

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

COMPLAINT OF SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.
AGAINST BELLSOUTH TELECOMMUNICATIONS,
INC.

DOCKET NO. 040301-TP

JOINT PETITION BY ITC^DELTACOM
COMMUNICATIONS, INC. D/B/A ITC^DELTACOM
D/B/A GRAPEVINE; BIRCH TELECOM OF THE
SOUTH, INC. D/B/A BIRCH TELECOM AND D/B/A
BIRCH; DIECA COMMUNICATIONS, INC. D/B/A
COVAD COMMUNICATIONS COMPANY; FLORIDA
DIGITAL NETWORK, INC.; LECSTAR TELECOM,
INC.; MCI COMMUNICATIONS, INC.; AND
NETWORK TELEPHONE CORPORATION ("JOINT
CLECS") FOR GENERIC PROCEEDING TO SET
RATES, TERMS, AND CONDITIONS FOR HOT
CUTS AND BATCH HOT CUTS FOR UNE-P TO
UNE-L CONVERSIONS AND FOR RETAIL TO
UNE-L CONVERSIONS IN BELLSOUTH
TELECOMMUNICATIONS, INC. SERVICE AREA.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 7

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON
COMMISSIONER LISA POLAK EDGAR

DATE: Tuesday, January 18, 2005

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

REPORTED BY: JANE FAUROT, RPR

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 NANCY WHITE, ESQUIRE, representing BellSouth
3 Telecommunications, Inc.

4 BRIAN CHAIKEN, representing Supra Telecommunications
5 & Information Systems, Inc.

6 JEREMY SUSAC, ESQUIRE, and FELICIA BANKS, ESQUIRE,
7 representing the Florida Public Service Commission Staff.

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P R O C E E D I N G S

2 CHAIRMAN BAEZ: Commissioners, we are on Item 7.

3 MR. SUSAC: Commissioners, Item 7 is staff's
4 recommendation to consolidate Docket Numbers 040301-TP and
5 041338-TP. In addition, Item 7 is staff's recommendation to
6 deny Supra's motion for partial summary final order, a motion
7 for reconsideration of Order Number PSC-04-1180-PCO-TP. It
8 should be noted that Supra has requested oral argument, and
9 participation is at the discretion of the Commission.

10 CHAIRMAN BAEZ: Mr. Susac, just so that I'm clear,
11 I'm showing three separate motions?

12 MR. SUSAC: Yes, Mr. Chairman.

13 CHAIRMAN BAEZ: Commissioners, oral argument is at
14 your discretion, right?

15 COMMISSIONER DEASON: The summary page for this
16 docket shows that oral argument was requested for the motion
17 for reconsideration.

18 MR. SUSAC: That is correct, Commissioners.

19 COMMISSIONER DEASON: Only the motion for --

20 CHAIRMAN BAEZ: Only the motion for reconsideration
21 is there a request?

22 MR. SUSAC: Yes.

23 CHAIRMAN BAEZ: Very well. Commissioners, Issue 1.

24 COMMISSIONER DAVIDSON: Chairman, I have just got a
25 couple of questions for staff, if that is okay with --

1 CHAIRMAN BAEZ: Very well.

2 COMMISSIONER DAVIDSON: There is just staff
3 presenting on this item or issue, correct?

4 CHAIRMAN BAEZ: That's fine.

5 COMMISSIONER DAVIDSON: All right. For staff, I
6 mean, consolidation seems to make a lot of sense, but I also
7 don't think it is entirely fair to subject Supra to delays
8 simply because a lot of CLECs came late in the case and filed
9 late in the case. So my questions are if we allow time for the
10 new petitioners to file testimony, BellSouth to file rebuttal,
11 and the parties to issue discovery, how soon could a hearing
12 date be set, assuming that there are dates on the calendar?

13 And, second, if Supra ultimately prevailed in the
14 docket, would there be some recognition of the earlier timing
15 of their filing? Because, I mean, they have argued that their,
16 sort of, substantive interests will be impacted by this. So I
17 preface those questions, though, with consolidation seems very
18 much to make sense, because we have got identical issues, and
19 we don't need to go through this same type of docket, it seems
20 to me, repeatedly.

