

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, October 24, 2006

PLACE: 4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
(850)413-6732

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FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

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

4 VICKI GORDON KAUFMAN, ESQUIRE, representing
5 Time-Warner Telecom, NuVox Communications, XO Communications
6 and Xspedius Management Company.

7 JASON FUDGE, ESQUIRE, representing the Florida
8 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: We will begin our discussions with
3 Item 5.

4 MR. FUDGE: Commissioners, Jason Fudge on behalf of
5 Commission staff. Item 5 is staff's recommendation to deny the
6 motion for stay filed by the Joint CLECs. Vicki Gordon Kaufman
7 is here on behalf of the Joint CLECs and Jim Meza for
8 BellSouth. Participation is at the discretion of the
9 Commission.

10 CHAIRMAN EDGAR: Commissioners, other questions? .
11 Commissioner Arriaga.

12 COMMISSIONER ARRIAGA: Were we going to hear
13 arguments on this issue or oral -- I don't know.

14 CHAIRMAN EDGAR: As it says in the item,
15 participation is at the discretion of the Commission. If we
16 need to hear discussion, I will certainly open it up for
17 discussion.

18 COMMISSIONER ARRIAGA: I'm not proposing, I'm just
19 wondering.

20 CHAIRMAN EDGAR: Commissioners, would you like to
21 hear from the parties? We do have a group before us.

22 COMMISSIONER DEASON: Madam Chairman, I think that it
23 would probably be appropriate to hear from the parties. This
24 is a significant matter that's in front of us, but I would just
25 leave it to your discretion for time limitations, because we do

1 have a full day today.

2 CHAIRMAN EDGAR: We do have a full day today.

3 Mr. Meza, you're recognized.

4 MR. MEZA: Thank you, Madam Chair.

5 BellSouth supports staff's recommendation in this
6 matter. It correctly determines that the requirements
7 necessary for you to issue a stay pending review have not been
8 met. There is no likelihood of success on appeal. Your
9 decision approving the merger is consistent with at least 40
10 other merger decisions under 364.33, including ILECs and CLECs
11 involving some of the same appellants that are appearing here
12 today. There is also no irreparable injury as recognized by
13 the staff's recommendation because the interconnection
14 agreements that we operate under, the federal and state law
15 that governs our relationship and your regulatory jurisdiction
16 will not change as a result of this merger. So there is
17 nothing that these CLECs can harm to establish irreparable
18 injury.

19 I would like to reserve the remainder of my time to
20 address any questions you may have or comments that our
21 opponents may raise. Thank you.

22 CHAIRMAN EDGAR: You may. Mr. Hatch.

23 MR. HATCH: Tracy Hatch appearing on behalf of AT&T.
24 I would adopt the comments of Mr. Meza and reserve my time for
25 rebuttal or questions as needed.

1 CHAIRMAN EDGAR: Thank you.

2 Mr. Adams. Ms. Kaufman.

3 MS. KAUFMAN: Thank you, Madam Chairman. Thank you,
4 Commissioners, for indulging my argument this morning. I'm
5 Vicki Gordon Kaufman. I'm with the Moyle Flanigan law firm,
6 and I'm here on behalf of parties that have been referred to as
7 the Joint CLECs. They are NuVox Communications, Time Warner
8 Telecom of Florida, XO Communications Services, and Xspedius
9 Management Company.

10 As the Commission is aware, this case involves your
11 approval of the transfer of control of certain facilities from
12 BellSouth to AT&T. And as I think you are also aware, this
13 transaction will combine two of the largest telecommunications
14 companies in the nation, and it will affect millions of
15 Floridians as well as the companies with whom the newly merged
16 company will compete. And I think it's undisputed that this is
17 one of the largest telecommunications transactions in our
18 nation's history.

