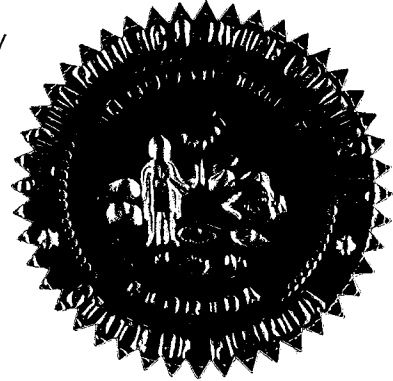


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET 000121A-TP

In the Matter of:

INVESTIGATION INTO THE ESTABLISHMENT
OF OPERATIONS SUPPORT SYSTEMS PERMANENT
PERFORMANCE MEASURES FOR INCUMBENT LOCAL
EXCHANGE TELECOMMUNICATIONS COMPANIES.
(BELLSOUTH TRACK)



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 4

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER J. TERRY DEASON
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW

DATE: Tuesday, June 20, 2006

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

REPORTED BY: JANE FAUROT, RPR
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FLORIDA PUBLIC SERVICE COMMISSION

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1 PARTICIPATING:

2 JIM MEZA, ESQUIRE, representing BellSouth
3 Telecommunications, Inc.

4 MATTHEW FEIL, ESQUIRE, representing FDN
5 Communications.

6 VICKI GORDON KAUFMAN, ESQUIRE, representing
7 Competitive Carriers of the South.

8 BETH KEATING, ESQUIRE, representing XO
9 Communications.

10 ADAM TEITZMAN, ESQUIRE, BETH SALAK, JERRY
11 HALLENSTEIN, and LISA HARVEY, representing the Florida Public
12 Service Commission Staff.

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P R O C E E D I N G S

CHAIRMAN EDGAR: We are back on the record.

Commissioners, we will begin with Item 4, but before we do that, I would like to let everyone know that Item 16 has been deferred. So remaining on our agenda for discussion, and I plan to move in this order, Item 4, Item 5, and then Item 9.

And so if staff will kick us off with Item 4.

MR. HALLENSTEIN: Good afternoon, Commissioners.

Jerry Hallenstein with staff.

In Item 4 staff is recommending that BellSouth's SEEM plan be revised to require BellSouth to pay penalties during a force majeure event for noncompliance with performance measures where the performance standard is a retail analog.

Commissioners, staff would further note that this issue was raised in the last six-month review and resolution could not be reached during that review period. Staff is available for questions. And we also believe the parties are here to discuss this issue further.

CHAIRMAN EDGAR: Thank you. Mr. Meza.

MR. MEZA: Thank you, Madam Chairman. Jim Meza on behalf of BellSouth. And let me preface my comments, if I may, with a statement, and that is BellSouth appreciates the concern staff has shown about this issue as well as staff's diligence in general regarding the SQM SEEM plan. Their diligence is unmatched by any other state.

1 And I would also like to say that BellSouth is
2 willing to sit down with staff and all parties to discuss and
3 further understand their concerns about SEEM payments during
4 force majeure, as well as exploring all potential solutions
5 that may be appropriate for that concern. But, as written
6 today, the recommendation should not be approved by this
7 Commission because it unfairly penalizes BellSouth.

8 And I'm not going to spend a lot of time, but I just
9 wanted to give you a brief description of what I mean, and that
10 is the plan is designed to measure parity. How was BellSouth
11 performing as compared to its CLEC wholesale customers? By
12 definition, force majeure means that an event is prohibiting
13 BellSouth from performing under normal circumstances. That
14 event is out of BellSouth's control. And so the plan, as
15 designed, doesn't contemplate these unforeseen variables that
16 show up in a force majeure situation.

17 And I want to remind you that BellSouth does provide
18 parity during force majeure, it is just not the parity that the
19 plan is designed to measure. And let me give you an
20 explanation as to what I mean. You have two neighborhoods.
21 They are both adjacent to each other. Neighborhood A, mix of
22 CLECs and BellSouth customers, wasn't damaged that severely by
23 a storm. A couple of downed lines, but after one day
24 everything is back up and normal. Neighborhood B is a heavy
25 CLEC neighborhood where there is some cable that is exposed,

1 trees are down all over the place, there is no power and
2 BellSouth can't even get into the properties to reestablish
3 service for several days, maybe a couple of weeks as
4 experienced in Wilma.

5 In that situation, those repair and install orders
6 for Neighborhood B would be used against BellSouth to calculate
7 BellSouth's performance for repair and install intervals
8 through no fault of BellSouth. In Neighborhood A, BellSouth is
9 providing parity. It is performing installations and repairs
10 for any customer regardless of whether it is a CLEC or
11 BellSouth customer in that neighborhood where they have access.

