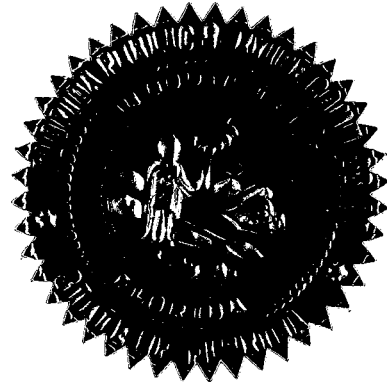


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060308-TP

IN the Matter of:

JOINT APPLICATION FOR APPROVAL OF
INDIRECT TRANSFER OF CONTROL OF
TELECOMMUNICATIONS FACILITIES
RESULTING FROM AGREEMENT AND PLAN
OF MERGER BETWEEN AT&T INC. (PARENT
COMPANY OF AT&T COMMUNICATIONS OF
THE SOUTHERN STATES, LLC, CLEC CERT.
NO. 4037, IXC REGISTRATION NO.
TJ615, AND PATS CERT. NO. 8019;
TCG SOUTH FLORIDA, IXC REGISTRATION
NO. TI327 AND CLEC CERT. NO. 3519;
SBC LONG DISTANCE, LLC, CLEC CERT.
NO. 8452, AND IXC REGISTRATION NO.
TI684; AND SNET AMERICA, INC., IXC
REGISTRATION NO. TI389) AND BELLSOUTH
CORPORATION (PARENT COMPANY OF
BELLSOUTH TELECOMMUNICATIONS, INC.,
ILEC CERT. NO. 8 AND CLEC CERT.
NO. 4455); AND BELLSOUTH LONG DISTANCE,
INC. (CLEC CERT. NO. 5261 AND
IXC REGISTRATION NO. TI554).



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 5

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

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PLACE: Betty Easley Conference Center
Room 148
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Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Chief, Hearing Reporter Services Section
FPSC Division of Commission Clerk and
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(850) 413-6732

1 PARTICIPATING:

2 MARSHALL CRISER and JIM MEZA, ESQUIRE, and LISA
3 FOSHEE, ESQUIRE, representing BellSouth Telecommunications,
4 Inc.

5 WAYNE WATTS, ESQUIRE, and TRACY HATCH, ESQUIRE,
6 representing AT&T Communications of the Southern States, LLC.

7 VICKI GORDON KAUFMAN, ESQUIRE, representing
8 NuVox Communications, Expedia, and ITT DeltaCom.

9 MATTHEW FEIL, ESQUIRE, representing FDN
10 Communications.

11 BETH KEATING, ESQUIRE, representing XO
12 Communications.

13 ALAN GOLD and MARK AMARANT, representing Saturn
14 Telecommunications Services.

15 GENE ADAMS, ESQUIRE, representing Time Warner
16 Telecommunications.

17 DALE BUYS, RAY KENNEDY, MICHAEL COOKE, ESQUIRE,
18 JASON FUDGE, ESQUIRE, and PAT WIGGINGS, ESQUIRE, representing
19 the Florida Public Service Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: And now it looks like during that
3 discussion we did get everybody settled, so I'll look to staff
4 to go ahead and introduce Item 5.

5 MR. BUYS: Dale Buys with Commission staff.

6 Item 5 is staff's recommendation in Docket Number
7 060308-TP, on the joint application of BellSouth Corporation
8 and AT&T, Inc., for approval of the indirect transfer of
9 control of telecommunications facilities from BellSouth to AT&T
10 as a result of the planned merger between the two companies.

11 Additionally, staff would like to make an oral
12 modification to the case background in its recommendation. On
13 Page 3, staff would like to omit the first sentence in the
14 second paragraph which reads, "The control of BellSouth
15 Telecommunications, Inc., and BellSouth Long Distance, Inc.,
16 will be transferred to AT&T, Inc., and hence BellSouth
17 Corporation will cease to exist upon the conversion of
18 BellSouth Corporation's stock to AT&T, Inc.'s stock." That
19 sentence should be stricken.

20 In addition, we would like to clarify in Issue 2
21 where staff is recommending that the Commission file comments
22 with the FCC, that that issue is not a PAA and the language in
23 the recommendation should not be contained in the subsequent
24 order.

25 With that said, staff is available to answer any

1 questions that the Commissioners may have. And, also, I
2 believe there are a number of interested parties that are here
3 today to address the Commission.

4 CHAIRMAN EDGAR: Thank you.

5 Commissioner Arriaga.

6 COMMISSIONER ARRIAGA: I didn't understand the second
7 clarification. Would you repeat that for me, please?

8 MR. BUYS: Yes. Issue 2 is staff's recommendation
9 for the Commissioners to file comments with the FCC regarding
10 the merger, and that issue is not a PAA, and the language
11 contained in the recommendation, should there be an order
12 issued, would not be included in that order.

13 COMMISSIONER ARRIAGA: I understand now. Thank you.

14 CHAIRMAN EDGAR: Mr. Meza.

15 MR. MEZA: Thank you, Madam Chairman. Jim Meza on
16 behalf of BellSouth. With me today is Lisa Foshee, she also
17 represents BellSouth.

18 BellSouth supports staff's recommendation and we
19 would like to reserve the majority of our time to answer any of
20 your questions or any comments raised by our wholesale
21 customers.

22 But to begin with, Mr. Criser, the president of
23 BellSouth Operations in Florida, would like to make a few
24 opening comments.

25 CHAIRMAN EDGAR: Mr. Criser.

1 MR. CRISER: I'm getting the point on the corner
2 here. Commissioners, good afternoon. I'm Marshall Criser,
3 President of BellSouth Florida. I'm here to support the joint
4 application filed with this Commission by BellSouth and AT&T.
5 This merger will make BellSouth a better and more efficient
6 competitor creating more choices for voice, data, and video
7 communications consumers in Florida.

8 This merger is simple with respect to the effect on
9 Florida. The merger is a holding-company transactions between
10 BellSouth and AT&T. After the merger BellSouth Corporation
11 will being a wholly-owned subsidiary of AT&T. BellSouth
12 Telecommunications, the operating subsidiary, will continue to
13 operate in Florida. We will be the company you are familiar
14 with in Florida.

15 We will continue to provide high quality service and
16 meet our customers and this Commission's service standards,
17 both retail and wholesale. We will continue to invest in
18 Florida to meet the communications needs of our customers. We
19 will continue our current customer relationships, both retail
20 and wholesale. We will continue to have meaningful high
21 quality jobs. We will continue to be an active corporate
22 citizen.

23 Commissioners, I have had the pleasure of working
24 with this agency since the time when the gentleman you honored
25 earlier today was seated at that bench. And during that time I

1 believe I have learned time and time again that the best way to
2 do it is to say it and play it straight. So I just want to
3 close by telling you I believe this merger is good for
4 BellSouth's customers. I believe that this merger is good for
5 BellSouth's employees. I believe that this merger is good for
6 our state. And I believe that your approval of the staff
7 recommendation in front of you today meets those same
8 standards.

9 I want to thank you for the time to be in front of
10 you today and I would like to pass to Mr. Wayne Watts of AT&T
11 to make a couple of additional comments. Thank you.

12 MR. HATCH: Madam Chair, Tracy Hatch appearing on
13 behalf of AT&T. Also with me is Wayne Watts, Senior
14 Vice-President and Assistant General Counsel for AT&T.

15 MR. WATTS: Good afternoon. I find it quite a
16 privilege to have an opportunity to address you here. I am
17 also mindful that you have had a long time and I will keep my
18 remarks appropriately brief.

19 I do want to echo the comments that Marshall made
20 about the impact of this transaction on the customers, the
21 employees, and the shareholders of BellSouth and for AT&T. To
22 do that, I want to step back for just a moment and describe the
23 industry in which we find ourselves operating today. It is a
24 highly competitive industry. You cannot ignore the results of
25 the changes in our industry, be they regulatory changes,

1 technological changes, or a combination of the two that have
2 resulted in the creation of extensive competition.