21 MR. SUSAC: Commissioner, if the two dockets were
22 consolidated, it looks like there would be a two-day hearing on
23 the issues. That would take place, more than likely, the first
24 week in July.

25 COMMISSIONER DAVIDSON: And if there was no

1 consolidation, and we had just moved forward on the
2 BellSouth/Supra docket, when would that hearing -- when was
3 that hearing scheduled to take place? And if we denied
4 consolidation today, when, in all likelihood, would it take
5 place?

6 MR. SUSAC: Commissioner, that hearing was originally
7 scheduled for December 2nd. In the event it is not
8 consolidated, Docket Number 040301-TP could take place on
9 February 23rd.

10 COMMISSIONER DAVIDSON: So with the consolidation, as
11 of today we are looking at almost an additional five months for
12 the docket. And if the dockets are consolidated, is there some
13 way that the Commission could, if Supra prevailed, take
14 recognition of the earlier filing?

15 MR. SUSAC: Could you please elaborate on that
16 question? Do you mean would there be some type of refund or
17 retroactive ratemaking in the event that there would be a lower
18 rate, is that --

19 COMMISSIONER DAVIDSON: Well, I think there wouldn't
20 be retroactive ratemaking. I hope not. But, hypothetically,
21 assume we have these two summaries, without consolidation we
22 have a hearing on February 23rd, Supra prevails, and an order
23 comes out, let's say hypothetically March 15th, or it is
24 effective March 30th. That's scenario one.

25 Scenario two, we consolidate, hearing in July, and an

1 order comes out, say, August 30th. Let's say there is a
2 five-month gap. Supra would prevail in both of those
3 hypotheticals. Is there some way that if we consolidate and
4 Supra prevailed, they would stand in the same place they would,
5 but for consolidation? Meaning I don't want consolidation to
6 somehow impact the substantive rights of either party here,
7 BellSouth or Supra.

8 MR. SUSAC: Commissioner, I believe the only way it
9 could go back to the original filing is if you gave them an
10 interim rate. Supra has renewed their motion, based on changed
11 circumstances for a renewed rate, interim rate, and that would
12 be addressed at the next agenda.

13 COMMISSIONER DAVIDSON: All right. Thank you, Staff.

14 COMMISSIONER DEASON: Mr. Chairman, have we decided
15 whether we are going to have oral argument or not on the
16 question of reconsideration?

17 CHAIRMAN BAEZ: Commissioners -- well, since we are
18 taking motions up individually, I don't think we have addressed
19 whether we are going to hear oral argument on the
20 reconsideration, that is Issue 3. At this point, I mean, in
21 all fairness, any oral argument is to your discretion, but the
22 first two issues don't seem -- or at least based on
23 Commissioner Davidson's questions, don't seem to call for input
24 other than from the staff, based on his questions at this
25 point.

1 Commissioners, any other questions?

2 Mr. Susac, I just want to be clear. Along the lines
3 of Commissioner Davidson's questions, there is obviously, in
4 these dockets -- is there an issue of financial considerations
5 that are impacted, I guess, pending a decision. But if a
6 decision is of one way or another, are the financial
7 considerations at play effected by the time you have the
8 hearing, you know, by when you have the hearing?

9 MR. SUSAC: If I'm understanding the question
10 correctly, going back to Commissioner Davidson's original
11 question, another alternative could be if BellSouth agrees to
12 apply retroactively a rate that is finally set in this docket,
13 then that could be a financial consideration of yours that, I
14 think, would be addressed.

15 However, at this point in time, only if you set an
16 interim rate where BellSouth agreed, I believe it would go back
17 to the date of filing for Supra.

18 CHAIRMAN BAEZ: Have we ruled, I seem to remember
19 that an interim rate had been requested at some point in the
20 past. We did rule on that motion previously, correct?

21 MR. SUSAC: That is correct, Chairman.

22 CHAIRMAN BAEZ: And you said, and I thought I heard
23 you say something that the motion was renewed, is that --

24 MR. SUSAC: That is correct.

25 CHAIRMAN BAEZ: Based on your recommendation here to

1 move forward, was that the catalyst, or are we just going to
2 replay the --

3 MR. SUSAC: No, sir. No, Chairman.

4 The basis for the renewal of the motion was the FCC's
5 December 15th press release of the final unbundling rules
6 coming out.