12 And this is description is not hypothetical, it is
13 real. After a storm, BellSouth's ability to restore service
14 and to install service is largely dictated by measures outside
15 of its control. Do we have access? Do we have power? Is it
16 safe for our people to go in? And Katrina told us that even if
17 it is physically safe, you still may need to have armed
18 security guards with your technicians as they go into
19 neighborhoods trying to restore service.

20 All of those things, all of those unforeseen
21 variables cannot be accurately taken into account in the plan.
22 So what happens? What happens is those orders that are sitting
23 in the till for Neighborhood B because we can't get in there
24 are measured against us. And that's not fair. That's not what
25 the plan was designed to do. It's not what the plan was

1 designed to measure.

2 The second concern BellSouth has is the way that this
3 was brought before the Commission. The plan has a detailed
4 process by which modifications to the plan should be handled
5 and it involves a collegial discussion between the industry
6 participants and staff. And for the most part it is pretty
7 successful. And your staff has done a tremendous job in
8 negotiating settlements as far as plan modifications and
9 proposals.

10 We believe that by taking this process outside of the
11 plan in the six-month review leads to a situation where you are
12 effectively undermining that collegial process, whereby instead
13 of raising the issue among all industry participants we are
14 going straight to the Commission to get an order, a PAA that
15 could be protested and could result in hearing. We are willing
16 to sit down and talk with the parties and to staff to see if we
17 can look at all possible solutions to this issue. We just
18 don't think it's appropriate to do it now in the context of a
19 PAA prior to the six-month review which begins on July 25th and
20 in the manner in which staff is seeking to do it which unfairly
21 penalizes BellSouth.

22 Thank you.

23 CHAIRMAN EDGAR: Mr. Feil.

24 MR. FEIL: Thank you, Madam Chairman. Matthew Feil
25 with FDN Communications.

1 A couple of quick points. FDN supports the staff
2 recommendation. Our bottom line perspective here is that there
3 is no exception in the Telecom Act, in the FCC rules, or in the
4 Commission's rules for not providing parity during a force
5 majeure event. And I think that part of what I heard Mr. Meza
6 to say, and what I understand BellSouth's position to be is
7 that it does provide parity service during a force majeure
8 event. So if BellSouth does, BellSouth will, then there really
9 shouldn't be any issue here with the recommendation to ensure
10 that BellSouth does.

11 Intuitively, a rule of parity during a force majeure
12 event makes sense. You shouldn't be in a situation where
13 because a hurricane comes through and you are five days after
14 restoration, a trouble ticket comes in from FDN and it takes
15 two weeks versus a trouble ticket for a BellSouth retail
16 customer comes in and it takes 48 hours. Obviously, the CLEC
17 or FDN end user would get extremely frustrated with the process
18 and would probably try to seek service elsewhere, and that's
19 one of the things we are trying to avoid.

20 By way of background, after last year's hurricanes,
21 FDN did experience a number of issues where we thought we had
22 seen a lack of parity service from BellSouth. We provided or
23 put together some examples, carefully vetting them as we could
24 to make sure that we were giving good information. We provided
25 those to BellSouth and to the Commission staff, who graciously

1 helped us through those examples and sat through some
2 negotiations and discussions with FDN and with BellSouth.

3 We were making progress on those examples, but Mr.
4 Meza and I decided that -- or agreed that we would try to
5 negotiate some of the issues that we thought we could resolve,
6 and in the meantime put those examples to the side. And
7 ultimately we agreed to put to the side this issue, the SEEMS
8 issue, to have the Commission address and dispose of as the
9 Commission saw fit. So FDN and BellSouth are still talking
10 this issue before you today. And this item is a separate
11 matter, however.

12 The examples that we provided to staff we believe are
13 very real and very representative of issues that we experienced
14 during the last hurricane. I understand Mr. Meza's point with
15 respect to the six-month review. But we are in the middle of
16 the hurricane season, as Commissioner Carter pointed out on the
17 last item, we have already had one storm go through Florida. I
18 think it is time to start moving on this issue as quickly as
19 possible.

20 That is all I have to say. Thank you.

21 CHAIRMAN EDGAR: Ms. Keating.

22 MS. KEATING: Thank you, Madam Chair. Commissioners,
23 Beth Keating, Akerman Senterfitt, on behalf of XO
24 Communications. I would just like to echo Mr. Feil's comments,
25 and also add that we are very appreciative of the work that

1 staff has put in on this issue. And we are very much in
2 support of staff's recommendation.