3 ILECs as an industry lost 8 million access lines in
4 2005. They are projected to lose 7,000 access lines in 2006.
5 Those are facts that cannot be ignored. Comcast projects it
6 will have one million VoIP customers by the end of '06.
7 Comcast is a very significant aggressive competitor in Florida
8 and other places. Vonage began the year with half a million
9 customers and it projects that it will end the year with 1-1/2
10 million customers. Those are all facts that cannot be ignored.

11 That competition is real and exists, this transaction
12 will do nothing to harm it. And why is that the case, because
13 our two companies are highly complementary. BellSouth has a
14 tremendous resource in terms of local access. Their focus is
15 on residential customers, small and mid-sized business
16 customers. Frankly, if you talked to large business customers,
17 particularly those that have locations across the country and
18 around the globe, they would tell you BellSouth is not an
19 alternative for them.

20 We filed pleadings at the FCC just this morning. We
21 attached numerous customer statements indicating exactly that.
22 They simply do not view BellSouth as a competitor with AT&T.
23 You know as well as I that AT&T, legacy AT&T withdrew from the
24 consumer business before the SBC/AT&T transaction even
25 occurred. They are therefore not a competitor in the consumer

1 business; they are not a price constraint on BellSouth's
2 activities; and they are not an entity that provides
3 competition to BellSouth today. So you get this transaction
4 without any harm to competition.

5 Now, let's turn to what is really important to the
6 five of you and to our customers, and that's what are the
7 benefits of this transaction. First, let's talk about how this
8 transaction will benefit residential and small business
9 customers. You know, I mentioned that AT&T doesn't compete for
10 those customers in Florida, but what AT&T has is a unique
11 resource and asset called AT&T Labs.

12 AT&T Labs has spent the last many years focussing on
13 developing new products, new services, new capability for the
14 enterprise customer, the very customers that AT&T chose to
15 focus on as they withdrew from the consumer space. They did
16 not have the incentive or, frankly, the economic resources to
17 try to take those benefits down to small business customers,
18 consumers, and that sort of thing. Our combined company, just
19 as the combination of AT&T and SBC had this benefit in our 13
20 states, this newly combined company will have both the
21 incentive and the economic resources to take those benefits
22 down to the customers that are the focus of BellSouth in
23 Florida and their other eight states. SBC's customers have
24 already begun to receive the benefit of those new services and
25 features just in a few months since we closed that transaction

1 in November of last year.

2 I will just give you one example because of the
3 interest of time. But by integrating the AT&T backbone network
4 with the SBC backbone network we have been able to eliminate
5 hops and connections between the multiple backbone networks,
6 decreasing the number of handoffs that have to occur, or hops
7 that have to occur, decreasing latency, improving the quality
8 of service, improving the speed of the service. That has
9 already begun to be realized in the SBC states. That will
10 quickly begin to be realized in Florida and in other BellSouth
11 states. That's just one example. But there are other
12 benefits.

13 The second benefit is in relation to video
14 competition. BellSouth has done a phenomenal job of investing
15 in fiber for broadband services, but they are investing in
16 fiber for broadband services. Higher speed, broader bandwidth
17 for DSL and that sort of thing. They have not made a decision
18 to enter the video market. It's a perfectly valid thing to
19 think about a whole lot because it's tough. It's a hard
20 business to enter.

21 AT&T, on the other hand, is absolutely committed to
22 making that entry. We have begun to spend over \$4 billion to
23 expand our fiber footprint. But more importantly, and here is
24 where we are different from BellSouth, we have begun to develop
25 the back office systems and capabilities to deliver, order,

1 provision video services. We have also begun the very, very
2 difficult negotiations with content providers, and that is
3 something that has put us in a position where the combined
4 company will be able to do something that BellSouth cannot do
5 alone, and that is quickly roll out and deploy a video offering
6 in competition with cable over the fiber that BellSouth has put
7 in place. A tremendous benefit that would not occur but for
8 this merger.

9 There is another benefit, and you will be happy to
10 know I'm getting close to the end here. I have heard many
11 times during the course of this day a reference to the
12 hurricane season, the difficulties that all customers face in
13 Florida. I cannot say enough about what I see as being a
14 tremendous capability that BellSouth has to respond to those
15 kind of difficult situations, to restore service in time of
16 disaster. But I can also tell you, and I could not say enough,
17 about how the combined company will be able to do so even
18 better.

19 We will take the resources and capabilities that
20 BellSouth has, hard learned lessons, and we will take the
21 resources and capabilities that AT&T has, hard learned lessons,
22 substantial investments by AT&T. We have 300-plus mobile
23 central offices that could be dispatched to a disaster, site of
24 disaster. Those can be put to use faster by the combined
25 business than they could by two separate companies.

1 We have capabilities for fixed wireless. BellSouth
2 has capabilities for fixed wireless. By combining those
3 resources and capabilities the combined company will be able to
4 respond to and restore service following natural disasters
5 faster, better, and more effectively. And that's before you
6 even take into account it is a real expensive proposition, and
7 the combined company will simply have stronger financial
8 resources, as well. So there are a number of benefits for this
9 transaction.

10 Now, let me talk about employees for just a second
11 and then I'll stop. One of the things that we are very proud
12 of at AT&T, we are very proud of at SBC before we combined with
13 AT&T, and I know that BellSouth is very proud of, is how we
14 treat our customers, but also how we treat our employees.

15 One of the commitments that the Chairman of BellSouth
16 asked us to make and one of the commitments we were happy to
17 give is that we will recognize the value of the employees that
18 BellSouth has. That we will work hard to try to make sure that
19 we maintain the good jobs that BellSouth has. And we have a
20 letter that is attached, I believe it was attached to the
21 documents that have been filed with this Commission where we
22 made it clear that we will maintain state headquarters in each
23 of the states, including Florida, which I know is very
24 important to this Commission and to this staff. That we will
25 maintain positions like Marshall's position here because we

1 know as a matter of business you need to have the ability to
2 reach out to somebody here in Florida, not have to find
3 somebody in San Antonio to talk to if you have an issue or
4 something like this that comes up.

5 And our commitment to the employees of BellSouth and
6 our commitment to the employees across our company are further
7 evidenced by the steps we're taking to make sure that we can
8 minimize any impact on employees. For example, BellSouth has
9 put in place a hiring freeze. We have, too. AT&T, alone,
10 loses 1,200 customers -- employees. We lose a hell of a lot
11 more than 1,200 customers, I will say that -- but we lose 1,200
12 employees a month just natural attrition. People who retire,
13 leave, go to work somewhere else. And we are doing everything
14 we can to take advantage of that attrition to minimize the
15 impact on employees after we close.

16 So what I would sum up is this: Competition is real,
17 this merger does not affect it. The benefits that I just
18 mentioned are very real, are very tangible. They will be
19 realized in Florida, they will be realized quickly. And so I
20 would join in Marshall's observation that this transaction is
21 very good for the customers and employees of BellSouth and AT&T
22 and for the state of Florida. Thank you.

23 MR. HATCH: We reserve the rest of our time, Madam
24 Chair.

25 CHAIRMAN EDGAR: Thank you, Mr. Hatch. Mr. Feil?

1 Ms. Kaufman.

2 MS. KAUFMAN: Thank you, Madam Chairman,
3 Commissioners, and I do sympathize with you as well as having
4 had a long day, so I hope you will bear with me for just a few
5 moments. I'm Vicki Gordon Kaufman and on this item I am here
6 before you on behalf of NuVox Communications, Expedia, and ITT
7 Deltacom.