7 COMMISSIONER DAVIDSON: Chairman, I do think these
8 proceedings ought to be consolidated, I mean, if we are going
9 to go through this exercise twice. So I would -- I would be
10 prepared to make a motion, I guess, on Issue 1 granting the
11 motion for a continuance so that they can be consolidated, but
12 with sort of an urging to staff to work with the parties,
13 specifically BellSouth and Supra, to make sure that because of
14 something procedurally that we are doing that the substantive
15 rights of the parties are not impacted.

16 And maybe staff can work with the parties to work out
17 some type of agreement relating to a consolidation that would
18 address that, so that whoever prevails, they are in the same
19 position they would be but for our procedural consolidation.

20 CHAIRMAN BAEZ: And I guess that is really the
21 quandary that I'm in. I would agree with you, I mean, I think
22 for our purposes consolidation is proper, because you don't
23 want to be replaying the same issues wherever possible. But we
24 do have a situation here where there is, you know, the
25 proverbial money is on the table for at least the four months

1 that is the balance of -- will be the balance of a deferral of
2 sorts of the original case.

3 And I guess I'm just not sure how you go about it. I
4 mean, the idea of encouraging them to straighten this out,
5 perhaps if that is the case, and you all can go back and kind
6 of discuss it, my question to staff would be, or, Mr. Melson,
7 perhaps you can answer, is that something that has to come back
8 before the Commission in order to fix a date, if you will, or
9 if that were --

10 MR. MELSON: No, sir. I think the parties could
11 agree to a date. However, if it's your sense that you would
12 want consolidation contingent upon Supra's timetable not being
13 effective, that may not be something you can do, but it is
14 certainly something BellSouth could agree to. And you might
15 look to BellSouth and see if they are willing to commit today
16 that if there is a five-month lag, that any decision that the
17 Commission entered that favored -- ultimately that favored
18 Supra would be effective back five months, that would certainly
19 protect Supra's rights, and it would allow BellSouth at least
20 part of what it wants, which I understand is to have the
21 hearings consolidated. So it might be a little amiable
22 terrorism could get you some place that you may not be able to
23 get on your own.

24 CHAIRMAN BAEZ: Well, Ms. White -- it is Ms. White.
25 isn't it?

1 MS. WHITE: It is. Never thought I've heard the
2 words amiable and terrorism in the same sentence before.

3 CHAIRMAN BAEZ: Before you answer, this does not
4 constitute oral argument for the record. Go ahead.

5 Ms. White, there is a question before you.

6 MS. WHITE: As I sit here now I cannot commit to
7 that. I would have to make some calls. If you wanted to put
8 this off while we tried to do that, we would be happy to see if
9 we can get you an answer, but I cannot answer it as I sit here
10 today.

11 CHAIRMAN BAEZ: Commissioners, I'm interested in the
12 answer one way or the other, if that's all right to TP it, if
13 no one has any objections. Very well. We will temporarily
14 pass, Ms. White. We will try to pick you up on the back end.
15 Thank you.

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17 CHAIRMAN BAEZ: We are back on Item 7.

18 And, as you recall, there was some discussion about
19 what the effect of the postponement or the deferral of an
20 already existing docket would have.

21 Mr. Susac, do you want to brief us on where we are?

22 MR. SUSAC: Yes, Chairman. If it's appropriate, I
23 think BellSouth has an answer for your question.

24 CHAIRMAN BAEZ: Ms. White.

25 MS. WHITE: Yes, sir. BellSouth will agree to take

1 the rate that comes out of the generic hot cut docket --
2 unfortunately, I don't have that number in front of me -- and
3 apply it to Supra back to the date the order was supposed to be
4 out in the original Supra docket but for the continuance. I
5 believe, I'm not sure what that date is, probably February or
6 March. But what we would like to do it is on the condition
7 that Supra dismisses or withdraws their renewed motion for an
8 interim rate.

