

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Complaint by BellSouth Tele-)
Communications, Inc., Regarding)
The Operation of a Telecommunications)
Company by Miami-Dade County in)
Violation of Florida Statutes and)
Commission Rules)

DOCKET NO. 050257-TL

FINAL EXHIBIT NOS. 239-241

28 of 29

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE:

Shared local exchange telephone service.

DOCKET NO. 860455-TL

VOLUME I

BEFORE:

Chairman Katie Nichols
Commissioner Gerald L. Gunter
Commissioner John R. Marks, III
Commissioner Michael Wilson
Commissioner John Herndon

PROCEEDINGS:

Special Agenda

DATE:

Thursday, January 8, 1987

TIME:

Commenced at 9:30 A.M.
Concluded at 4:30 P.M.

PLACE:

106 Fletcher Building
101 East Gaines Street
Tallahassee, Florida

REPORTED BY:

PATRICIA L. GOMIA, RPR, CSR
LORI DEZELL
Notaries Public in and for the
State of Florida at Large

* * *

1 PARTICIPATING:

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- JAMES MCAULEY, ESQUIRE, FPSC Legal Department
- ROB VANDIVER, ESQUIRE, FPSC Legal Department
- GEOFFREY COPPIN, FPSC Communications Department
- ROBERT CROUCH, FPSC Communications Department
- WALTER D'HAESELEER, FPSC Communications Department

- ROBIN NORTON, FPSC Communications Department
- JULIAN O'PRY, FPSC Communications Department
- JULIA PATTON, FPSC Communications Department
- GREG SHAFER, FPSC Communications Department
- ALAN TAYLOR, FPSC Communications Department
- RICHARD TUDOR, FPSC Communications Department
- STEVE TRIBBLE, Commission Clerk

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P R O C E E D I N G S

1
2 CHAIRMAN NICHOLS: Commissioners, it strikes me
3 that we can proceed one of two ways. We can either go
4 issue by issue, and I would suggest if we do in that
5 case we go in the order that the Staff has recommended.
6 Or we could just go right to the heart of the matter
7 and discuss whether we find shared tenant service in
8 the public interest or not, and then move to the
9 various fallout issues that come from that. What is
10 your pleasure? Anybody feel strongly about how you
11 want to proceed?

12 COMMISSIONER GUNTER: Commissioner, I think it
13 would be appropriate to take, to first have an
14 evaluation of whether STS or shared tenant service is
15 in the public interest, and if, for instance, we found
16 that it was not in the public interest, then it would
17 moot a lot of issues later. And I think it would be
18 very appropriate to make, have the Commission make a
19 determination based on the evidence in the record,
20 whether or not it was in the public interest. .

21 CHAIRMAN NICHOLS: That is Issue 3.

22 COMMISSIONER GUNTER: And for the record, I have
23 laboriously reviewed the record since I was not here in
24 the hearing. I was out of state, at that time I sent
25 Chairman Marks a memorandum that I would not be at the

1 hearing, but I would attempt to wade through, which I
2 have done in reviewing, and I'm not sure which one was
3 more laborious, Staff's recommendation or the
4 transcript of the hearing.

5 COMMISSIONER MARKS: For those of us who were
6 here, we don't know either.

7 CHAIRMAN NICHOLS: Weren't it fun. Okay, let's
8 take up Issue 3, which begins in the recommendation on
9 Page 58.

10 MS. PATTON: Commissioners, Issue 3 asks if the
11 provision of STS is in the public interest. Staff
12 recommends that a limited type of STS is in the public
13 interest. We believe that there are efficiencies
14 involved that the STS provider receives through sharing
15 the lines, and that these efficiencies may be passed on
16 to the end users. However, we do believe that
17 limitations are very necessary in that if the new
18 market is approved it will be just that, a new market,
19 and there are many unknowns. We have listed out the
20 limitations, and if you would like to, I would go
21 through those as well.