8 Commissioners, I think that we can all agree, and I
9 know you probably all read the press the way I have that the
10 proposed merger of these two companies will create the largest
11 telecommunications company in the country, and that this
12 transaction is probably the largest or one of the largest that
13 has ever occurred in the history of our country. It's
14 interesting to us because this transaction is going to have a
15 direct and immediate impact here in Florida. So that being
16 said, it's our view that it behooves the Commission here, the
17 Florida Public Service Commission, to take a very close look at
18 this request and to fully investigate what impact the transfer,
19 if you will, will have on the provision of telecommunications
20 services here in Florida.

21 If the Commission doesn't look at this, if the
22 Florida Public Service Commission doesn't look at this and
23 assess it, my question to you would be, well, who will. And we
24 suggest that you do this investigation through an evidentiary
25 hearing. Not on the basis of a written application, not on the

1 basis of the eloquent statements that have been made to you
2 today by some of the representatives of the companies, but
3 through your usual process, which is an evidentiary hearing
4 where there is sworn testimony and cross-examination.

5 We suggest to you that this transaction is just too
6 important not to take that step. You have heard a lot of
7 comments from the two representatives here today as to all the
8 benefits that this transaction will have as well as the fact
9 that they assure you that this won't have any adverse impact on
10 competitive markets in Florida. We think you need to put those
11 comments to the test.

12 Now, your staff has told you in their recommendation
13 as I understand it that the standard that you need to apply
14 here is one of the public interest under Section 364.01. We
15 agree. That's the standard that you should apply. But it
16 seems to us that your staff took a pretty narrow view of what
17 that standard was and suggests that it related to the
18 managerial, technical, and financial capabilities of the new
19 company.

20 That's the usual standard that is applied to a new
21 certificate, but I think if you also look at that new
22 certificate section, which is 364.335, it also has a separate
23 public interest criteria, and it also says that you may and you
24 should investigate and determine whether that public interest
25 standard has been met.

1 I would respectfully suggest to you that 364.01,
2 which I know you are all familiar with, gives you ample
3 authority to take a close look at this request because it has a
4 number of provisions that charge you with, for example,
5 ensuring the competitive provision of telecommunications
6 services, encouraging competition to ensure availability of the
7 widest possible range of consumer choice, promoting competition
8 by encouraging innovation and investment and encouraging the
9 introduction of new services. All of these matters are going
10 to be impacted by this transaction, and we suggest you conduct
11 an evidentiary hearing to find out what that impact will be.

12 I also read the staff recommendation to say to you
13 that these are important issues, Commissioners, these are
14 important issues. But, we think they are issues that the FCC
15 ought to be looking at, not you. And, in fact, they've
16 suggested some comments for you to file with the FCC. And we
17 don't take -- we don't disagree that you should inform the FCC
18 of your view. However, we also think that just like you have
19 heard the old saw that all politics are local, you are in the
20 best position here to look at this transaction in Florida and
21 figure out how it is going to impact telecommunications
22 services in Florida, which, of course, is going to ultimately
23 at the end of the day impact end users.

24 Some questions I think that you might want to find
25 out the answers to before or if you were to approve the

1 company's request would be, for example, will this transaction
2 increase or decrease the availability of services. Will this
3 transaction increase or decrease prices to wholesale customers
4 and to end use customers. Will this transaction encourage or
5 discourage innovative services and packages that consumers are
6 interested in. Will this transaction unreasonably tilt the
7 playing field back to monopolistic conditions.

8 Now, as I've said, you have heard the gentlemen from
9 BellSouth and AT&T assure you there won't be any competitive
10 impact and it will all be business as usual. But at the end of
11 the day, regardless of the corporate structure, you're going to
12 have two incredibly large companies combining into one. One
13 goal, one company, regardless of how the operating subsidiaries
14 are set up.

15 We think that your staff's comment that you are not
16 in a position to focus on the competitive interests of CLECs
17 misses the point entirely. Because, in our view, the
18 competitive interests of CLECs are just inextricably tied to
19 your public interest review and to the interests of all
20 consumers here in Florida in having a competitive
21 telecommunications market and all of the benefits that such a
22 market can bring.

23 The applicants, the joint applicants spent -- and I
24 should have counted the pages -- many pages in their
25 application attempting to assure you that competition would not

1 be impacted by this transaction, so we suggest that perhaps you
2 want to hold their feet to the fire and investigate that to see
3 if that is the case or not the case. And also, perhaps after
4 your investigation, decide maybe there are some conditions that
5 might need to be attached to this transaction to ensure that
6 the competitive market continues to flourish.

7 So to sum up, Commissioners, these are issues that
8 the Florida Commission should be concerned about and that you
9 should review here in Florida. And so our position is that you
10 should conduct a full evidentiary hearing on this requested
11 transfer and make an evidentiary determination here in Florida
12 as to whether or not this transaction will be or will not
13 benefit the people in Florida. Thank you.

14 CHAIRMAN EDGAR: Mr. Feil.

15 MR. FEIL: I will be brief, Madam Chair. Matthew
16 Feil with FDN Communications. This is a reconstitution of the
17 Bell monopoly. You are only going to have one chance to
18 address this issue from now probably through the rest of the
19 history in the State of Florida for communications services.

20 I really only wanted to address Issue 2. And one of
21 the things that the -- Mr. Watts, was it -- referred to is very
22 interesting, which is IP video competition. He talked about
23 that, and the interesting thing about all the advocacy that
24 AT&T and BellSouth and the other ILECs have made in the course
25 of discussing video services is this: You have to have

1 competitors to have competition. And our concern is that we
2 want to be in the situation where we are one of those
3 competitors. And if you have such a dominant carrier, a
4 reconstituted monopoly out there to compete with, it is going
5 to make competition that much more difficult for carriers such
6 as my client.

7 I submit to you that you don't want to be here two
8 years from now and looking at the competition report and see
9 that the progress you've made in the state of Florida is slowly
10 being eroded. There are markets out there that the cable
11 companies do not compete for. There are millions of
12 residential customers in the state of Florida that don't have
13 broadband, don't want broadband, all they want is a phone line.
14 You are going to want wireline competition to serve those
15 customers.

16 Those customers also aren't necessarily turning to
17 wireless. If you look at the last competition report, the
18 number of access lines for BellSouth in the state of Florida
19 have actually increased, not decreased. The same thing on the
20 business side. You're going to want wireline competition for
21 business customers because the cable companies are not
22 competing for those customers. You have to have CLECs in order
23 to have price competition.

24 We would urge you to modify the staff recommendation
25 on Issue 2, and in particular the draft comments to the FCC,

1 and recommend to you that you draft comments that would suggest
2 conditions that are at least as stringent as those as the CLECs
3 are advocating to the FCC in that proceeding.

4 If that is not to your liking, I would suggest that
5 you would at least recommend conditions similar to those that
6 the FCC has approved in prior mergers, including examining the
7 merger between SBC and Ameritech, which was the last merger the
8 FCC addressed where it wasn't a combination of ILECs such as is
9 the case here. That's all I had, and I will have to give up my
10 jump seat. Excuse me.

11 CHAIRMAN EDGAR: Thank you. Are there others who
12 would like to address the Commission at this time on this item?

13 Ms. Keating.

14 MS. KEATING: Thank you, Madam Chair and
15 Commissioners. Beth Keating, Akerman Senterfitt, again, here
16 on behalf of XO Communications. And I also thank you for your
17 time today and will try to be brief.

18 As Mr. Feil has pointed out, this is not just your
19 everyday big merger. This is a merger of two large RBHCs. And
20 as with the recent mergers of other large telecommunications
21 companies, XO wants to be clear that we do oppose this merger.