9 CHAIRMAN BAEZ: Mr. Chaiken.

10 MR. CHAIKEN: Good morning, Commissioners. Thanks
11 for giving me the opportunity to speak. As you know, this
12 docket has been pending since April of 2004. Supra had been in
13 negotiations with BellSouth prior to that time. Supra
14 attempted to get an expedited hearing before the FCC on this
15 matter, so we have been pushing for an expedited hearing and a
16 resolution of this case for over two years.

17 Quite frankly, the issue for us is a cash flow issue.
18 The rate BellSouth is seeking to charge for UNE-P to UNE-L
19 conversions is cost prohibitive and it is crippling our
20 business and it will further cripple our business once these
21 new FCC rules are issued. I think there is no dispute among
22 the parties that UNE-P is going away. Once that happens, our
23 business plan has got to shift to converting our existing
24 customer base, over 250,000 customers, from UNE-P to UNE-L.

25 It is true that we did convert approximately 18,000

1 of those customers over a year ago, and we did that pursuant to
2 settlement credits we have from BellSouth. There was no cash
3 expended, no out-of-pocket cash was provided to BellSouth in
4 doing those initial 18,000 conversions. We have not, since
5 that time, done more than a handful of conversions because the
6 cost of doing so is so cost prohibitive.

7 The BellSouth proposal here, although it is a step in
8 the right direction, doesn't get us where we need to go.
9 Because during that period of time between today and whenever
10 the generic docket results in the issuance of an order for our
11 rate, we are going to be forced to pay that prohibitively high
12 cost. And once that FCC order comes out that says that we no
13 longer get access to UNE-P, we have no option but to pay that
14 prohibitively high cost. And that cost is going to be passed
15 on to consumers.

16 So we don't think the proposal that BellSouth has
17 offered today goes far enough. And we ask that the Commission
18 provide for an interim rate, subject to true-up, which would
19 prejudice no one in this case. I would ask that the Commission
20 ask BellSouth how BellSouth would be prejudiced by having
21 interim rates subject to true-up.

22 The bottom line is there is no harm to anyone if
23 that, in effect, happens. And that is what we are going to ask
24 for. And that is what we have asked for in our response to
25 BellSouth's emergency motion for continuance, although it

1 wasn't addressed in the Commission's order granting BellSouth's
2 emergency motion for continuance, we asked for it in that
3 response. We continue to ask for it throughout this
4 proceeding. And although it is not set for agenda today, we
5 have renewed our motion for an interim rate based on two
6 factors. One being the FCC's summary order that came out. The
7 second being that fact that our hearing that should have taken
8 place in December of 2004 has been indefinitely postponed. And
9 we think we are entitled to an interim rate subject to true-up.

10 CHAIRMAN BAEZ: Mr. Chaiken, maybe you can answer
11 this. You mentioned about a hearing that should have taken
12 place in December of '04. Why was it postponed?

13 MR. CHAIKEN: Well, the Commission didn't really set
14 forth a reason why it was postponed. The Commission stated in
15 its order that it received BellSouth's motion, it received
16 Supra's response, and basically said that the motion has been
17 granted.

18 CHAIRMAN BAEZ: Ms. White.

19 MS. WHITE: That's not true. The bottom line is the
20 prehearing officer received BellSouth's motion for continuance,
21 he received Supra's opposition, and specifically stated in the
22 order granting the continuance that for reasons of judicial
23 efficiency and economy the Supra hearing should be continued
24 because of the virtually identical issues of fact and law that
25 were raised by the generic petition.

1 CHAIRMAN BAEZ: So it was done, in essence, to be
2 able to accommodate this discussion here, is that correct?

3 MS. WHITE: Yes, that is absolutely correct.

4 CHAIRMAN BAEZ: Thank you.

5 Any questions of Mr. Chaiken, Commissioners? If
6 there are no questions for Mr. Chaiken or Ms. White's offer of
7 accommodation, a motion is probably proper at this point on
8 Issue 1.

9 COMMISSIONER DAVIDSON: Briefly, a couple of
10 follow-up questions. One for BellSouth. What is BellSouth's
11 position on the idea of an interim rate subject to true-up,
12 which, as I understand it, would make either party whole
13 depending on what is ultimately determined? It could be trued
14 up in BellSouth's favor or trued up in Supra's favor.