3 We believe that staff's recommendation will provide
4 the right incentive for BellSouth to treat its retail and
5 wholesale customers in the same way in serious situations like
6 a hurricane. And as has already been pointed out, we're
7 already in hurricane season; we've already had a named storm;
8 and this recommendation is extremely timely.

9 And that's all. Thank you.

10 CHAIRMAN EDGAR: Thank you. Ms. Kaufman.

11 MS. KAUFMAN: Thank you, Madam Chairman. I am Vicki
12 Gordon Kaufman. I'm with the Moyle Flanigan law firm, and I'm
13 here on behalf of the Competitive Carriers of the South.

14 And as a preliminary matter, I want to echo some of
15 the comments that you have already heard, and to thank your
16 staff for their diligence in their monitoring and suggesting
17 revisions regarding the performance measures in the SEEMS plan
18 that we have all worked so long and hard on. The competitive
19 carriers greatly appreciate that. And in this recommendation,
20 in particular, we would like to thank them for looking out for
21 all Florida consumers, including those consumers that are
22 served by CLECs.

23 That said, I'm going to echo the comments of my
24 colleagues. We support the staff's recommendation. We urge
25 you to adopt it. And I think it's important to remember that

1 at the end of the day the CLECs, just like BellSouth, are
2 serving Florida's end users. And in an emergency situation,
3 everybody's goal needs to be to get those end users back in
4 service as quickly as possible.

5 As your staff told you in the recommendation, CLECs
6 depend in great part on BellSouth to restore service to them so
7 that they can restore service to their end users, and so to
8 ensure that all customers are treated equally, Bell should be
9 required to restore CLEC service in the same time and manner
10 that it restores service to its own customers. And we think
11 that that is what will be accomplished by the change in the
12 plan that your staff has suggested, and so we would urge you to
13 adopt it. Because as everyone has pointed out and as you spent
14 the morning and afternoon discussing, we are in hurricane
15 season now and we don't see the need to delay. Thank you.

16 CHAIRMAN EDGAR: Commissioners, any questions or
17 discussion?

18 Commissioner Tew.

19 COMMISSIONER TEW: I'll take a stab at one. And
20 hopefully staff can help me. I'm having a hard time
21 understanding exactly what parity in this situation means, too.
22 And rather than trying to keep up with the Neighborhood A and B
23 situation that Mr. Meza laid out, I thought I would ask it this
24 way. Doesn't parity in this situation have to be limited to a
25 BellSouth retail customer and a CLEC wholesale customer that

1 are served off the same BellSouth facilities, whether that's a
2 central office, or I'm not sure what the bounds --

3 MS. HARVEY: Parity is based on analogous products.
4 So a CLEC customer that is ordering a DS-1 would be compared to
5 the service level for a retail DS-1. All the customers
6 receiving that same provisioning or are having restoration for
7 that same product in a certain central office are compared
8 together. The time frames are what are looked at. And the
9 time that it has taken to either restore or provision the
10 retail DS-1 is compared to the wholesale DS-1 customers grouped
11 together. And that is just a real simplified version of it.

12 Does that answer it?

13 CHAIRMAN EDGAR: Commissioner Tew, follow-up?

14 COMMISSIONER TEW: I think that helps. I'm just
15 trying to make sure that in a situation -- if you have a
16 BellSouth retail customer, for instance, in Chipley, would
17 their service be compared to a CLEC customer in Miami?

18 MS. HARVEY: No. You would compare based on the same
19 central office. So it would be retail customers that are
20 served from the central office that services Chipley compared
21 to the wholesale customers that are served by the Chipley
22 central office.

23 CHAIRMAN EDGAR: Commissioner Deason.

24 COMMISSIONER DEASON: The question that I have, I
25 guess, is a broad policy question, and I'll address this to

1 staff. Does your recommendation have the unintended
2 consequence of, in the name of parity, requiring BellSouth to
3 not restore service to the largest number of people in the most
4 quick and the most safe fashion possible?

5 My concern is that, is BellSouth, are we telling them
6 that we want you to do this in parity fashion or else pay a
7 penalty, and for them to achieve parity it may not result in
8 the highest number of customers getting restored in the
9 quickest manner possible?

10 MS. HARVEY: I hope that is not an unintended event,
11 but we believe that both the wholesale and the retail customers
12 deserve equal treatment.

13 COMMISSIONER DEASON: Shouldn't all customers be
14 restored as quickly as possible regardless of whether they're a
15 CLEC customer or whether they are a customer of the incumbent?