22 That being said, like FDN, XO strongly supports the
23 Florida Commission moving forward and filing comments with the
24 FCC recommending very strong merger conditions in this
25 instance. In a truly competitive market, Commissioners, the

1 availability of equivalent services from other competitors will
2 police the actions, service quality, and pricing of those that
3 are in that market. If this merger proceeds without the
4 application of stringent merger conditions which are tailored
5 to enable the competitive market to survive and thrive, that
6 policing power is simply not going to exist.

7 With last year's large telecom mergers and the recent
8 significant changes in federal telecommunications regulatory
9 policies just having taken effect, there just really hasn't
10 been enough time or regulatory stability for the market to
11 develop to that level where there really is competition
12 sufficient to police the actions of those that are in the
13 market. This merger will substantially reduce competition in
14 Florida. AT&T will no longer compete with BellSouth or the
15 other CLECs. Competitive LECs do not account for enough
16 competitive activity to counterbalance the proposed removal of
17 AT&T from the Florida market. Intermodal competition,
18 competition from wireless, VoIP, and cable isn't the answer for
19 business end users because those services just haven't
20 developed enough to serve any real check on the new entity's
21 market power.

22 Besides the fact that Cingular, the largest wireless
23 provider, is owned by AT&T and BellSouth, the proposed merger
24 partners. For instance, your own 2005 competition report
25 indicates that while wireless service is on the rise, a full

1 93.4 percent of customers still subscribe to wireline service.
2 Of the meager 6.1 percent of customers that have decided to go
3 completely wireless, your report indicates that many of them
4 are actually considering reconnecting to the network. As for
5 cable, while service to residential customers is certainly on
6 the rise, the market penetration isn't yet significant and
7 likely never will be in the small business market.

8 That being said, again, XO understands that the
9 Commission's authority is what it is in this area and that
10 ultimately it is the FCC that will make the final call on this.
11 But you really should not discount your ability to affect the
12 process and to provide input at the FCC. In addition to your
13 state authority to provide telecommunications competition
14 generally and your ongoing responsibility to provide oversight
15 and protect consumers, the Florida Commission is very well
16 respected at the federal level. And your perspective and
17 insight regarding the impacts of this merger will definitely
18 carry great weight.

19 As such, XO appreciates and supports staff's
20 suggestion that you file comments regarding the merger, but we
21 request that you consider strengthening those comments to a
22 great degree and actually recommending specific more stringent
23 merger conditions be applied. We appreciate the time and we
24 hope that you will give us consideration.

25 CHAIRMAN EDGAR: Thank you, Ms. Keating.

1 MR. GOLD: Good afternoon. First, I would like to
2 thank you all for the opportunity to speak today. My name is
3 Alan Gold. I represent Saturn Telecommunications Services,
4 Inc., who I will call STS. Sitting beside me is Mark Amarant,
5 the Chairman of the Board and CEO of STS.

6 We have come here to voice our concern and request
7 the Commission further investigate BellSouth and AT&T's request
8 for approval of indirect transfer of control. We're not here
9 to voice a generalized objection, we are here to bring before
10 you specific instances of misconduct on behalf of BellSouth.
11 We are here to point out to you instances in which BellSouth
12 has failed to follow the law, has failed to follow the
13 directives of the FCC and of this Commission. We are here to
14 demonstrate that BellSouth has failed to follow the directives
15 of the TRO regarding commingling rules and failed to follow the
16 directives of the TRRO regarding the transfer of the embedded
17 base.

18 In the staff's recommendations they discuss the
19 technical capabilities of BellSouth. Through BellSouth's
20 treatment of STS we can demonstrate that BellSouth does not
21 have or refuses to implement the migration of STS's embedded
22 base of customers to a network that STS paid for, a network
23 that was designed, built, and supposedly implemented by
24 BellSouth. We can demonstrate through their treatment of STS
25 that BellSouth has refused or failed to implement the

1 commingling requirements of the TRO.

2 Mr. Amarant will explain to you that beginning in
3 January of '05, nearly a year and a half ago, that they
4 approached BellSouth to design a network in order to comply
5 with the directives of the FCC and of this Commission. They
6 followed every requirement of BellSouth. And today that
7 network is not operating as designed through no fault of
8 BellSouth -- of STS, but through complete fault of BellSouth.
9 Those allegations are presently before this Commission in
10 Docket Number 60435-TT.

11 Now, at BellSouth's request, we are commencing
12 settlement negotiations. But we are coming before you today
13 and requesting that this Commission further investigate what we
14 know to be a complete disregard for the various rules and
15 regulations. We're asking you to investigate this for the
16 public health, safety, and welfare as it relates to the
17 telecommunications industry in Florida.

18 We believe that rewarding BellSouth's conduct with
19 approval is only going to create an unwieldy giant who will
20 only further disregard the rules. Again, at this point in
21 time, as Mr. Amarant will demonstrate, we are just requesting
22 that you not abdicate a responsibility to the FCC, but
23 companies and citizens of the state of Florida are involved and
24 that you take a good hard look before approving the transfer of
25 control. Thank you.

1 Mark.

2 MR. AMARANT: Good afternoon. Sorry. I lost my
3 voice at the Heat game the other night, so I will try to get it
4 out as best I can. STS Telecom is a South Florida based local
5 exchange and voice over IP company with about 10,000 customers
6 in the Dade, Broward, and Palm Beach area. We were founded in
7 1994 and our focus is in Florida. We previously were a
8 switchless carrier until 2002 when we became a CLEC, and then
9 in 2005 we started making plans to become a managed services
10 provider offering voice over IP to our customers.

11 STS started to comply with the FCC and the Florida
12 Public Service Commission rules in January 2005 by planning to
13 offer services as a facilities-based carrier. We flew a team
14 of our own people up to Birmingham where BellSouth had proposed
15 an OC48 fiber ring to our company in order to take our existing
16 base of UNE-P clients and move it over onto the ring and the
17 network that they were going to build for us.

18 In anticipation of this, we had hired approximately
19 30 additional people to work in our company full-time. We
20 tripled the amount of office space that we had, and we moved
21 our core network operations center from Brickell to the Knap of
22 the Americas in downtown Miami. So we made a lot of
23 commitments based on the completion of the network that
24 BellSouth had promised us.

25 We have followed BellSouth's recommendation to comply

1 with all federal and state mandates. We signed a multi-million
2 dollar fiber ring agreement with BellSouth in March of 2005 for
3 the migration of our UNE-P base so that we could have it
4 completed by the March 10th, 2006 deadline. We moved our
5 facilities and we signed the long-term deal committing
6 significant dollars at the Knap of the Americas so that we
7 could withstand a Category 5 hurricane and make sure that we
8 could provide service to our customers at all times.

9 STS spent substantial dollars to populate the nodes
10 on this fiber ring and use the vendors that BellSouth itself
11 recommended to us to complete this project. All in all our
12 company spent millions of dollars to become fully compliant
13 with the rules from March 2005 until today. Just to be
14 perfectly clear, we have done every single thing that BellSouth
15 has recommended we do to build-out this network.

16 While this was going on, Hurricane Wilma hit south
17 Florida. While STS were told that it would take 35 to 45 days
18 to restore their service, BellSouth directly offered clients
19 service in three to five business days if they could sign an
20 agreement with BellSouth and leave STS. This happened with
21 multiple customers.

22 The most frustrating part is that our ring was
23 designed, implemented, and then billed to us for a full nine
24 months at greater than \$50,000 a month before BellSouth ever
25 told us that they couldn't do the commingling as they promised

1 us in the agreements that we had with them. Because of this,
2 we have been saddled with commercial rates despite the fact
3 that we built out this network to take advantage of services at
4 wholesale rates. It seems that BellSouth was too busy making
5 sure that all of the CLECs were complying with the rules when
6 they themselves had no idea how to do commingling. To this
7 day, they still cannot do commingling as mandated by the FCC's
8 TRO ruling of 2004.