22 CHAIRMAN NICHOLS: Questions, Commissioners?

23 COMMISSIONER HERNDON: Can I, just as a point of
24 clarification, when you talk about STS being in the
25 public interest, you are talking about the resale of

1 local service, that is the definition of STS that you
2 are using in that phrase?

3 MS. PATTON: Yes, sir, I'm talking about a non-
4 partitioned arrangement whereby the STS provider could
5 order the trunks in bulk and let users use the trunks
6 without having to partition trunks out to Tenant A,
7 Tenant B and Tenant C and so forth.

8 COMMISSIONER HERNDON: And you would not include
9 in that discussion of STS being in the public interest
10 the provision of resold long distance service since
11 that is not in the Commission's jurisdiction?

12 MS. PATTON: I should clarify that point.

13 COMMISSIONER HERNDON: Okay.

14 MS. PATTON: The resale of long distance service
15 is in the Commission's jurisdiction, and I apologize
16 because probably there was a point in the
17 recommendation where that was misleading. We would
18 look at this situation as though a person would come in
19 for effectively two different certificates. If they
20 wished -- one certificate, but two authorities. If the
21 person chose to provide the shared local service they
22 would be getting authority to provide STS. If they
23 wish to also resell WATS, they would be getting
24 authority from this Commission for the resale of WATS.

25 COMMISSIONER HERNDON: So would you envision two

1 answers to the question whether or not it's in the
2 public interest, a yes or no answer as to whether long
3 distance service, resold long distance service is in
4 the public interest and a yes or no as to whether
5 resold local service is in the public interest?

6 MS. PATTON: No, I would not. At this point I
7 would only --

8 COMMISSIONER HERNDON: You do not see any
9 separation between --

10 MS. PATTON: No, I would see this issue deals only
11 with resale of local exchange service. Should we
12 decide this is not in the public interest, it would in
13 my opinion in no way affect the WATS resale portion; that
14 is still as is. This is simply resale of local exchange
15 service.

16 MR. D'HAESELEER: Commissioner Herndon, I would
17 argue we have already decided that resale of WATS is in
18 the public interest.

19 COMMISSIONER HERNDON: Yes, I don't disagree. I
20 just want to make sure so I understand.

21 COMMISSIONER MARKS: Commissioners, you know --
22 let me make a statement that I probably should have
23 made in the beginning. I have gotten several calls on
24 this from several parties and talked with several
25 people who stopped, at my church, and called on the

1 telephone and visited by my office on this matter. I
2 treated the matter as though it was not necessarily a
3 factor that we have to be seriously concerned about
4 ex parte communications since it was not really in the,
5 quote, true adversarial position. But I want to make
6 that statement on the record about that so the other
7 parties will understand that. But for the record let
8 me make that clear.

9 MR. MCAULEY: Commissioner Herndon, to add
10 something to what was already said about your question,
11 it reminded me of something Commissioner Wilson asked
12 me in agenda several weeks ago where there was a
13 recommendation to allow a company to withdraw its
14 application. It wasn't a company, it was Pensacola
15 Christian College, which is not a party to this docket,
16 but to withdraw an application for a resale
17 certificate, a resale of WATS. And we did that because
18 we have orders out there which explicitly identify for
19 dormitory service that those people will not be
20 required to come in and obtain that. And we recognize
21 that in that particular circumstance that they were
22 asking for a certificate to resell WATS, which they
23 didn't need under one of our orders, and those orders
24 already recognize, of course, as Walter said, that we
25 have already made the decision that that is in the

1 public interest. And this is separate.

2 COMMISSIONER HERNDON: Madam Chairman, may I ask
3 you just a point of clarification? Would it be your
4 intent in addressing Issue 3 to arrive at a yes/no
5 answer, as opposed to addressing in this particular
6 instant the various terms and conditions and
7 limitations that the Staff are recommending, or do
8 you --

9 CHAIRMAN NICHOLS: We can go however you wish,
10 Commissioner. It was my thought that if we get over
11 the threshold question of whether it's in the public
12 interest or not, then the rest of the questions become
13 either moot or critical.

