. So I'm asking you to think beyond even
24 what staff has put in Issue 1 that they need and think about an
25 efficient process that this Commission can consider.

1 And, Ms. Masterton, I don't mean to leave you or
2 Mr. O'Roark out, Mr. Feil, the same direction; there's an
3 opportunity within the 60 days for you all to sit down, not
4 only discuss the resolution of issues and what can be resolved
5 informally so we don't see it, but to sit down and think about
6 the procedure that would result in the most efficient handling
7 of your case.

8 That would be my motion, Mr. Chairman.

9 CHAIRMAN BAEZ: Commissioners, we have a motion to
10 accept staff's recommendation with the modification that
11 Verizon be allowed 60 days to refile plus all that other good
12 stuff.

13 COMMISSIONER JABER: Go work hard.

14 CHAIRMAN BAEZ: Go work hard.

15 COMMISSIONER JABER: Real hard, because we don't want
16 to see this again.

17 CHAIRMAN BAEZ: Is there a second, Commissioners?

18 COMMISSIONER DEASON: Second.

19 CHAIRMAN BAEZ: Motion and a second. All those in
20 favor, say aye.

21 (Unanimous affirmative vote.)

22 CHAIRMAN BAEZ: Thank you, Commissioners.

23 MR. FORDHAM: Commissioner, excuse me. For
24 clarification, is that -- would that be 60 days from the vote
25 or the issuance of the order?

1 COMMISSIONER JABER: You've got -- you say 20 days of
2 the Commission's vote, so all I modified was the days.

3 CHAIRMAN BAEZ: Okay. So we have 60 days of the
4 vote.

5 COMMISSIONER JABER: And do you need a motion, staff,
6 from us on Issue 2, which is to, what, hold it in abeyance,
7 find it moot? What do you need?

8 MR. FORDHAM: Commissioner, that -- Issue 2 just sets
9 out all of the other bases for dismissal that the different
10 CLECs raised. The Commission has the option of voting or not
11 voting on those since the petition would certainly be
12 dismissed.

13 Staff's thinking was that if the Commission desired
14 to be a little proactive on those other issues, then this would
15 be a good chance to address those issues on a proactive basis
16 so that they may not reappear. However, the other side of that
17 is that there's a possibility that through some diligence many
18 of the companies may even resolve them and ink agreements
19 before this comes up again.

20 COMMISSIONER JABER: I think I just made that clear.
21 Just in case they weren't clear, that would be what I would
22 hope to accomplish. So I think a vote on Issue 2 is
23 unnecessary, Commissioners, and that would be my motion, as
24 well as moving staff on Issue 3.

25 CHAIRMAN BAEZ: Well, just for organization's sake, I

1 mean, we can stop at having Issue 2 being rendered moot. Is
2 that -- is it your --

3 CHAIRMAN JABER: I don't think we are rendering it
4 moot because we're giving Verizon an opportunity to refile its
5 petition, but that's a question better posed to counsel,
6 Chairman.

7 CHAIRMAN BAEZ: Well, I guess, I guess based on your
8 notion I'm a little unclear as to what, what the carryover is,
9 and maybe that's me missing the point.

10 COMMISSIONER JABER: The carryover is dependent on
11 what we see from Verizon's modified petition. Is that correct?

12 MR. FORDHAM: That's correct, Commissioner. And if
13 the Commission chooses not to address those other issues today,
14 then the order could simply reflect that the Commission would
15 desire that the guidance of the order be sufficient to render
16 it unnecessary to address them, something to that effect.

17 CHAIRMAN BAEZ: That's -- and what does that do for
18 preserving the same arguments that --

19 MR. FORDHAM: Well, what it simply would mean is that
20 those arguments could be raised again in the future; although
21 even if the Commission addressed them today, they could still
22 be raised again in the future.

23 CHAIRMAN BAEZ: I see what you mean. Okay.

24 MR. FORDHAM: So that's why it's sort of giving
25 direction if the Commission desires to, even though the same

1 issues could resurface even if the Commission addressed them
2 today.

3 CHAIRMAN BAEZ: Commissioner Jaber, can you restate
4 your motion, please?

5 COMMISSIONER JABER: My motion would be to recognize
6 that a vote on Issue 2 is not necessary and to move staff on
7 Issue 3.

8 CHAIRMAN BAEZ: All right. And there's a motion that
9 a vote on Issue 2 is not necessary, and also a motion to --

10 COMMISSIONER DEASON: Can I make one comment on that?

11 CHAIRMAN BAEZ: Go ahead, Commissioner.

12 COMMISSIONER DEASON: I certainly am in agreement
13 with the, with the motion and I'll either second it or vote for
14 it. But just one observation or word of caution is just
15 because we're not voting on Issue 2 at this time does not mean
16 that we're inviting the same arguments to be filed again. The
17 parties have the benefit of staff's very thorough analysis.
18 Just guide yourselves accordingly and concentrate on narrowing
19 the issues, focusing on what's important in negotiating some of
20 these things away instead of just concentrating on so much
21 legal pleadings and raising -- never mind. I won't get on my
22 soapbox at this point.

23 CHAIRMAN BAEZ: No. You're doing fine. Mr. Fordham,
24 you had a question.

25 MR. FORDHAM: Mr. Chairman, Issue 3 would also need

1 the amendment of the time frame because it contains the 20-day.
2 So I would make that point for purposes of the motion.

3 CHAIRMAN BAEZ: And that motion on Issue 3 should be
4 amended accordingly or modified accordingly. There is a motion
5 on Issues 2 and 3. Is there a second?

6 COMMISSIONER DEASON: Second.

7 CHAIRMAN BAEZ: Motion and a second. All those in
8 favor, say aye.

9 (Unanimous affirmative vote.)

10 CHAIRMAN BAEZ: Thank you, Commissioners. Thank you
11 all.

12 (Agenda Item 6 concluded at 10:25 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER


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I, LINDA BOLES, RPR, Official Commission Reporter, 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 9th DAY OF JULY, 2004.


LINDA BOLES, RPR
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