19 When we have been before you in the past on this
20 matter, we have asked you to hold a hearing and to test the
21 allegations of the applicants and determine whether or not this
22 transaction is in the public interest and whether or not it
23 will impact Florida's competitive telecommunications market.
24 You declined to do that, you issued a final order approving the
25 transfer. We sought review of this order in the Florida

1 Supreme Court, and at the same time we asked the court to stay
2 the effectiveness of your decision. Because of the impending
3 closure of the transaction, we originally filed our motion to
4 stay in the court as the appellate rules permit, but the court
5 sent our motion back to you for your consideration. So we are
6 here today not so much to argue the merits of the case, but to
7 decide whether or not we have met the requirements for a stay
8 to be issued and we think that we have.

9 We believe that the criteria required for you to stay
10 our order until the court can review it has been met. Mr. Meza
11 mentioned that one of the standards you look to is the
12 likelihood of success on the merits. This is a difficult
13 argument for me to make to you, since the court will be looking
14 at your order, but with all due respect, we think that your
15 order is incorrect on the issue of standing, and that you erred
16 when you found that you would not consider the competitive
17 impact of this tremendous transaction on the marketplace.

18 These are the issues we will present to the court.
19 But we think that based on the well-established case law and
20 standing that we are likely to prevail. And if we do prevail
21 at the court, the result will be that the court will remand
22 this case to you, and they will tell you that you must conduct
23 an evidentiary hearing on the transfer, including taking a look
24 at its competitive ramifications with the CLECs as full
25 participants and then make your determination on the question

1 of the public interest.

2 If your order is not stayed and the transaction
3 closes before the hearing, we will be irreparably harmed, we
4 will have had no point of entry into the proceedings. Now,
5 your staff tells you --

6 COMMISSIONER DEASON: I'm sorry, Ms. Kaufman.

7 Madam Chairman, I apologize.

8 When you say no point of entry, you appealed it to
9 the Supreme Court? How is that no entry?

10 MS. KAUFMAN: I mean no point of entry before the
11 Commission before you made your decision approving the
12 transaction. Yes, we have taken the matter to the Supreme
13 Court, but because of the timing and the impending closure of
14 the transaction, were the court to rule in our favor, send the
15 matter back to you for a hearing, it's not clear that that
16 could occur before the transaction closed.

17 COMMISSIONER DEASON: Let me ask you this question.
18 The court's decision to not stay and basically send it back
19 here to consider the merits of the stay, is that not a message
20 from the court that your likelihood of success is small?

21 MS. KAUFMAN: It is not, Commissioner, and I would
22 direct you to the court's order where they specifically said
23 that their sending this issue back to you is no ruling and is
24 not to be considered as any view on the merits. So I think the
25 court actually has clearly answered that question.

1 COMMISSIONER DEASON: Okay.

2 MS. KAUFMAN: I was also going to say that your staff
3 tells you in their recommendation that they don't think we have
4 any likelihood of success because we haven't shown a link
5 between the harm we allege and the size of the newly merged
6 company. And, again, we have to respectfully disagree with
7 that. Your staff makes this statement despite the fact that
8 the combined resources of AT&T and BellSouth will surpass by
9 many magnitudes all other telecommunications competitors
10 combined.

11 This transfer essentially is going to result in a
12 reconsolidation of the market and a recreation of the Bell
13 legacy system. There is going to be a huge resource imbalance
14 and, of course, a very vigorous competitor, AT&T, who at one
15 point used to sit on this side of the table has been removed
16 from the marketplace. You have to take the allegations in our
17 petition to intervene, our protest, our response to the motion
18 to dismiss as true. And we have made sufficient allegations.

19 The other reason we think that we have a likelihood
20 of success on the merits is based on your very own order that
21 you entered this year, I believe in January, in the
22 Sprint/Nextel case. In that case you said that transfers of
23 control are looked at under 364.33. And you said but that
24 particular statutory provision has no standards in it. And so,
25 therefore, we are going to look to Section 364.01 when we

1 perform our public interest review.