9 Who was watching BellSouth? Are we just taking their
10 word for it when they say they can do something as required by
11 law? This is the exact reason that this Commission should not
12 grant the petition of BellSouth and AT&T to merge. The way
13 that they have and are presently handling STS Telecom and our
14 customers that use our service is intentionally deceiving and
15 I, for one, would not treat our toughest competitor that way.
16 What's to stop them from doing this to others? If BellSouth
17 can ignore the laws and the agreements that they signed, who is
18 looking out for the public to enforce those contracts?

19 Until this Commission has investigated our claims to
20 which we can substantiate 100 percent, then the public health,
21 safety and welfare of all the customers in the state of Florida
22 continue to remain at risk. I ask you, as a telecommunications
23 provider, as a citizen of the state of Florida, and as a
24 business that has been wronged by BellSouth under your watch,
25 to reject the proposed merger until all allegations we are

1 making today have been fully investigated and until this
2 Commission is 100 percent sure that a repeat of what happened
3 to STS Telecom cannot happen to others by a bigger merged
4 Goliath. Thank you for the opportunity to speak with you
5 today.

6 CHAIRMAN EDGAR: Mr. Adams.

7 MR. ADAMS: Thank you, Madam Chairman and members of
8 the Commission. I'm Gene Adams of the law firm of Pennington,
9 Moore, Wilkinson, Bell, and Dunbar. And, again, I'm
10 representing Time Warner Telecom here today.

11 Time Warner Telecom is a competitive local exchange
12 carrier, and we are both a customer and a competitor of
13 BellSouth. We are here today to ask the Commission to exercise
14 its broad authority under Section 364.33, Florida Statutes, and
15 Section 364.01, Florida Statutes, to protect the public health,
16 safety, and welfare in reviewing this application for transfer
17 of control.

18 The merger of AT&T and BellSouth is the most
19 significant event in the telecommunications industry since the
20 local exchange was opened to competition, and also, ironically,
21 since the divestiture of the Bell companies. Time Warner
22 Telecom believes that there are matters of sufficient public
23 interest that stem from this merger and that the Commission
24 should exercise its jurisdiction to hold hearings in this
25 matter and determine and assure that this transfer of control

1 is in the public's best interest.

2 We believe that the public interest concerns require
3 the Commission to review this transaction as has been done or
4 as is being done currently in Kentucky, Mississippi, and in
5 Tennessee. As was earlier stated, the Commission's
6 jurisdiction ensures -- and the Commission has the ability to
7 ensure that basic telecommunication services are available to
8 all consumers in the state. The Commission can encourage
9 competition in order to ensure the availability of the widest
10 range of consumer choice in communication services, and the
11 Commission also has the ability to ensure that monopoly
12 services provided by telecommunications companies continue to
13 be subjected to effective price, rate, and service regulation.
14 And we ask that you exercise that jurisdiction to help preserve
15 competition and the benefits of competition for consumers in
16 the state of Florida.

17 This merger, one of the very largest in our nation's
18 history, will result in a return to a monopolistic control of
19 the marketplace. Here an incumbent local exchange company is
20 being merged into a competitive exchange company. The combined
21 merger possesses a phenomenal amount of market power, incumbent
22 local exchange services, long distance services, competitive
23 joint ventures, and wireless communications services make this
24 a powerhouse with the ability to harm competitive interests in
25 the marketplace.

1 We believe that this combination of companies also
2 has a tremendous potential to limit competitor access to
3 underlying ILEC facilities. We believe they have an ability to
4 effect the service quality of those facilities and to even deny
5 interconnection or piercing of IP networks.

6 With the enactment of recent legislation in the state
7 of Florida which deregulated broadband and voice over Internet
8 protocol services, genuine questions may also arise as to
9 whether or not the Commission may continue to have jurisdiction
10 concerning the provision of competitive services. Time Warner
11 Telecom currently buys special access services from BellSouth.
12 With the current deregulated environment of broadband, the
13 question will arise as to whether or not services are broadband
14 or special access.

15 BellSouth and AT&T have stated on the record that
16 they intend to spend billions of dollars to transition their
17 network to an IP network. Once that transition is complete,
18 BellSouth can potentially deny access to those underlying
19 facilities and could deny piercing or interconnection requests.
20 With broadband exempt from regulation at this Commission, Time
21 Warner could be without access to the competitive environment
22 and indeed without an effective remedy at this Commission. The
23 staff has stated in its recommendation that it will need to
24 continue to monitor the market to ensure AT&T and BellSouth
25 remain in compliance with Florida Statutes. We believe the

1 time is now to make those determinations, and while the
2 Commission has the jurisdiction to hold a hearing and to set
3 appropriate conditions for the merger as it occurs.

4 The staff also states that a more global approach is
5 required and the approach is ultimately resting with the FCC.
6 We would submit that the Florida Public Service Commission has
7 broad authority to protect local exchange competition and to
8 ensure connection of all networks as was contemplated by the
9 Telecommunications Act of 1996. We believe this matter is
10 important and should not be delegated to the FCC when this
11 Commission, we believe, can also impose needed merger
12 conditions.

13 AT&T and BellSouth assert and insist that no merger
14 conditions are required and have not, so far, agreed to any
15 merger conditions. We believe that that in itself should
16 require the attention of the Commission to bring this to a full
17 hearing. A significant competitor here is being eliminated,
18 and this combined entity will be the largest ILEC in the
19 country. They will have the largest IP network in the country
20 and the second largest wireless network in the country. We
21 believe that merger conditions are necessary to protect the
22 competition that will remain.

23 We believe that those assurances should be in writing
24 through merger conditions and that some targeted merger
25 conditions are appropriate and that this Commission has the

1 ability to review and impose those necessary protections
2 regardless of what the FCC may do.

3 We believe that the Commission should require a full
4 evidentiary hearing and help ensure that all customers in
5 Florida will have access to competitive services not only now
6 but also in the future. We do not disagree with staff's
7 recommendation that comments should be forwarded to the FCC for
8 exercise of review of the merger, but we believe this
9 Commission has the ability and has the need to address these
10 issues through the exercise of its jurisdiction under Chapter
11 364, and we would strongly urge the Commission to do so. Thank
12 you.

13 CHAIRMAN EDGAR: Thank you, Mr. Adams. Is there
14 anybody that I have missed that wanted to address the
15 Commission on this item? Seeing none.

16 Commissioner Carter.

17 COMMISSIONER CARTER: Thank you, Madam Chair, for a
18 couple of questions.

19 CHAIRMAN EDGAR: Yes, sir.

20 COMMISSIONER CARTER: Staff, did I understand you
21 guys -- is it okay if I jump around from Issue 1 to 2? Is that
22 all right?

23 CHAIRMAN EDGAR: It is.

24 COMMISSIONER CARTER: Thank you. On Issue 2, did I
25 understand you guys to say that you would recommend we not file

1 the comments as Attachment A? Did I hear you guys to say that?

2 MR. KENNEDY: We are recommending that you do.

3 COMMISSIONER CARTER: Okay. Good. That's what I
4 thought you said. I was just making sure. Thank you.

5 Commissioners, questions or discussion? Commissioner
6 Tew.

7 COMMISSIONER TEW: My question also goes to Issue 2.
8 I think that the way staff has drafted the comments, that they
9 are fairly neutral for the most part. But I had concerns about
10 one sentence in the comments, and I will direct everyone to it.
11 It is in the first paragraph, the very last sentence. And it
12 reads, "If competition were to be negatively impacted by the
13 merging of AT&T and BellSouth, choices for Florida's consumers
14 as well as those in other states could also be negatively
15 impacted."

16 In my opinion if you have a sentence like that, if we
17 are indeed intending to be neutral and leaving it up to the FCC
18 and the authority they have in this area, then you either don't
19 have that sentence or you have a sentence, perhaps, that also
20 points out that there could be positive impacts as a result of
21 the merger.