16 MS. HARVEY: Yes.

17 COMMISSIONER DEASON: And by putting a parity
18 requirement on that, are we giving an incentive for the company
19 to avoid paying a penalty and making sure there is parity when
20 that particular restoration plan may not be the most quickest
21 and efficient way to restore service after a hurricane?

22 MS. HARVEY: I don't believe that that incentive is
23 there. I don't believe that there is a perverse incentive.
24 They readily admit now that they are providing parity service,
25 and if that is the --

1 COMMISSIONER DEASON: Let me ask Mr. Meza. How do
2 you restore service now after a hurricane in any central
3 office?

4 MR. MEZA: The first plan of action in restoration of
5 service is to get into the area and do sweeps where we go
6 through the neighborhood street-by-street putting up facilities
7 that are down regardless of who the customer is. And in all
8 instances -- not all -- in most instances we have no idea who
9 the customer belongs to for the underlying services that we are
10 restoring.

11 COMMISSIONER DEASON: Madam Chairman, may I continue?

12 CHAIRMAN EDGAR: Commissioner Deason.

13 COMMISSIONER DEASON: In a restoration situation, who
14 makes the decision as to which crews go where first as a
15 proprietary?

16 MR. MEZA: It is based upon access.

17 COMMISSIONER DEASON: And who makes that decision?
18 Does the person that is dispatching those crews, do they even
19 know the number of CLEC customers on a given line as opposed to
20 the number of BellSouth customers?

21 MR. MEZA: No, sir. I mean, the analysis of whether
22 the customer is a BellSouth customer or a CLEC customer just
23 never enters the equation. The analysis is how quickly can we
24 get the most customers up as quickly as possible.

25 COMMISSIONER DEASON: So you are saying under your

1 current methodology it is just as likely that a CLEC customer
2 would get the highest proprietary as opposed to a BellSouth
3 customer, it makes no difference in your dispatch.

4 MR. MEZA: Absolutely.

5 CHAIRMAN EDGAR: Commissioners, is there further
6 discussion, further questions?

7 MR. MEZA: Madam Chair.

8 CHAIRMAN EDGAR: Mr. Meza.

9 MR. MEZA: I apologize, for delaying, but I would
10 like to clarify something that I just said to Commissioner
11 Deason. And that very reason as to why we don't know who the
12 customer is is the reason why this staff recommendation
13 unfairly penalizes us, because we don't identify the customer,
14 is it a CLEC or a BellSouth customer. And so when you have a
15 situation where you have a neighborhood that is inaccessible in
16 the same central office, those orders would still be counted
17 against us in the analysis of whether a SEEMs penalty should be
18 paid, even though we can't fix them.

19 CHAIRMAN EDGAR: And I will look to staff for
20 additional comments.

21 MR. HALLENSTEIN: Commissioners, we would expect the
22 opposite to be true, of course, that fulfilling orders on the
23 CLEC side in a faster manner than on the retail side would be
24 favorable to BellSouth, as well. In the SEEM plan, by
25 enforcing the SEEM plan during a force majeure event provides

1 us with an effective means of monitoring parity service.
2 Without the SEEM plan we can only listen to complaints that
3 CLECs provide to us.

4 COMMISSIONER DEASON: May I follow up with a
5 question?

6 CHAIRMAN EDGAR: Commissioner Deason.

7 COMMISSIONER DEASON: Do you suspect that there is
8 being treatment, that dispatch is being done on the basis of
9 type of customer as opposed to a plan of restoring the greatest
10 number of customers the quickest?

11 MR. HALLENSTEIN: Well, I'm not so sure I can answer
12 that directly. But as Matt alluded to, we do have a list of
13 complaints that was provided to us, particularly from FDN,
14 approximately 14 complaints in regards to orders that they
15 placed where we believe that roughly five of them the
16 possibility of discriminatory service exists.

17 COMMISSIONER DEASON: Do we have data on the system,
18 the company as a whole as to the number of customers restored
19 during what period of time and whether they were CLEC customers
20 or BellSouth customers?

21 MR. HALLENSTEIN: I'm not sure.

22 COMMISSIONER DEASON: Can that data be obtained?

23 MR. HALLENSTEIN: That question might be better for
24 BellSouth as to whether they can provide it or not.

25 COMMISSIONER DEASON: Let me ask you this question.

1 Under the SEEMS plan, can we gather the data for the purposes
2 of reviewing it without necessarily imposing a penalty one way
3 or the other just to see if there is a trend that perhaps needs
4 attention?