14 COMMISSIONER HERNDON: Yeah.

15 CHAIRMAN NICHOLS: If we determine it's not in the
16 public interest, we can pretty much pack it up and go
17 home.

18 COMMISSIONER HERNDON: I just want to make sure in
19 terms of understanding where we are headed that --

20 CHAIRMAN NICHOLS: It's my understanding that the
21 Staff recommendation on Issue 3, Issue 3 being: Is the
22 provision of STS in the public interest, is yes, a
23 limited type of STS is in the public interest.

24 COMMISSIONER HERNDON: All right. That's really
25 why I'm asking, because there are a variety of

1 limitations that are proposed within the body of
2 Recommendation 3 that I believe we could -- I could
3 answer yes to part of the question but not necessarily
4 to all of the question, and that's why I'm struggling
5 with how best to handle Issue 3 itself.

6 CHAIRMAN MARKS: It seems to me that if we vote
7 on, if we vote on the generic issue, that is, if it is
8 in the public interest, and we say -- assuming we say
9 yes, then if we vote on the limitations, we will then
10 make a determination as to how much of it is in the
11 public interest.

12 CHAIRMAN NICHOLS: When and where.

13 COMMISSIONER MARKS: When and where and that kind
14 of thing, and it may be, and it may be a long drawn-out
15 procedure. We may come to a point where all our votes
16 indicate that it's not in the public interest.

17 COMMISSIONER HERNDON: Yeah, that seems to me to
18 be one of the problems, Commissioner, is that in the
19 abstract I might have one answer for it being in the
20 public interest, but when you start talking about the
21 rate structure and so on and so forth, I might come to
22 a different conclusion. So that's where I start having
23 some difficulty.

24 COMMISSIONER GUNTER: Well, I looked,
25 Commissioners, very briefly, I looked at STS as the

1 concept of shared tenant service, and when I read
2 Issue 3, and in fact I underlined some of Staff's
3 analysis, highlighted the positive effect on some
4 groups of users, or neutral or positive effect on the
5 general body of ratepayers. I looked at Issue 3 as
6 being conceptual, and then we get down to the specifics
7 of how, because of the word limited, then we get down
8 to the specifics of how we may or may not accept
9 Staff's recommendations on things such as rate
10 structure, certain exemptions or certain inclusions or
11 what have you. So to me Issue 3 is the concept of
12 shared tenant service.

13 And then we go from there. If the Commission
14 says, no, the concept of shared tenant service is not
15 in the public interest, fine, I'm willing -- I've got
16 things I can do back in the office. If it is in the
17 public interest, the concept, then we can go on to the
18 particular details. I mean, that's the way I viewed it
19 personally; that's the way I viewed Issue 3.

20 COMMISSIONER MARKS: I will move, Madam Chairman,
21 I will move Staff's recommendation on Issue 3.

22 COMMISSIONER GUNTER: Second.

23 COMMISSIONER WILSON: Wait a minute.

24 COMMISSIONER MARKS: I'm just moving it.

25 CHAIRMAN NICHOLS: Moved and seconded.

1 Commissioner Wilson.

2 COMMISSIONER WILSON: I didn't second.

3 COMMISSIONER GUNTER: No, I did.

4 CHAIRMAN NICHOLS: Do you have any comments?

5 COMMISSIONER WILSON: Yeah, I have some questions.

6 CHAIRMAN NICHOLS: Questions.

7 COMMISSIONER WILSON: The Staff recommendation
8 that it's in the public interest is conditioned on,
9 first, that it be those same tenants that are allowed
10 under the statute, which is single building,
11 commercial, shared PBX?

12 MS. PATTON: With one minor clarification, that
13 the statute gives a cutoff date, and that would --

14 COMMISSIONER WILSON: Right, that would eliminate
15 the grandfather clause. Preserve the ability of the
16 tenant to receive direct local exchange service?