22 And I wrote something, and it is just to throw out
23 for discussion. I don't know how the Commissioners feel.
24 Something like, "Conversely, if the merger of these entities
25 results in increased investment in advanced technologies and

1 competitive offerings, we expect that Florida's consumers may
2 be positively impacted." And I think that just makes the
3 comments more neutral, at least in the vein that I believe they
4 are written currently. I know that's subject to Commission
5 discussion of where we go with the comments overall, but that
6 is my input.

7 CHAIRMAN EDGAR: Commissioner Tew, could you read
8 your draft sentence for discussion one more time.

9 COMMISSIONER TEW: Okay. It would follow the last
10 sentence of the first paragraph which talks about the negative
11 impacts, and it would read, "Conversely, if the merger of these
12 entities results in increased investment in advanced
13 technologies and competitive offerings, we expect that
14 Florida's consumers may be positively impacted."

15 And, again, I don't know which way that turns out, I
16 just believe that that makes it more neutral, which I think is
17 consistent with the following sentence which reads, "The FPSC
18 is not filing these comments in support of or in opposition to
19 any filing made by any stakeholder," and it goes on.

20 CHAIRMAN EDGAR: Thank you.

21 Commissioner Carter.

22 COMMISSIONER CARTER: Have you guys got that
23 language?

24 MR. KENNEDY: I missed about three words in the
25 middle of it. I'm sorry.

1 COMMISSIONER CARTER: The reason I asked that -- with
2 your permission to address you, Madam Chair.

3 CHAIRMAN EDGAR: Yes.

4 COMMISSIONER CARTER: The reason I asked that is
5 because, I mean, when we get to that Issue 2 I wanted to make
6 sure that we have that incorporated, because that pretty much
7 reflects the sense of the Commission on this issue. And I
8 think it is a fairly reasonable perspective to have, so I
9 wanted to make sure that staff had that language.

10 I know that most of the day Commissioner Deason and I
11 have been asking what other exceptions do you guys have. So I
12 wanted to make sure we have that so when we get to this point
13 you guys will have the verbiage necessary in the document. So
14 you guys got it, right?

15 CHAIRMAN EDGAR: Well, if we are going to get to that
16 point we can go over it one more time. And I know that the
17 court reporter will have it accurately, which is always a
18 resource to all of us. Thank you.

19 COMMISSIONER CARTER: Thank you, Madam Chair.

20 CHAIRMAN EDGAR: You know, I do expect that we will
21 jump around between the two to three issues that we have before
22 us, but let's maybe go back and see before we get into specific
23 wordsmithing perhaps on potential comments to perhaps be filed,
24 let's see if there are further questions or discussion on
25 Issue 1.

1 I know, Mr. Watts, that you shared from your
2 perspective potential benefits to Florida customers. But after
3 your comments we did hear concerns from some of the other
4 companies here? And so, I guess, Mr. Criser, I would like to
5 kind of throw it back to you. If you could briefly -- because
6 quite frankly we are all getting tired, but from your
7 perspective, from your seat, if you could briefly share with us
8 what you see as benefits to Florida customers.

9 MR. CRISER: Commissioners, a couple of things I
10 would like to address. I think that what you have already
11 heard a little bit about today, but it is important to
12 understand is that the one area in this where bigger is better
13 is your ability to, one, respond to natural disasters, and,
14 two, your ability to get into new technologies. Essentially we
15 are in a marketplace today where we are competing against other
16 players. And we need to have the resources and the facilities
17 to be able to enter into those marketplaces and to be able to
18 negotiate and enter into those businesses on a level footing
19 with others.

20 I think the other side of that is our ability to
21 recover is one where essentially at the end of the day you come
22 down to how people do I am have, what resource do I have, and
23 how many jobs can I do a day. And, therefore, it's important
24 to look at not only the lessons we have learned, but the
25 lessons we can learn, and to combine resources in that kind of

1 reaction.

2 I think the other thing, I have heard sort of a tone
3 here that says, well, at some point they are going to be too
4 big to listen to you. I recall when I was 13 years old I got
5 to a point where I thought at some point that I was too old to
6 listen to my mother anymore until my father came home that
7 night and corrected that impression for me. Essentially, what
8 we have heard discussion about today is the job that you do
9 each and every day. We have seen other examples at this agenda
10 today where there are issues that have been brought before you
11 by some different parties and you listened to those arguments,
12 you listened to complaints, you listened to solutions.

13 There is nothing about this merger that takes away
14 from your ability to do your job. And there is absolutely
15 nothing about this merger that takes away from our respect for
16 this agency in doing its job. That's the commitment that I am
17 here to make to you today and I believe you will see made to
18 you each and every day going forward.

19 But that is your normal business. That is what this
20 Commission does is protects the best interests of the citizens
21 of the state of Florida. And there is a normal process for
22 bringing those things before you and there is a normal process
23 for resolving those.

24 I take every one of our customer's complaints or
25 concerns very seriously. I hope that we are able to resolve

1 each and every one of them to our mutual satisfaction. And if
2 we can't, I know we will be back in front of you in the proper
3 process for dealing with that. But I believe that what is
4 happening today is an attempt to sort of bring those into
5 another venue, and that is not necessary. Because nothing here
6 takes away from your ability to do the job that you do each and
7 every day. Thank you.

8 CHAIRMAN EDGAR: Thank you.

9 Commissioners, any additional comments, questions,
10 discussion, follow-up? Commissioner Deason.

11 COMMISSIONER DEASON: I have a question for staff.
12 Issue 1 is a PAA, is that correct?

13 MR. FUDGE: Yes, Commissioner.

14 COMMISSIONER DEASON: And if the Commission agrees
15 with staff's recommendation and that order is protested, do we
16 find ourselves in a hearing mode?

17 MR. FUDGE: Yes, sir. Technically we would find
18 ourselves in a hearing mode. Some of the people who have spoke
19 today, they already have pending motions or petitions to
20 intervene. And at that time we would have to rule on whether
21 or not they have standing to intervene. And at that time we
22 would either proceed or not with the hearing.

23 COMMISSIONER DEASON: So anyone seeking to protest
24 this order would have to show standing to file that protest?

25 MR. FUDGE: Yes, Commissioner.

1 MR. COOKE: Commissioner, let me just amplify on
2 that. It's a PAA, so interested parties -- substantially
3 affected parties could file a petition for a hearing. There
4 would be an issue as to whether intervenors are entitled to
5 intervene in this matter. I think one of the things we have
6 struggled with is there is precedent in the Commission orders
7 previously that has said that competitive impacts on companies
8 is not a matter for consideration under 364.33 and .335, which
9 is the statutory provisions we're dealing with. So we would
10 have to grapple with that issue in terms of interventions.

11 COMMISSIONER DEASON: So is it possible that we could
12 issue an order, it would be protested, and we go to a hearing
13 but no one has standing to intervene in the hearing?

14 MR. COOKE: I would say theoretically, but I think
15 that's pretty theoretic.

16 COMMISSIONER DEASON: Madam Chairman, if there are no
17 other questions, I can move staff's recommendation on Issue 1.

18 CHAIRMAN EDGAR: Commissioner Tew, did you have a
19 question?

20 COMMISSIONER TEW: I was just going to ask staff
21 about Saturn Telecom's concerns.

22 Have they filed a complaint or anything with the
23 Commission, and are they able to?

24 MR. COOKE: Commissioner, can I -- I'm sorry to
25 interrupt.

1 CHAIRMAN EDGAR: Mr. Cooke. No, you're recognized.

2 MR. COOKE: I'm just concerned about one thing, which
3 is, as I heard it, there is a separate docket on that matter.
4 And to the extent we -- I think we need to be cautious about
5 specific questions with regard to that proceeding, per se. I
6 don't think your question goes that far, Commissioner. I'm
7 just throwing that out as an advisory.