2 And I just want to read you two sentences from that
3 order, and this is the Commission's order. You said, "We have
4 authority under Section 364.33, Florida Statutes, to approve an
5 application for transfer of control. In the past we have noted
6 that this provision does not provide specific standards which
7 we may follow in making our decision to approve a transfer of
8 control. However, Section 364.01 implies a public interest
9 standard that we may follow when deciding whether to approve or
10 deny transfers of control."

11 So you, yourselves, have said that you are going to
12 look to the public interest standard in Section 364.01, and I
13 know that you are all aware of the provisions of that statute
14 and the fact that it specifically says, the legislature
15 specifically says that the competitive provision of
16 telecommunications services is in the public interest. So they
17 have already defined for you what items you should be looking
18 at.

19 We think that when you pull just one part of
20 364.01 out to look at in terms of this transfer, that that was
21 error, and we don't find any authority for you to do that. So
22 when you look at the appropriate statutory standards, we think
23 we clearly meet the Agrico standing test, and we think we will
24 prevail.

25 There's two other issues that you have to look at,

1 and I will touch on those briefly. One is the irreparable harm
2 standard which we have already discussed and Commissioner
3 Deason has asked me a question about. This is a fundamental
4 question of due process and the right to be heard, and we think
5 that your staff's recommendation where they say that our stay
6 request is based on, quote, self-serving assertions, close
7 quote, is in error. We suggest to you, with all due respect,
8 Commissioners, that the court may look to your approval of this
9 transfer without any testing of the applicant's statement as
10 being based on the self-serving assertions of the applicants.

11 As to the public interest, which is the third prong
12 of the stay review, that's what this case is all about. The
13 entire purpose of our attempt to appear before you and test the
14 Joint Applicants' assertions was to determine if this
15 proceeding is in -- if this transfer, excuse me, was in the
16 public interest.

17 We have met the standards for stay, and we would ask
18 that you stay your order. And I would also tell you that we
19 have filed our briefs in this case on a very expedited basis.
20 We have already filed our initial brief. Answer briefs have
21 already been filed, and our reply brief is due very shortly.
22 The court has already set this case for argument on
23 January 8th, so they seem to be moving more quickly than might
24 be their normal course. So we would ask that you stay this
25 order until the court has time to review your decision.

1 Thank you.

2 CHAIRMAN EDGAR: Thank you, Ms. Kaufman.

3 Mr. Meza.

4 MR. MEZA: Yes, ma'am. Thank you. Just a few brief
5 comments in reply.

6 First, Ms. Kaufman suggests to you that you erred in
7 your decision. As a fundamental matter, we disagree. Your
8 order was entirely correct and consistent with your precedent
9 and the precedent of the Supreme Court. But there is one
10 important fact that she failed to provide to you regarding the
11 standard of review that will apply to your order that has been
12 applied to all of your orders when the Supreme Court looks at
13 it, and that is the court has established that your orders are
14 entitled to extreme deference, especially when you're
15 interpreting a statute that you are entitled to apply. And
16 that's exactly what we have here. You have a statute, 364.33,
17 that you have interpreted in this order consistent with a
18 series of previous orders, and the court is going to apply an
19 extremely high standard and deference to that decision.

20 And so error is not enough. It has to be clearly
21 erroneous. And I submit to you that a decision that's
22 consistent with orders approving transfers involving these same
23 companies is not clearly erroneous because if it were, then
24 every single transaction that you have already approved is
25 infirm, and that can't be the case.

1 The next point I would like to address is
2 Ms. Kaufman's reliance on the Sprint/Nextel order. In that
3 decision, she is correct, you did say that you have the ability
4 to look to 364.01 for a public interest inquiry. But, again,
5 what she doesn't tell you is that in that analysis you didn't
6 look at competitive interest, you looked at whether or not the
7 public's interest would be served by spinning off Sprint's
8 landline operations from its wireless operations creating a
9 separate entity. There was absolutely no discussion regarding
10 competitive interest of competitors or of anything relating to
11 the claims that they are now asking you to apply. And so her
12 reliance on that decision simply does not support the arguments
13 that she has raised now three times before you and once before
14 the court.