17 MS. PATTON: Yes.

18 COMMISSIONER WILSON: You want a usage-based
19 tariff?

20 MS. PATTON: Yes.

21 COMMISSIONER WILSON: And you want to preserve
22 bypass restrictions?

23 MS. PATTON: Yes.

24 COMMISSIONER WILSON: You also want to certify the
25 STS?

1 MS. PATTON: Yes.

2 COMMISSIONER WILSON: Okay. Are you proposing
3 certification?

4 MS. PATTON: Yes, we are.

5 MR. MCAULEY: Commissioner, the statute would
6 require it also.

7 COMMISSIONER HERNDON: Does an answer --

8 COMMISSIONER WILSON: Which statute?

9 MR. MCAULEY: The STS statute.

10 COMMISSIONER WILSON: Requires certification?

11 MR. MCAULEY: Requires certification. We can
12 exempt them from any other standards but certification,
13 and we would set whatever standards would be
14 appropriate.

15 COMMISSIONER HERNDON: Let me ask a question with
16 respect to -- while Commissioner Wilson is looking at
17 the statute for a minute. If I read the Staff
18 recommendation correctly, in looking at Page 66, I
19 guess most explicitly it says: In conclusion we
20 believe that the benefits to providers, quote, may,
21 unquote, flow through to tenants, and therefore STS
22 should be authorized.

23 And it was made abundantly clear throughout the
24 recommendation that STS will provide benefits to the
25 STS providers. I don't think there's any question in

1 anybody's mind about that, and that they may provide
2 benefits to tenants. I don't find any discussion,
3 however, in Issue 3 about benefits to the general body
4 of ratepayers. In fact, it seems to me that the
5 recommendation is silent as to whether or not there are
6 any benefits to the larger general body of ratepayers.
7 What happens if STS is provided as Staff recommends,
8 what happens to the rates in the long term to the
9 general body of ratepayers who are not tenants?

10 MS. PATTON: We have recommended in a later issue
11 that there may be no increase in rates. Also,
12 Mrs. Norton has done in an issue about rates, and she
13 could maybe discuss it.

14 MS. NORTON: If you would care to have me discuss
15 that now, I would be glad to, or just a brief overview
16 and pick up in more detail when it comes to that issue.
17 But the rates and rate structure that we have
18 recommended based on the support that we have in the
19 docket, which it must be noted is not all encompassing
20 as far as revenue impact, okay. To the extent that it
21 is determined that the STS is in the public interest,
22 we have recommended that reports be filed which would
23 give us more data as time goes on. But based on the
24 evidence that we have and the rates that we have
25 proposed, we believe that they approach revenue

1 neutrality, and that is that the revenues that are
2 currently generated or that would be generated, for
3 example, in a building with individually provided
4 direct service, then take that and put it into an STS,
5 under an STS tariff, we believe that the rates, based
6 on the evidence that we have, are revenue neutral and
7 perhaps even generate slightly more for the basic
8 services.

9 COMMISSIONER HERNDON: That's based on the fact
10 that you charge LMS rates for the provider?

11 MS. NORTON: That is correct.

12 COMMISSIONER HERNDON: Is it possible under that
13 scenario that the STS provider or the customer or the
14 tenant of an STS provider will pay more in an LMS rate
15 structure than he would have under a flat rate
16 structure?

17 MS. NORTON: I think the evidence shows that is
18 quite possibly the case. Now, what the STS provider
19 decides to charge his customer, whether on a flat rate
20 or usage-rated basis, once this Commission determines
21 that the LECs will charge the STS provider usage-based
22 rates, we don't know, and that's not really -- we don't
23 regulate the STS providers themselves, so we won't
24 regulate exactly what they pay, but I believe it's
25 something that we should be, you know, tuned into.