15 MS. WHITE: We do not agree with that. The problem
16 with that is that the only interim rate that has been suggested
17 is by Supra. We don't believe there is a basis for that, for
18 the rate, and we don't believe that it's appropriate.

19 COMMISSIONER DAVIDSON: And I would agree that it is
20 not appropriate to just accept a rate that is suggested by any
21 one party in the absence of clear contractual language. I
22 mean, either the contract addresses this specifically, which is
23 a legal issue which the Commission would decide, or it doesn't.
24 If it doesn't, I would think that we would then have to have
25 some type of, hopefully, expedited process to determine what

1 the interim rate would be.

2 So if there is no interim rate, let's actually, sort
3 of, get down to numbers, but not so much arguments, and try and
4 go through step-by-step. What is the rate that BellSouth would
5 be charging? And from Supra, what is the rate you propose,
6 just to refresh my recollection on this issue.

7 MS. WHITE: And, I'm sorry, I do not have that in
8 front of me, Commissioner. I apologize.

9 COMMISSIONER DAVIDSON: Is it fair to state that
10 whatever the rate, whatever rate is being proposed by
11 BellSouth, Supra considers that unreasonably high?

12 MR. CHAIKEN: Yes, sir.

13 COMMISSIONER DAVIDSON: And is it the position of
14 BellSouth and of Supra that whatever rate is being proposed by
15 each of you respectively, that rate is clearly set forth in the
16 contract?

17 MS. WHITE: That is BellSouth's position. I believe
18 it is not Supra's position.

19 MR. CHAIKEN: That is not Supra's position. In fact,
20 I believe the Commission in a previous order has stated that
21 there is no rate explicitly set forth in the contract.

22 COMMISSIONER DAVIDSON: In the contract. I recall
23 that now. Ms. White?

24 MS. WHITE: Yes, sir.

25 COMMISSIONER DAVIDSON: The Commission, as I recall,

1 id find that there was no rate specifically set forth in the
2 ontract to govern this issue. Do you recall that prior
3 etermination?

4 MS. WHITE: What the Commission found was that there
5 s no rate explicitly called UNE-P to UNE-L conversion, but
6 hat the piece-parts that would make up that rate may be
7 ontained in the contract.

8 COMMISSIONER DAVIDSON: Assuming that there is no
9 rate that we can right here right now point to, and we would
10 either have to make up the rate from parts of the contract or
11 come up with an appropriate rate, if the contract is silent as
12 o that, and let's assume both of those are scenarios. We can
13 either piecemeal it from the contract or the contract is
14 silent. What would BellSouth advise that we do at this point
15 given that there is not a clear rate that we can point to
16 today?

17 MS. WHITE: Well, BellSouth has made what it believes
18 to be an extremely reasonable offer, especially since Supra has
19 signed away the rights to any retroactive rate and agreed in
20 the bankruptcy case to only pursue a prospective rate change
21 for hot cuts. But what we have done is make what we believe is
22 an eminently reasonable offer, that we will take the rate that
23 comes out of the generic proceeding and apply it back for Supra
24 to the date the Supra order was to come out in the 040301
25 docket and true-up that.

1 COMMISSIONER DAVIDSON: In the meantime what would
2 apply?

3 MS. WHITE: We will apply what we have been charging
4 and what we have believe are the appropriate rates under the
5 current interconnection agreement.

6 COMMISSIONER DAVIDSON: How long have you been
7 charging those rates, roughly, do you recall?

8 MS. WHITE: Well, you know, they are charged only
9 when there is a hot cut.

10 COMMISSIONER DAVIDSON: A transition.

11 MS. WHITE: Yes. And I know that Supra has been
12 doing some, but I don't believe it is a big number. So, you
13 know, it has been charged all along I would say throughout the
14 contract.

15 COMMISSIONER DAVIDSON: So BellSouth would be willing
16 to continue charging at the rate it has been charging, take
17 whatever new rate would come out of the generic proceeding and
18 apply that with a true-up mechanism?