8 CHAIRMAN EDGAR: I appreciate the comment.

9 MR. COOKE: And they do have a complaint, correct?

10 MR. WIGGINS: (Indicating yes.)

11 MR. COOKE: If it is the one I'm thinking of, there
12 was a docket filed fairly recently.

13 CHAIRMAN EDGAR: Commissioner Tew, does that answer
14 your question, or do you have additional?

15 COMMISSIONER TEW: I guess I have a follow-up.

16 Nothing about the outcome of this item, whatever the
17 Commission does, should impact that complaint or the process
18 that complaint takes?

19 MR. FUDGE: Your monitoring and oversight authority
20 under 364.01 and the complaint process would continue to exist
21 regardless of the merger.

22 CHAIRMAN EDGAR: Commissioner Arriaga.

23 COMMISSIONER ARRIAGA: Madam Chair, Commissioner
24 Deason made a motion, and, if I may, I would like to second the
25 motion.

1 CHAIRMAN EDGAR: You may.

2 Commissioner Deason, your motion is recognized and on
3 the table. Did I hear correct you are -- okay. And then, yes,
4 Commissioner Arriaga has seconded the motion.

5 So we have a motion and a second. We are on Issue 1.
6 Is there discussion?

7 Okay. All in favor of the motion on Issue 1 say aye.

8 (Simultaneous affirmative vote.)

9 CHAIRMAN EDGAR: Opposed? Show the motion for
10 Issue 1 adopted.

11 We are on Issue 2.

12 COMMISSIONER CARTER: Madam Chair.

13 CHAIRMAN EDGAR: Commissioner Carter.

14 COMMISSIONER CARTER: I think now would be the
15 appropriate time to make sure, because I do feel strongly that
16 the language from Commissioner Tew gets us where I think we
17 need to be. I think we do need to be on record of saying
18 something to the FCC, and I think that the language -- if we're
19 going to be just saying that we would like for them to --
20 basically, I view her language -- if I am allowed to speak on
21 this, Madam Chair?

22 CHAIRMAN EDGAR: You are.

23 COMMISSIONER CARTER: Basically, I view her
24 language -- well, let me just say I adopt it by reference.
25 It's saying that we are basically asking the FCC to do its job

1 in protecting the interests of citizens regardless of where
2 they may be geographically located in the context of this
3 merger. And I think that that's what we are asking them to do.
4 I think that we want to make sure we are on record as doing
5 that, and I think that the language accomplishes that.

6 And whenever is an appropriate time, I would move
7 Issue 2 with that language for clarification.

8 CHAIRMAN EDGAR: Commissioners -- I'll come back to
9 you, Commissioner Carter -- further discussion on the proposed
10 comments from staff that are before us. No.

11 I guess then I have one, then, for our staff.
12 Commissioner Carter has described these proposed comments as
13 asking the FCC to do its job. And when I read it that was
14 actually sort of the way I read it, too. So I'm not sure who
15 on our staff to direct this to, but when the staff was putting
16 together these comments for our consideration, is that
17 characterization the intent or the thinking with the drafting,
18 or is it something additional?

19 MR. KENNEDY: This is Ray Kennedy, Commission staff.
20 You are correct in your statement, that was the intent. To the
21 best of my knowledge, we have never filed comments on mergers
22 before. The fact that it's such a broad, as described by
23 everyone here, a broad merger, you know, wireless, wireline,
24 Internet, you name it. Considering the jurisdictional
25 authority of this Commission and all, we didn't want to go into

1 those kind of details, so we kept it intentionally broad with
2 the intent that the FCC would do what it did in prior mergers
3 where it would focus on conditions that the CLECs believe were
4 good. They need more they say, and they have filed numerous
5 ones with the FCC to comment on each and every filing they made
6 or condition they want. I'm not sure we would be capable of
7 doing that, quite frankly, in the jurisdictional aspects of it
8 all.

9 CHAIRMAN EDGAR: So am I to understand from our staff
10 that you have no recommendation as to any general or specific
11 conditions that you would recommend to this Commission that we
12 consider recommending?

13 MR. KENNEDY: We certainly could add to what we have
14 here. I may have an example of a potential change. If you
15 would like me to throw that out, I will.

16 CHAIRMAN EDGAR: If you have a suggestion, I'm
17 interested in hearing it.

18 MR. KENNEDY: I have a couple. If we look at the
19 last paragraph on Page 11, we could -- to make it a commitment,
20 in essence, we could take out in the first sentence in the last
21 paragraph the words "if any." I've got to make sure I read the
22 right one. I actually have extra copies which would make it
23 easier. I will continue on. And then add a sentence right
24 after the first sentence where we would say, "At a minimum, the
25 FPSC believes that the FCC should adopt the same conditions

1 that were proposed and implemented in FCC WC Dockets 05-65 and
2 05-75." That would be certainly a stronger commitment on a
3 position to the FCC. And I heard one mention during this
4 proceeding of another docket that I did not include that might
5 could be added, but I don't know the number of it. Someone
6 else mentioned it earlier.

7 CHAIRMAN EDGAR: Mr. Kennedy.

8 MR. KENNEDY: Yes, ma'am.

9 CHAIRMAN EDGAR: Could you repeat for me the
10 sentence, and I guess it is now before me, but I'm going to ask
11 you to repeat it anyway, the sentence that you said was a
12 possibility for discussion as a potential addition.

13 MR. KENNEDY: Okay. In the last paragraph after the
14 first sentence, after the first full sentence we would add a
15 new sentence. It would read as follows: "At a minimum, the
16 FPSC believes that the FCC should adopt the same conditions
17 that were proposed and implemented in FCC WC Dockets 05-65 and
18 05-75." Those happen to be the two discussed in the paragraph
19 right above that, the SBC/AT&T merger and MCI/Verizon merger.

20 CHAIRMAN EDGAR: Okay, thank you.

21 Commissioner Arriaga.

22 COMMISSIONER ARRIAGA: Madam Chair, look at Page 11
23 of the proposed language from staff, the last sentence. I have
24 a heartache with that sentence. I mean, we believe the FCC is
25 in the best posture to protect the stakeholders and consumers.

1 I don't know. I mean, I'm okay with -- I just don't think so.
2 And for us to capitulate that way bothers me a little bit.

3 MS. SALAK: That was caveated with the -- that impact
4 intermodal services, only because we don't have jurisdiction
5 over a lot of the intermodal services.

6 COMMISSIONER ARRIAGA: Well, we could say we don't
7 have jurisdiction over intermodal service. But to say that
8 they are in the best posture to protect the stakeholders and
9 consumers --

10 MS. SALAK: It was only meant because we thought, you
11 know, we can't do much about wireless, we can't do a lot about
12 some of the other -- things that are outside our jurisdiction.
13 So it was just looking at the big picture. Otherwise, I think
14 that we are the in best posture to do anything that we have
15 jurisdiction over, obviously, and we will do a better job close
16 to home. But that was meant to be taken in context.

17 CHAIRMAN EDGAR: And I'm thinking, as I go along
18 here, but noting that we do have one other additional important
19 item that we need to consider today, and the workday is drawing
20 to a close, let me throw this out. It sounds to me like I'm
21 hearing some interest at the bench in filing comments. We
22 haven't affirmatively made that decision yet, but I think I
23 sense some interest in that.

24 So throwing this out for discussion, maybe we can
25 wrap this up today, maybe not. We'll see. But, Commissioner

1 Carter, I believe, has expressed some support for the suggested
2 sentence addition that Commissioner Tew mentioned, and I may
3 have -- because I always do a word tweak to that, because I
4 like to use the red pen, as well, but I also have some support
5 for that addition. I think it's a good addition with, of
6 course, my one edit. And from the suggestions that we have
7 just heard from our staff, I kind of like deleting the "if
8 any." It's a small point, but yet I like deleting the "if
9 any."