1 CHAIRMAN NICHOLS: We had evidence in the hearing
2 that the tenants of STS providers are paying more --

3 MS. NORTON: That is correct.

4 CHAIRMAN NICHOLS: -- than they would be if they
5 had say a single business line. They may be getting
6 more services or whatever, but if you just look at the
7 rates and don't make any -- I'm not sure it's -- from
8 the tenant's perspective that it's a valid comparison
9 because they may be getting more services.

10 MS. NORTON: There was information in there, and I
11 think it is elsewhere in the recommendation trying to
12 make a comparison based on what we had that I think it
13 was said, like Amerisystems charges \$40 a month, and
14 that really is basically just for the line and for the
15 CPE for a single line phone. And I think it includes
16 touch tone.

17 There are -- the argument the STS providers put
18 forth is that the enhanced services are really what
19 sort of makes STS attractive. And so as Chairman
20 Nichols said, there may be more services that at some
21 point will be available. So to say whether they get
22 charged more or less now, they may, but it may not be a
23 problem. I don't --

24 COMMISSIONER HERNDON: Let's talk about that point
25 for a minute, then. If I understand correctly, setting

1 aside rates for a second, are those other services that
2 an STS provider offers going to be available to the
3 general body of ratepayers? No? I see a lot of
4 horizontal head-shaking. I presume that is a no.

5 MR. SHAFER: Let me address one of the points that
6 you were alluding to earlier, and that was where does
7 the general body get their benefit? I think that the
8 record indicated and that the parties, various factions
9 have indicated that the potential is there, that the
10 local exchange company could gain some efficiency and
11 some economies from the provision of STS, as opposed to
12 providing individual services to the occupants of a
13 fairly substantial sized building. Obviously, you
14 know, you are shooting in the dark, and I can't sit
15 here and tell you that, yes, that will happen, and
16 under what circumstances. I think it is a possibility.
17 I think that the technology that really has brought us
18 STS in the first place could very well have some long-
19 term flowthroughs to the general body. And obviously
20 if that is, if that happens, then the general body is
21 better off.

22 As Robin indicated, we have tried to put together
23 a rate structure that we believe in the short run will
24 be relatively revenue neutral, and therefore not have a
25 detrimental effect on the general body, and give that

1 flowthrough and economy and efficiency an opportunity
2 to reach the general body, and thereby provide us with
3 a clear indication that we have a public interest
4 situation. You know, obviously there is a great deal
5 of uncertainty as to the final consequences of what we
6 are doing here and what we are recommending, and that
7 puts everyone in somewhat of an uncomfortable position.

8 As far as your question as to do customers in fact
9 pay more in an STS building than they would otherwise,
10 I think that what you are really looking for here is
11 the value that your dollar buys. You may very well be
12 able to get individual service from the local exchange
13 company for \$40 a month in a very limited sense,
14 whereas you may be willing to pay \$45 a month to an STS
15 provider because there are some other things that he
16 can provide by aggregating a number of customers
17 together that there would otherwise not be an economic
18 demand for by an individual, and therefore that
19 individual customer gets a better buy for his dollar
20 than he would directly from the local exchange company,
21 and certainly that is the argument that the STS
22 provider would put forward. And, you know, obviously
23 there is some validity to that, at least in the
24 theoretical, from a theoretical perspective.

25 Again, we are in a big area of uncertainty here in

1 predicting what the flowthroughs are going to be, and
2 who are going to be the winners and who are going to be
3 the losers.

4 COMMISSIONER HERNDON: Let me ask you a question,
5 Greg. With respect to the efficiencies of trunking and
6 so on and so forth that might occur, where an STS
7 provider is in a building, am I correct that the
8 other side of that sword is a loss in revenues to the
9 LEC unless LMS is instituted?

10 MR. SHAFER: Again, I hesitate to give you a real
11 strong yes or no on that. I think you could build a
12 hypothetical situation where, regardless of the rate
13 structure, there could be some positive benefit to the
14 local exchange company, and therefore to the general
15 body.