19 MS. WHITE: Back to the date that the order was due
20 out in this docket, yes.

21 COMMISSIONER DAVIDSON: Okay. Thank you.

22 MS. WHITE: But what we would like to see is the fact
23 that Supra has filed --

24 COMMISSIONER DAVIDSON: Continue.

25 MS. WHITE: Well, Supra has filed this renewed motion

1 for an interim rate. And what we would like to see, if this
2 offer is taken, we would like to see that motion go away.
3 First of all, it would be moot. Second of all, we feel like we
4 have made this good faith offer and that Supra should
5 acknowledge and reciprocate.

6 COMMISSIONER DAVIDSON: And let me ask is -- I know
7 BellSouth would like to see that, and we haven't ruled on that.
8 Is the offer, is this offer of true-up that is put before the
9 Commission contingent upon Supra withdrawing that motion,
10 meaning --

11 MS. WHITE: Yes.

12 COMMISSIONER DAVIDSON: Okay. Thank you.

13 Chairman, I will tell you where I am on this issue.
14 I'm somewhat comforted by the fact that BellSouth has said that
15 it will only continue charging what it has been charging, and
16 that it will, in fact, true-up to at some point in the past
17 after our order comes out, whatever rate is there.

18 I would be inclined to -- well, I don't know what I
19 would be inclined to do. I like this offer, but it is
20 troubling because I don't want to sit here and prejudge where I
21 would be on this interim rate issue. But the offer to true-up,
22 the offer to true-up is only -- the offer to true-up is
23 contingent upon Supra withdrawing that motion. So we don't
24 have a true-up on the table right now that we can move forward
25 with.

1 So I think we are at the point of if we move forward
2 on consolidation, there is no true-up vehicle on the plate.
3 And I don't know if that is something that Supra wants to think
4 about or if it is ready for the Commission to rule.

5 MR. CHAIKEN: Well, Commissioner if I may speak. I
6 think I would have to go back and consult with my people to see
7 if they would be willing to accept that offer before I could
8 say one way or the other.

9 COMMISSIONER DAVIDSON: Chairman, would it be
10 possible to perhaps TP this again to give Supra an opportunity
11 to speak to its client as to whether the BellSouth offer is
12 acceptable?

13 CHAIRMAN BAEZ: You know when I woke up this
14 morning --

15 COMMISSIONER DAVIDSON: You knew it was going to be a
16 lovely sunny day.

17 CHAIRMAN BAEZ: The notion of temporarily passing
18 things was just not -- it wasn't there. I don't know why I
19 didn't see it, but I think if I'm reading Mr. Chaiken's need to
20 discuss with his client what may be an offer that might
21 possibly be acceptable, I think we can TP it.

22 What I'm concerned of, can we move on with the other
23 issues are or they dependent on --

24 MR. SUSAC: Chairman, we can move on to Issues 2 and
25 3, if you would like.

1 CHAIRMAN BAEZ: Issues 2 and 3 are independent,
2 right?

3 MR. SUSAC: They are independent.

4 CHAIRMAN BAEZ: To some extent that we can go ahead
5 and address them. They are not fallout, I guess, is more
6 important?

7 MR. SUSAC: No. I would just be aware that Issue 3
8 is a motion for reconsideration and it does briefly touch upon
9 the interim rate issue.

10 CHAIRMAN BAEZ: Okay.

11 COMMISSIONER DEASON: But it's strictly within the
12 context of a reconsideration.

13 CHAIRMAN BAEZ: Of a reconsideration, exactly.

14 MR. SUSAC: Correct.

15 CHAIRMAN BAEZ: It is not officially the renewed
16 motion for an interim rate before us, correct?

17 MR. SUSAC: That's correct, Chairman.

18 CHAIRMAN BAEZ: Okay. Thank you.

19 COMMISSIONER DAVIDSON: Chairman, on Issue 2, if
20 there is no oral argument and if there are no questions from
21 the Commission, I can move staff on Issue 2.