15 Regarding the public interest, the public interest
16 standard is whether or not the public would be harmed by
17 granting a stay. And in our papers that we filed with the
18 court and that we submitted with you when the court remanded
19 the issue of the stay back to you, it's clear that the public
20 will be disserved by granting a stay. Because the benefits of
21 the merger, benefits that you have found to exist and that the
22 Department of Justice have found to exist will not come to
23 fruition if a stay is granted. The CLECs don't address that
24 argument.

25 Finally, regarding oral argument and the Supreme

1 Court's schedule, Ms. Kaufman is correct that the Supreme Court
2 has scheduled oral argument for January of '07. However, the
3 court did deny their request for an expedited appeal. So I
4 just want to make sure the record is clear on that, that while
5 the argument is scheduled several months in advance, the court
6 has refused to apply an aggressive scheduling decision in the
7 case. Thank you.

8 CHAIRMAN EDGAR: Mr. Hatch.

9 MR. HATCH: Just one additional comment with respect
10 to irreparable harm. Setting aside the issue of likelihood of
11 success on appeal, just setting that completely aside, even
12 assuming they are correct, which clearly they are not, but
13 notwithstanding that, if you look at the irreparable harm, what
14 they have proposed as their solutions in the event that they
15 get their hearing, the outcome of that hearing that they want
16 is conditions on the merger. If you can impose conditions,
17 assuming the court finds that they are absolutely right, they
18 send it back here and have a hearing and they are entitled to
19 their conditions, they get their conditions, there is no
20 irreparable harm. Their harm is fixed by the imposition of the
21 conditions. So there should be no stay here under any set of
22 circumstance. There is no irreparable harm, because they can
23 always get their remedy after success on appeal.

24 MS. KAUFMAN: Chairman Edgar, could I respond to one
25 point that was raised?

1 CHAIRMAN EDGAR: Ms. Kaufman.

2 MS. KAUFMAN: I just wanted to respond to the
3 standard of review that Mr. Meza raised, which I actually had
4 it in my notes and skipped over, and that is Mr. Meza is
5 correct that generally the court does give due deference to
6 your orders. In this case, however, we don't think that that
7 will be the case, because that due deference is given when an
8 agency, whether it's the Public Service Commission or the
9 Environmental Regulatory Authority or whomever, applies some
10 special expertise. And when special expertise is applied, then
11 due deference is given. We would suggest to you that if you
12 had conducted a hearing, heard the evidence, and then made your
13 finding about, for example, competitive impact, yes, then your
14 order may well have been given due deference. In this case
15 we're talking about a reading of the statute. And in this case
16 we think there is an error of law and that your order will be
17 reviewed by the court on a de novo basis. And that is one of
18 the issues that the court, I'm sure, will be looking at.

19 Thank you.

20 CHAIRMAN EDGAR: Commissioners, questions.

21 Commissioner Deason.

22 COMMISSIONER DEASON: Ms. Kaufman, your last comment
23 about you believe it is an error of law that the Commission did
24 not hold a hearing and take evidence upon competitive impacts,
25 is that your position?

1 MS. KAUFMAN: Yes, sir.

2 COMMISSIONER DEASON: Has the Commission ever held a
3 hearing on competitive impacts on a merger between
4 telecommunications companies?

5 MS. KAUFMAN: They have not, to my knowledge, and
6 that gives me the opportunity to address the 40 orders that
7 Mr. Meza referenced. In our research, we have discovered only
8 three cases in which this was even an issue before the
9 Commission. One of them is the Sprint/Nextel case. And we
10 have also discovered no orders where the magnitude and the
11 reach of the transaction that you were looking at is in any way
12 comparable to what is before you today. So I would suggest to
13 you that when the court reviews this question, it's going to be
14 an issue of first impression for them. And I don't think that
15 much comfort can be taken nor many comparisons made between
16 most of those orders where generally you have one small CLEC
17 combining with another small CLEC.

18 But, Commissioner Deason, you are correct, you have
19 never held a hearing. But I believe you have only really
20 looked at this issue three times, despite the number of
21 transfer orders that are out there.