16 COMMISSIONER HERNDON: What would be the scenario
17 that would benefit them in the absence of LMS --

18 MR. SHAFER: Certainly if the cost to provide to
19 an STS provider the link to the network, as opposed to
20 providing some large number of individual services,
21 there would be some cost saving there, your trunking
22 efficiencies, your cabling and so forth, your readiness
23 to serve and that type of thing.

24 COMMISSIONER HERNDON: But the revenues are not
25 there either, are they?

1 MR. SHAFER: Right, and where you hope to make up
2 the revenues is that you will be able to, or at least
3 in part where you hope to make up those revenues is that
4 you begin to provide to the STS provider as a single
5 entity WATS service, teleconferencing, data service,
6 things that the tenants of that building individually
7 probably would not have subscribed to because
8 individually it wasn't economically efficient for them
9 to bother to do it. But if you have got a hundred or
10 200 businesses in the building, and they all have a
11 little bit of demand for some data service or some
12 interconnecting via computing networking or something
13 like that that the telephone company can provide, then
14 suddenly you have a demand for a service that wasn't
15 there before, and the telephone company picks up
16 revenues in that regard.

17 COMMISSIONER HERNDON: But, as you said, that is a
18 scenario that you could build hypothetically that is
19 not supported in the record, and in fact, I think as
20 your recommendation indicates, we are not certain,
21 hence the choice of the word "may," that benefits will
22 even flow to the tenants of the STS building itself,
23 much less to the general body of the ratepayers.

24 MR. SHAFER: That is correct, and clearly there
25 won't be any STS providers if customers in those

1 buildings don't perceive some value for their dollar,
2 and that's as simple as you can make it.

3 CHAIRMAN NICHOLS: Any more questions?

4 COMMISSIONER HERNDON: Madam Chairman, let me ask
5 again, because, I apologize, but I am confused. The
6 recommendation and the support for the motion and the
7 second that have occurred thus far, how would you
8 intend that vote to take place? I mean, do you see
9 that vote to be on the question of, yes, STS is in the
10 public interest, period?

11 CHAIRMAN NICHOLS: No.

12 COMMISSIONER HERNDON: Or yes, STS is in the
13 public interest under the terms of LMS, single
14 building, et cetera, et cetera, that Commissioner --

15 CHAIRMAN NICHOLS: No, the motion that is on the
16 table right now, that has been moved and seconded, is
17 yes, a limited type of STS is in the public interest.
18 We have not defined the limits; that will come up in
19 later issues. I think all we have before us right now
20 is the threshold question, is some form of STS in some
21 limited fashion in the public interest?

22 COMMISSIONER MARKS: My motion is to adopt Staff's
23 recommendation, Madam Chairman.

24 CHAIRMAN NICHOLS: That a limited type of STS is
25 in the public interest.

GOMIA AND ASSOCIATES

1 COMMISSIONER HERNDON: And not any of the
2 limitations, Commissioner?

3 CHAIRMAN NICHOLS: Not the specific limitations.
4 They all come up in specific issues further on.

5 MR. SHAFER: If I can make a suggestion, that
6 perhaps we can go through the rest of the STS issues
7 that discuss the limitations, and you can come back to
8 Issue 3.

9 CHAIRMAN NICHOLS: Well, if we don't find it's in
10 the public interest in any form at all, in any limited
11 sense, we don't really need to worry about what the
12 limits are.

13 COMMISSIONER MARKS: We can go through the limits --
14 as I understand the limitations are by the Staff, I think
15 as stated by Commissioner Wilson --

16 COMMISSIONER GUNTER: It's on Page 66.

17 COMMISSIONER MARKS: They say that only commercial
18 end users in a single building are eligible. Direct
19 access to the local exchange company to be provided for
20 each end user; that flat usage rates be established
21 covering the direct cost and providing contribution to
22 joint and common costs, and that bypass restrictions
23 are applicable. There was one other that Commissioner
24 Wilson said that certification is required, and I think
25 the Staff pointed out that that is required anyway by

1 statute.