5 MR. HALLENSTEIN: We can review the data, but it's a
6 convoluted and complicated process, the SEEM program itself,
7 the SQM program. By seeing whether there is a penalty
8 associated with it, a failure for that matter, it is clear cut
9 and dry that a problem exists. Sometimes by just looking at
10 the data itself you have to dig deeper into the woods.

11 COMMISSIONER DEASON: Mr. Meza, after the storm is
12 there information that can be provided -- after the storm
13 restoration business is back as close to normal as you can be
14 immediately following a hurricane, can information be obtained
15 which indicates the time frame for a customer's restoration by
16 the type customer?

17 MR. MEZA: I don't know if it can be broken by type
18 of customer, but I do believe we retain the data and that the
19 information necessary to make that evaluation would be
20 available.

21 COMMISSIONER DEASON: Has there been any analysis in
22 past hurricanes as to whether there seems to be a systematic
23 problem?

24 MR. MEZA: We believe that there has not been a
25 systematic problem as evidenced by the conversations Mr. Feil

1 and I have had as well as with other CLECs. And there have not
2 been many given the magnitude of repair and install orders that
3 we had, especially following Hurricane Wilma. The number is de
4 minimis. But we do have the data that we think will verify
5 that.

6 MS. HARVEY: Chairman, can I answer that?

7 CHAIRMAN EDGAR: Ms. Harvey.

8 MS. HARVEY: Commissioner, we had requested the data
9 for three months during the force majeure period of October,
10 November, and December. We had asked for what the penalties
11 that would have been paid, and BellSouth wrote us back in a
12 document request that it would take them months in order to get
13 that data for us, that they would have to reprogram computers
14 and it would be --

15 COMMISSIONER DEASON: Well, doesn't that in some
16 sense give you some comfort that when they restored the service
17 they didn't know which customers they were, they were just
18 restoring service? It doesn't give you any comfort?

19 MS. HARVEY: No.

20 CHAIRMAN EDGAR: Commissioner Tew.

21 COMMISSIONER TEW: If we were to take this up during
22 the regular six-month review process, what kind of time frame
23 would that put us on? And I guess I ask that question in
24 relation to BellSouth representing it would take them months to
25 get that data together?

1 MR. HALLENSTEIN: Well, the six-month review, we have
2 a workshop scheduled late July, and usually there are
3 subsequent workshops that follow thereafter. And resolution of
4 any issues would be brought back to you. We are anticipating
5 well or at the end the hurricane season at this point. So as
6 Commissioner Carter alluded to earlier, we believe that this
7 issue needs to be addressed now. It is hurricane season.

8 CHAIRMAN EDGAR: Commissioner Carter.

9 COMMISSIONER CARTER: Thank you, Madam Chairman.
10 Just for staff, how long has this issue been percolating?
11 Percolating is my term.

12 MS. HARVEY: The issue was brought up in February of
13 2005 at the six-month review that was in effect at that time.
14 Resolution could not be reached at that time, and then as we
15 entered into the hurricane season, CLECs began calling with
16 issues of what they felt was discriminatory service. And then
17 the issue came up in terms of this recommendation, and we
18 decided to go ahead and bring it before you now at the
19 beginning of the hurricane season rather than waiting until the
20 next six-month review.

21 COMMISSIONER CARTER: Madam Chair. So this started
22 in February of '05?

23 MS. HARVEY: I believe it was brought to our
24 attention at that time. It may have been an issue with the
25 CLECs prior to that.

1 COMMISSIONER CARTER: Commissioner, a follow-up.

2 CHAIRMAN EDGAR: Commissioner Carter.

3 COMMISSIONER CARTER: Then what happened? What steps
4 were taken after February '05? What happened? Walk me through
5 the litany of --

6 MS. HARVEY: We went through workshops where the
7 parties discussed that. When I say the parties, BellSouth and
8 the CLECs that were participating in the six-month review at
9 that time. We discussed the issues then, and no resolution
10 could be reached, and so the issue was not brought before you
11 at that time for resolution.

12 COMMISSIONER CARTER: Madam Chairman.

13 CHAIRMAN EDGAR: Commissioner Carter.

14 COMMISSIONER CARTER: You say workshops. Is that
15 one, is it two, or is it 200?

16 MR. HALLENSTEIN: I would say approximately half a
17 dozen.

18 COMMISSIONER CARTER: Half a dozen. And that went on
19 until --

20 MR. HALLENSTEIN: A good -- it's a six-month review,
21 but the workshop itself and conference calls went on for almost
22 a good six months.