22 CHAIRMAN BAEZ: And let me confirm that.
23 Commissioners, any questions?

24 If there are no questions, there is a motion. Is
25 there a second?

1 COMMISSIONER DEASON: Second.

2 CHAIRMAN BAEZ: A motion and a second. All those in
3 favor say aye.

4 (Unanimous affirmative vote.)

5 CHAIRMAN BAEZ: Show Issue 2 approved.

6 Issue 3. And this is where we do have oral argument
7 requested, Commissioners. And if it is your pleasure, we can
8 go ahead and have that. I saw some nodding.

9 COMMISSIONER DEASON: I don't need oral argument
10 myself, but I don't oppose it if other Commissioners do.

11 CHAIRMAN BAEZ: Commissioner Davidson, I'm sorry, I
12 didn't mean to put words in your mouth.

13 COMMISSIONER DAVIDSON: No, I don't need it.

14 CHAIRMAN BAEZ: You don't need oral argument?

15 COMMISSIONER DAVIDSON: No.

16 CHAIRMAN BAEZ: Very well. Commissioners? Very
17 well. We don't need oral argument it has been determined.

18 Is there a motion or questions of staff?

19 COMMISSIONER DEASON: No questions. I can move staff
20 on Issue 3.

21 COMMISSIONER DAVIDSON: Second.

22 CHAIRMAN BAEZ: A motion and a second. All those in
23 favor say aye.

24 (Unanimous affirmative vote.)

25 CHAIRMAN BAEZ: Show Issue 3 approved, as well. And

1 we have to hold off on Issue 4. Very well. Thank you.

2 MS. WHITE: Chairman Baez, may I ask you to ask Mr.
3 Chaiken how long he thinks he will need and when you want to
4 come back?

5 CHAIRMAN BAEZ: I think you just did. Here is the
6 situation, Ms. White, just for purposes of knowing. At this
7 point Mr. Chaiken is not going to be able to come back -- I'm
8 assuming he is not going to be able to come back with a ready
9 answer in the next five or ten minutes. Is that fair or you
10 think you can?

11 MR. CHAIKEN: I would attempt to do so.

12 CHAIRMAN BAEZ: Because otherwise the other
13 alternative we have is to move to Internal Affairs. And you
14 already heard me say that we are taking up Item 14 at 2:00
15 o'clock, and I would imagine we would take up this last issue
16 after we are done there, so it would be sometime in the
17 afternoon. Mr. Chaiken, what is your --

18 MR. CHAIKEN: I think I could attempt to get an
19 answer one way or the other within the next five or ten
20 minutes. If not, maybe we could have this item moved to the
21 next agenda. As my motion for interim rate is considered at
22 the next agenda, I understand, maybe it makes sense to have it
23 heard at that point in time.

24 CHAIRMAN BAEZ: Well, there is an idea. I mean, how
25 doable is that, or how appropriate would that be? Ms. White,

1 I'm going to ask you for your input on that, as well. Is that
2 a possibility?

3 MR. SUSAC: Certainly if the Commission would like to
4 defer Issue 1 to the next agenda --

5 CHAIRMAN BAEZ: I mean, the truth is that just by
6 hearing it, so much of it is contingent on -- I mean, I would
7 note Commissioner Davidson's frustration on not being able
8 to -- and the rest of ours, as well, not being able to fashion
9 a motion that actually took advantage to some extent of parts
10 of Ms. White's or BellSouth's offer. But if they both come up
11 together, then perhaps the possibilities are more endless.

12 MR. SUSAC: Correct.

13 CHAIRMAN BAEZ: So procedurally there is not a
14 problem deferring Item 1?

15 MR. SUSAC: No, Commissioner, there is no problem.

16 CHAIRMAN BAEZ: Ms. White, I want to make sure that
17 you don't have a problem, as well.

18 MS. WHITE: I have no objection.

19 CHAIRMAN BAEZ: Mr. Chaiken, we will take your
20 suggestion as noted. And I guess we will stand deferred on
21 Issue 1 of this item. And we will bring it back and take it up
22 alongside the motion, the renewed motion, is that your
23 understanding?

24 MR. SUSAC: Yes. I may be getting ahead of myself,
25 but Issue 4 is still outstanding and that was --

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

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

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

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

DATED THIS 25th day of January, 2004

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