22 COMMISSIONER DEASON: If you could clarify for me,
23 the argument in front of the court, is one of error on the part
24 of the Commission and that's the reason that it needs to be
25 remanded to the Commission, or is your argument in front of the

1 Commission -- do you intend to argue the competitive impacts in
2 front of the court?

3 MS. KAUFMAN: No. Commissioner, this is an argument
4 over whether you were incorrect in regard to your conclusion
5 that the Joint CLECs did not have standing. And what flowed
6 from that was your denial of our request for a hearing. We
7 will not be arguing the merits of the competitive impact,
8 because there is no evidentiary record before the court to
9 question whether you were correct in regard to your conclusion
10 on standing.

11 COMMISSIONER DEASON: Okay.

12 CHAIRMAN EDGAR: Commissioner Carter.

13 COMMISSIONER CARTER: Just for legal. In the context
14 of where we are, notwithstanding whatever we do, the parties
15 still have their day in court with the Supreme Court, is that
16 not correct?

17 MR. FUDGE: That's correct, Commissioner.

18 COMMISSIONER CARTER: Thank you.

19 CHAIRMAN EDGAR: Commission Tew.

20 COMMISSIONER TEW: I have one for Ms. Kaufman, also,
21 and it's in response, or the question arose from something
22 Mr. Hatch said.

23 Is it true that you can get your remedy after an
24 appeal at the court?

25 MS. KAUFMAN: No, I don't think that's true at all.

1 I think that in the first instance the Commission needs to look
2 at this transaction. It's true that one of the things that we
3 suggested, one remedy might be the imposition of conditions.
4 Another remedy might be that you don't approve the transfer at
5 all. So I think that once the transaction closes, we're going
6 to be in a very difficult position if then the court sends the
7 case back to you for a hearing.

8 COMMISSIONER TEW: I'll just follow up with staff on
9 that. Mr. Fudge, do you have thoughts on that about whether or
10 not if they get a stay that they will be able to seek a remedy
11 here if they ultimately win on the appeal?

12 MR. FUDGE: Well, in their briefs, their argument is
13 basically that part of their remedy is actually getting their
14 day before the Commission and having their arguments heard.
15 And by denial of that, they weren't provided a point of entry
16 to explain how the competitive interests were harmed. But as
17 Mr. Hatch and Mr. Meza said, even if the transfer -- well,
18 after they have their day in court and it is remanded, the
19 Commission would still have the oversight jurisdiction as we
20 noted in our order to impose conditions and look at whether or
21 not there is a competitive harm realized after the merger.

22 CHAIRMAN EDGAR: Commissioner Arriaga.

23 COMMISSIONER ARRIAGA: I think, Mr. Fudge, your last
24 statement confused me a little bit. I was going to ask you to
25 interpret for me the statement that was made about competitive

1 provision of the telecom business is in the public interest,
2 and I think I just heard you say something that we can still go
3 ahead and listen to additional arguments in a hearing to
4 determine public interest. Interpret for me, how do you feel
5 legally, if we have to or not, look at the public interest in a
6 competitive environment? Am I explaining myself?

7 MR. FUDGE: I'm just a little confused. Are you
8 talking about after the merger is approved?

9 COMMISSIONER ARRIAGA: No, no. There's two sides of
10 the story here in front of me. One of them says that we don't
11 have to look at the competitive provision of the telecom
12 business in the public interest, and the other side of the
13 story says, yes, we do. And I think there is an implication
14 that we have erred by not looking at that. I want your
15 interpretation of the statute. Do we have to look at the
16 competitive provision of the telecom business is in the public
17 interest or not? Was that something that was mandated by
18 statute that we made a mistake by not looking at it?