23 COMMISSIONER CARTER: And then what happened in
24 February of '06? That was a year, right?

25 MR. HALLENSTEIN: Yes. And this issue did not take

1 precedent at that time. There was a bigger mountain to tackle
2 at that time because we were looking at the entire --
3 BellSouth's entire SQM plan, SEEM plan, and making changes to
4 it. So this issue was kind of, you know, on a smaller scale.
5 But with the onslaught of the hurricanes last summer, and we
6 had already resolved the changes to the SEEM plan, with the
7 onslaught of the hurricanes last summer this issue has now come
8 to the forefront.

9 MS. HARVEY: Parties were able to reach settlement on
10 all the issues that were brought before us in the six-month
11 review with the exception of this and a few others.

12 COMMISSIONER CARTER: Madam Chair.

13 CHAIRMAN EDGAR: Commissioner Carter.

14 COMMISSIONER CARTER: For the parties, how close are
15 you guys on resolving this issue? I guess you guys have kind
16 of kissed and made up on everything else, but this issue here
17 is outstanding?

18 MR. MEZA: We're still dating.

19 MR. FEIL: We're still circling each other sort of.

20 MR. MEZA: I can't figure him out.

21 MR. FEIL: You and a lot of other women.

22 MR. MEZA: To answer your question, sir, we are, I
23 believe, close on several other issues. One of the reasons why
24 BellSouth wanted to take this specific issue outside of our
25 discussions with FDN is that it is a modification of plan

1 issue. And we believe that those types of things need to be
2 discussed in the context of the entire industry, because you
3 are changing the way the rules work. And today I am here to
4 tell you that we are ready, willing, and able to talk about the
5 CLECs' perceived concerns and looking at all potential
6 solutions, all, everything, so that we can try to reach a
7 negotiated resolution with staff and with other parties to
8 address whatever concerns they may have.

9 MR. FEIL: Commissioner Carter, in the way of
10 background. After the hurricanes last year when we started
11 gathering up our examples, we went through a lot of effort to
12 make sure we were trying to provide good examples and not just
13 sort of flood BellSouth and PSC staff with everything we could
14 find so that they ended up doing most of the work to try and
15 figure out which ones were good and which ones weren't. That
16 was toward the tail end of last year.

17 I think FDN, BellSouth, and the staff had a meeting
18 in the first quarter of this year, probably in, I think,
19 February/March time frame. We have been going back and forth
20 and back and forth on the facts involved in those examples, and
21 that's probably about 45 days ago I would say, 30 days ago, and
22 Mr. Meza and I decided let's stop volleying back and forth on
23 the examples and let's just talk about some of the issues, and
24 the SEEMS issue was put to the side. And I think that Mr. Meza
25 is probably correct in his observation that that is more of a

1 generic that the Commission should deal with on an at-whole
2 basis addressing all the CLECs, with input from all the CLECs.

3 CHAIRMAN EDGAR: Commissioner Carter.

4 COMMISSIONER CARTER: One itty-bitty.

5 CHAIRMAN EDGAR: You have the floor.

6 COMMISSIONER CARTER: Thank you. I appreciate the
7 negotiating posture that both of you find yourselves in. How
8 do we put a time on that? You say you guys are close, you
9 resolved -- I mean, what kind of -- let's put it in -- not dog
10 years, but what kind of time are we on in terms of you guys
11 being able to resolve this?

12 MR. FEIL: Our intention wasn't to address this
13 issue. Our intention was to address our other issues with the
14 goal of trying to get that done by July, but as to the SEEMS
15 issue we put that to the side.

16 MR. MEZA: We are willing and ready to commit
17 whatever resources are necessary to get the six-month review
18 going and productive. And however long or expeditiously we can
19 operate it and contribute to that, we will. I mean, the other
20 thing that you have in your back pocket is that to the extent
21 that either we can't agree and ultimately you have to order a
22 change in the plan, you can always order a true-up. That's not
23 something we would like for you to do, but to the extent you
24 are concerned about the hurricane season and its impact this
25 year and how does that relate to the process designed by the

1 plan, you always have that option. You have that option today.

2 COMMISSIONER CARTER: This is actually the final
3 question, Madam Chair. Staff, I'm trying to get a perspective
4 here. How much time do you think it will take to resolve this
5 issue? I mean, just bottom line it. You guys have been
6 dancing around it for what, a year or so. I mean, how much
7 time -- I mean, it's not complicated in the context. It's not
8 something that all parties have anticipated. Am I correct in
9 that assumption? Maybe it is then.

10 MS. HARVEY: Let me answer you this way. During a
11 six-month review, all the parties identify whatever issues they
12 have with the plan and they are all put on a list and we go
13 through that list and we negotiate every single issue on that
14 list. And we will come with back to you when we finish that
15 list.