10 I'm not sure that I'm comfortable with the proposed
11 addition of the next sentence simply because I'm not intimately
12 familiar with those conditions that were implemented. I
13 respect the decision of the FCC that if they implemented them
14 then they were probably good, but I am not completely familiar
15 with those conditions. So I don't know that I'm comfortable
16 completely endorsing them for this particular factual situation
17 that is before us at this time.

18 And, Commissioner Arriaga, I'm not certain that that
19 next sentence actually adds a whole lot. So with that, again
20 for discussion, my proposal for discussion if, indeed, we want
21 to move to filing comments or making the decision to file
22 comments, would be to consider the addition of the sentence
23 from Commissioner Tew, to delete the "if any," but then end the
24 paragraph and the comments with just that first sentence in the
25 last paragraph, if that is clear. And that is for discussion.

1 Commissioner Carter.

2 COMMISSIONER CARTER: Madam Chair, once again, your
3 wisdom, you know, just puts us exactly where we are. I was
4 going to suggest that we strike both of those sentences. I
5 think that gets us where we really need to be.

6 Staff has said we have those references in the
7 paragraphs above, and it seems redundant at best. And I think
8 that -- you know, I feel that I could support that. I think
9 that gets us where we really need to be. Just striking the "if
10 any" from that sentence and ending the paragraph with that
11 sentence there.

12 CHAIRMAN EDGAR: Commissioner Arriaga.

13 COMMISSIONER ARRIAGA: I was just going to say,
14 Commissioner Carter, that that sounded like poetry, the issue
15 of wisdom, of which we do recognize in our chairlady.

16 CHAIRMAN EDGAR: Commissioner Tew.

17 COMMISSIONER TEW: I, too, agree with your comments.
18 So actually it would be my suggestion as well. And as for my
19 sentence, I really threw it out for discussion. I'm definitely
20 open to tweaking it. I just wanted to reserve the neutrality,
21 I think, of the overall comments.

22 CHAIRMAN EDGAR: And I think you raise a good point.
23 I do. And I like the addition of the potential for innovations
24 in advanced technologies and the other items that you listed
25 there.

1 Commissioner Deason.

2 COMMISSIONER DEASON: I have a question about the
3 filing of the comments. I'm not opposed to filing comments,
4 per se, but the question I have is if we issue -- the decision
5 in Issue 1 is PAA, it gets protested, someone has standing for
6 a hearing, we have a hearing, and then we make a decision based
7 upon evidence, we think there is something inconsistent with
8 the comments we have already filed. So when would these
9 comments be filed that staff is proposing? Would it be post --
10 we would wait and file those after we know there is a protest,
11 and if there is to be a hearing would we file comments after a
12 hearing, or would we go ahead? Is it your recommendation to go
13 and file these comments as they are today?

14 MR. COOKE: It's a good question. And you can direct
15 us when to file these comments. So there is not a set time
16 frame, per se. There is a proceeding at FCC. The FCC has
17 already received comments from parties. Those who chose to be
18 parties had to file by June 5th. There are reply comments to
19 those original set of comments at FCC due actually today.

20 But we also have confirmed that additional comments
21 can be filed with the Commission. They are treating that
22 proceeding, allowing ex parte communications as long as they
23 are disclosed within the record. So we could essentially file
24 these anytime. If you think it is wiser to wait until the 21
25 days run, we could do that. I'm not sure that anything

1 necessarily would preclude -- in fact, it would not preclude
2 the Commission from filing additional comments in the future.

3 Normally we take these up at Internal Affairs. So
4 these are not subject -- these are not PAA. And we can do that
5 again in the future, as well. I'm not sure if I answered your
6 question or not, but --

7 COMMISSIONER DEASON: No, you answered it. Thank
8 you.

9 CHAIRMAN EDGAR: Commissioner Carter.

10 COMMISSIONER CARTER: Madam Chair, I was just going
11 to say that I think that the language is fairly innocuous. And
12 I believe if we start putting more stuff in here then you will
13 say, well, you put this in and you left that out. And I think
14 that we are just expressing -- I read it as expressing the
15 sense of the Commission that, you know, the FCC will do its
16 job. And I wouldn't want us to -- I'm thinking aloud, but I
17 wouldn't want us to get in the posture where procedurally they
18 are headed on one track and then we are saying, well, we will
19 wait until we do a potential appeal or a potential application.

20 I think that this fairly succinctly states the
21 position of the Commission. And I think it is a good thing to
22 do to be on record saying, I mean, of what we are doing. But I
23 would be a little bit nervous if we were to go through another
24 proceeding on Issue 1 and then start putting little different
25 pieces into it and then send that back to the FCC. That would

1 make me nervous.

2 CHAIRMAN EDGAR: Commissioners, other comments?
3 Commissioner Arriaga.

4 COMMISSIONER ARRIAGA: I'm comfortable with filing
5 the way it has been proposed with the modifications included by
6 Commission Tew, your latest comments. I'm comfortable with
7 going ahead right now. If there are any complaints or any
8 issues that we will find out later, I think there are other
9 dockets that are open and it shouldn't affect these comments.
10 I think we can go ahead with the modifications. So if you want
11 me to make a motion, I will make a motion. It is my motion to
12 go ahead.

13 CHAIRMAN EDGAR: Okay. Commissioner Arriaga has made
14 a motion that we file comments as proposed before us with the
15 edits that we have discussed, and we can go over them one more
16 time if we need to for clarity.

17 COMMISSIONER CARTER: Second.

18 CHAIRMAN EDGAR: Okay. Thank you, Commissioner
19 Carter. And there is a second. Is there further discussion?

20 Commissioner Deason, did you have anything?

21 COMMISSIONER DEASON: No. I mean, I'm agreeable with
22 sending the letter. I guess my question was more procedural as
23 opposed to substantive, but I don't find anything in this
24 letter, as modified, that is particularly troublesome.

25 CHAIRMAN EDGAR: Commissioner Tew.

1 COMMISSIONER TEW: Is that my queue to go over the
2 sentence again?

3 CHAIRMAN EDGAR: It is. And thank you for reading
4 that queue.

5 COMMISSIONER TEW: I'm just thinking to myself is it
6 because I read too quickly, which I doubt, or is it the accent.
7 "Conversely, if the merger of these entities results in
8 increased investment in advanced technologies and competitive
9 offerings, we expect that Florida's consumers may be positively
10 impacted." And subject to the Chairman's wordsmithing.

11 CHAIRMAN EDGAR: Thank you. Well, my absolutely
12 nonsubstantive edit would be to delete, "we expect that," so it
13 would be, "Competitive offerings, Florida's consumers may be
14 positively impacted." And, again, a nonsubstantive suggestion.

15 Are you comfortable with that, Commissioner Tew?
16 Commissioners?

17 Okay. Then we have a motion and we have a second
18 that we file comments with the edits, additions and
19 subtractions that we have discussed here at the bench. I think
20 that that is clear. Staff, are you clear? I am seeing a nod.

21 MR. KENNEDY: Yes, ma'am.

22 CHAIRMAN EDGAR: Okay. Then all in favor of the
23 motion say aye.

24 (Unanimous affirmative vote.)

25 CHAIRMAN EDGAR: Opposed? Show the motion carried.

1 And we do have a third issue.

2 COMMISSIONER DEASON: Move staff.

3 COMMISSIONER CARTER: Second.

4 CHAIRMAN EDGAR: Motion and second on Issue 3. All
5 in favor say aye.

6 (Unanimous affirmative vote.)

7 CHAIRMAN EDGAR: Opposed? Show the motion carried.

8 Thank you all.

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STATE OF FLORIDA)

COUNTY OF LEON)

CERTIFICATE OF REPORTER

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 29th day of June, 2006.



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