19 MR. FUDGE: I don't believe you did, Commissioners.
20 Whenever the staff presented the recommendations in the
21 previous cases and in this case, we explained the Commission's
22 jurisdiction and the discretion it has to look at the standards
23 that are in 364.33 which are the technical, managerial, and
24 financial ability of the company, as well as a public interest
25 test that could be examined. However, the discretion to look

1 at that is not a mandate or duty to do so, and that is what the
2 Joint CLECs are arguing is that you have a duty to do that.
3 And all staff was pointing out was that you do have the
4 discretion, and in those orders the Commission determined that
5 it would only look at the technical, managerial, and financial
6 ability of the companies and whether that was in the public
7 interest to approve the mergers.

8 CHAIRMAN EDGAR: Commissioner Deason.

9 COMMISSIONER DEASON: This is a question for staff as
10 well, but it relates to a comment which Mr. Meza made early on,
11 and he indicated there is no irreparable harm and there is no
12 change in jurisdiction, and the Commission still has the same
13 jurisdiction it has post-merger as it did pre-merger over the
14 merged company. Do you agree with that?

15 MR. FUDGE: Yes, Commissioners. The merged company
16 would still be under the same federal and state laws that it is
17 today and still be obligated to do the same interconnection
18 agreements that it is today. And that is why we have
19 difficulty in agreeing with the Joint CLECs' arguments that
20 there is an irreparable harm after the merger is approved,
21 because they will still be subject to the same laws and
22 interconnection agreements.

23 COMMISSIONER DEASON: And so to the extent this
24 Commission has jurisdiction to ensure or to promote competition
25 as a protection for customers and for all the benefits that

1 competition brings, we still have that same jurisdiction, and
2 if the merger results are such that we need to invoke that
3 jurisdiction to ensure a competitive market, we have that
4 ability, is that your opinion?

5 MR. FUDGE: Yes, Commissioner.

6 CHAIRMAN EDGAR: Commissioner Carter.

7 COMMISSIONER CARTER: Madam Chairman, I don't want to
8 curtail our discussion, but at the appropriate time I would
9 like to propose that we accept staff's recommendation in this
10 matter.

11 CHAIRMAN EDGAR: Commissioners, are there further
12 questions of staff or others?

13 Commissioner Arriaga.

14 COMMISSIONER ARRIAGA: Mr. Fudge, Commissioner
15 Deason's latest comments still confuse me a little bit. Are we
16 saying here or are you indicating that even after the court
17 makes a decision, this case could come back to us?

18 MR. FUDGE: Yes, Commissioner. If the court
19 determines that we erred in rendering our decision, they would
20 remand it to us for a full evidentiary hearing.

21 COMMISSIONER ARRIAGA: Let's say the court agrees
22 with us. Is there still a chance that the CLECs can come back
23 to argue the competitive issue again?

24 MR. FUDGE: Not in this docket. They would bring a
25 new action arguing that based on actions that happened after

1 the merger, they are suffering competitive harm for, say, you
2 know, AT&T cancelled all of their interconnection agreements
3 and raised their UNE rates. They could bring that in and ask
4 the Commission to examine that and determine whether or not
5 that is in the competitive interest.

6 COMMISSIONER ARRIAGA: But not in this specific
7 docket? There's no more actions after the Supreme Court makes
8 a decision, correct, if it is favorable to us?

9 MR. FUDGE: Yes, Commissioner.

10 COMMISSIONER ARRIAGA: Okay. Thank you.

11 COMMISSIONER DEASON: I second the motion.

12 CHAIRMAN EDGAR: Okay.

13 Commissioners, we have a motion and we have a second.

14 Is there further discussion of the motion?

15 Seeing none, all in favor of the motion say aye.

16 (Unanimous affirmative vote.)

17 CHAIRMAN EDGAR: Opposed? Show the motion carried.

18 Thank you.

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STATE OF FLORIDA)

COUNTY OF LEON)

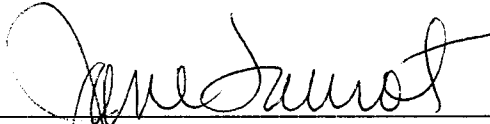
: CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, 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 30th day of October, 2006.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
FPSC Division of Commission Clerk and
Administrative Services
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