16 Typically that takes months. I don't know what the
17 list is going to look like. Last time it took at least six
18 months to get through that list because it was enormous. I
19 don't anticipate this list to be as long as it was last time.
20 I anticipate this list would be fairly reasonable. I would say
21 that we could realistically probably be back to you by October.

22 COMMISSIONER CARTER: Madam Chair.

23 CHAIRMAN EDGAR: Commissioner Carter.

24 COMMISSIONER CARTER: I mean, we're just talking
25 about one issue that is left. This is an issue left off the

1 list from last year, right?

2 MS. HARVEY: Right. But BellSouth is talking about
3 putting it in the six-month review and handling it that way, so
4 our normal process would be to handle all the issues and bring
5 it back to you all at one time.

6 COMMISSIONER CARTER: So we go back to go and collect
7 \$200?

8 MR. HALLENSTEIN: This could become one issue in a
9 list of 200 issues with the new six-month review workshop
10 coming up. We don't know how many issues are going to be
11 brought forward, but this would fall back into the pot, so to
12 speak.

13 CHAIRMAN EDGAR: Commissioner Tew.

14 COMMISSIONER TEW: This is to BellSouth. How quickly
15 can you get the data that Ms. Harvey was discussing earlier? I
16 believe it was October through December of last year. I think
17 she said it would take months, but is that still the case?

18 MR. MEZA: I do not know the answer to that, but I
19 will be more than happy to get back with you and the Commission
20 with an answer to that.

21 CHAIRMAN EDGAR: Commissioners, what is your
22 pleasure?

23 COMMISSIONER DEASON: Madam Chairman, you know, I
24 know that there seems to be some urgency because of the fact
25 that we are once again in the hurricane season. And I agree

1 that if we believe there's a problem that needs to be addressed
2 associated with hurricanes and preparedness and restoration we
3 need to address it as quickly as possible. I'm just not sure
4 this is a problem. I've not been convinced that there is, in
5 fact, or if there is any reason for BellSouth in its
6 restoration plans to try to discriminate and dictate
7 restoration times based upon which customer.

8 It seems to me that they have an obligation to
9 restore service to all customers, retail and wholesale, as
10 quickly as possible. And usually that means that when you are
11 restoring there has to be an evaluation made as to what
12 facilities can be accessed the quickest, which facilities can
13 be restored quickest to the greatest number of customers, and
14 then there also may be some considerations of priority
15 customers in the sense of not whether they are a retail or a
16 wholesale customer, but just the nature of whether it's an
17 emergency facility or hospital or something of that nature.

18 I'm all for addressing it if there's a problem, I'm
19 just not convinced that there is a problem. Maybe we need to
20 look at the data and find out if there is a problem, and maybe
21 it will vary from storm to storm. Maybe one storm will show a
22 result that -- I mean, we may get data that shows that just
23 because of where certain customers are located and the
24 priorities that are in effect, you may have one storm where you
25 may see CLEC customers being restored more quickly than

1 BellSouth customers. In the next storm the facts may be
2 different. So, I mean, I'm not sure that just looking at one
3 storm is going to give us a definitive answer, but it may at
4 least give us some guidelines as to whether we think there is a
5 systematic problem. I'll throw it out to staff. Do you all
6 think there is a problem? Do you think in restoration
7 BellSouth is discriminating against CLEC customers?

8 MS. HARVEY: Commissioner, my evidence is based on
9 provisioning as opposed to restoration, but of the 14 examples
10 that were discussed earlier that were brought to our attention
11 by FDN, of those 14 we believe that five experienced
12 discriminatory service. Another five may have received
13 discriminatory service. Two of those customers received
14 expedited treatment on the retail side whereas it had been
15 requested for expedite on the wholesale side and it was denied.
16 Of the 14 customers, five still remain with FDN. However, six
17 of those customers are with BellSouth now, and these were new
18 installs for FDN that are now with BellSouth because they
19 couldn't get provisioned in a timely manner.

20 COMMISSIONER DEASON: Are there any BellSouth
21 customers who complained that their FDN neighbor got service
22 restored quicker than they did?

23 MS. HARVEY: Not to my knowledge.

24 COMMISSIONER DEASON: Mr. Meza, are there any such
25 complaints?

1 MR. MEZA: I'm not aware of that.

2 COMMISSIONER DEASON: So you think there is problem.
3 The data indicates there is a problem?

4 MS. HARVEY: Yes, sir. In terms of new
5 installations, I clearly see that there is a problem with the
6 sample of 14 customers that I have before me.

7 COMMISSIONER DEASON: And it's limited to new
8 installations?

9 MS. HARVEY: Yes.

10 COMMISSIONER DEASON: What about restorations, is
11 that an issue at this point?

12 MS. HARVEY: I don't have any evidence to that
13 effect.

14 CHAIRMAN EDGAR: Commissioner Carter.

15 COMMISSIONER CARTER: I was all rah-rah and ready to
16 go, but then they say they roll over into another time frame,
17 so I lost -- all the wind of my urgency sail just went
18 pooh-pooh. You know, I was asking a series of questions, and
19 they said, well, you know, we'll just put it on the list for
20 next time. So, if it goes on the list for next time -- I mean,
21 what really is the urgency if it's going to go on another list
22 and be put on -- do you understand what I'm saying? I was
23 there.

24 MS. SALAK: Commissioner, Beth Salak for staff. My
25 understanding of what the staff was saying is that that was

1 BellSouth's proposal, that it be put on another list during the
2 six-month review. Staff's proposal is that we deal with it
3 now. I mean, if you are talking about -- we don't believe it
4 should just be added to that list, we believe it should be
5 dealt with now.

6 CHAIRMAN EDGAR: Commissioners.

7 COMMISSIONER DEASON: Madam Chairman, I'm inclined to
8 deny staff and simply put it on the list. And then if it can't
9 be resolved, it will get back to us in due course. If that is
10 a motion, I will make it.

11 CHAIRMAN EDGAR: Commissioner Deason, I'm comfortable
12 with that. I, quite frankly, feel like we need some more
13 information and some more data and maybe a larger sample, for
14 lack of a better term.

15 Commissioner Carter.

16 COMMISSIONER CARTER: I was just going to ask -- and
17 I agree with the motion. I was just going to ask would it be
18 appropriate for us to put a time certain on it to where we can
19 see when we would revisit this.

20 COMMISSIONER DEASON: There is a time frame already
21 set, is there not?

22 CHAIRMAN EDGAR: I think there is, but perhaps staff
23 could tell us what that time frame is.

24 MS. HARVEY: The workshop for initiating the
25 six-month review is scheduled to begin in July. We won't know

1 how many issues are on the list until that time, and then that
2 list will dictate the amount of time that it will take to bring
3 it back to you. But, again, if we're going to handle it all
4 lump sum, then it will probably be no sooner than October.

5 CHAIRMAN EDGAR: Commissioners, Commissioner Deason
6 has made a motion. Is there a second?

7 COMMISSIONER CARTER: I'll second it.

8 CHAIRMAN EDGAR: There is a second.

9 Commissioner Tew, did you have a question?

10 COMMISSIONER TEW: I was just going to add that there
11 is nothing that prevents bringing this back sooner than October
12 separate, if it gets resolved before then. Once you get the
13 data and get more information, it seems like you have got that
14 option, as well.

15 CHAIRMAN EDGAR: If it is resolved or if there are
16 some other factors that rises to the level of further
17 consideration and discussion. Okay.

18 Commissioners, we have a motion and we have a second.
19 Is there further discussion? All in favor of the motion say
20 aye.

21 (Unanimous affirmative vote.)

22 CHAIRMAN EDGAR: Opposed? Show the motion adopted.
23 Thank you.

24 MS. BASS: I don't believe we did Issue 2.

25 CHAIRMAN EDGAR: Thank you, Ms. Bass.

1 Once again, in my haste to move through the meat of
2 the items, I have bypassed Issue 2 on Item 4, so I need a
3 motion on Issue 2.

4 COMMISSIONER CARTER: Is it necessary?

5 CHAIRMAN EDGAR: It may or may not be, but yet the
6 recommendation before us is for the docket to remain open. Mr.
7 Cooke, I will look to you, or to Mr. Teitzman -- sorry, Mr.
8 Teitzman, to bring you back up, but with the motion that
9 carried on Item 4, do we need a motion on Issue 2?

10 MR. COOKE: Madam Chairman, I think we keep a motion
11 to keep the docket open, since you have asked them to, in the
12 future, if possible, bring this back if there are other factors
13 to consider.

14 CHAIRMAN EDGAR: Okay. For clarity for our staff and
15 for ourselves, can I have a motion for the docket to remain
16 open?

17 COMMISSIONER DEASON: So moved.

18 COMMISSIONER CARTER: Second.

19 CHAIRMAN EDGAR: Moved and seconded. All in favor
20 say aye.

21 (Unanimous affirmative vote.)

22 CHAIRMAN EDGAR: Opposed? Show the motion carried.
23 Thank you all.

24

25

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

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

7

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

10

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

13

DATED THIS 28th day of June, 2006.

14

15



16

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