2 Anyway, but the four limitations, as I understand
3 it, are those that I just read.

4 CHAIRMAN NICHOLS: But we will be discussing those
5 four individually in later issues, isn't that correct?
6 (Staff indicates affirmatively)

7 CHAIRMAN NICHOLS: So this is essentially just the
8 concept of is any form of STS in the public interest?
9 And then we have to go through and discuss each of the
10 limitations.

11 COMMISSIONER WILSON: Does the Staff
12 recommendation contemplate as part of the STS, limited
13 STS that would be authorized, intercommunications
14 behind the switch?

15 MS. PATTON: Yes.

16 MR. VANDIVER: Bearing in mind that that reverses
17 an earlier Commission decision, the Holywell decision.
18 I just want you all to be aware of that as you go
19 forward.

20 COMMISSIONER GUNTER: Sure, because at the time of
21 the Holywell case we did not have the legislative --

22 CHAIRMAN NICHOLS: Authority.

23 COMMISSIONER GUNTER: Authority to do otherwise.
24 And as I recall the Holywell case was litigated and the
25 Commission was upheld at that time.

1 MR. VANDIVER: I don't recall it being litigated,
2 but it's good Commission law.

3 COMMISSIONER GUNTER: I think it was.

4 MS. PATTON: If I may also clarify, later in some
5 limitation issues we discuss this further, and we say
6 if it's within one building, intercomming is
7 appropriate. However, should you have a switch that is
8 partitioned among several buildings, the intercomming
9 could not go on between two buildings.

10 COMMISSIONER GUNTER: There is even one where you
11 talk about certification of individual buildings,
12 if it's multiple buildings across thoroughfares and all of
13 that kind of stuff. Yeah, you have covered that in
14 another issue.

15 CHAIRMAN NICHOLS: Commissioners, are you ready to
16 vote on the concept?

17 COMMISSIONER GUNTER: Yeah.

18 CHAIRMAN NICHOLS: All of those in favor?

19 COMMISSIONER WILSON: Let me just make sure that
20 one thing is clear. The consideration that we are
21 going to later have about sharing arrangements, nursing
22 homes, airports, ACLFs, whatever, is completely
23 divorced from this issue?

24 MR. VANDIVER: Yes.

25 COMMISSIONER WILSON: The vote on STS that we are

1 discussing right now is limited to STS in a single
2 commercial building?

3 MR. SHAFER: Right.

4 COMMISSIONER WILSON: That's what we are talking
5 about here, and that's all we are talking about?

6 MR. SHAFER: That is correct.

7 COMMISSIONER HERNDON: I'm not sure I understand
8 that. I had understood that what we would be voting on
9 in this instance was an answer to the abstract question
10 is STS in the public interest, not single buildings,
11 not airports, not anything --

12 CHAIRMAN NICHOLS: Not commercial versus nursing
13 home --

14 COMMISSIONER HERNDON: -- just the abstract,
15 almost philosophic question is it in the public
16 interest. At some later point I understood we would be
17 addressing the question of single buildings, airports,
18 nursing homes, whatever.

19 COMMISSIONER WILSON: Well, my understanding is
20 that the -- when we are talking about STS we are
21 talking about -- we are not talking about airport
22 sharing arrangements. We are not talking about ACLF
23 in --

24 MR. VANDIVER: That is correct. We're talking
25 about what is in the statute.

1 MR. SHAFER: Right, STS is currently defined by
2 the statute.

3 MR. MCAULEY: There was a stipulation in the case
4 as well that STS, the use of the term STS, shared
5 tenant services, would mean as defined in the statute.

6 MR. VANDIVER: And that is commercial tenants,
7 single building.

8 MR. MCAULEY: And the other things that you have
9 mentioned, unless they fell within the definition of
10 the statute, would not be shared tenant services and
11 would not fall under the certification requirements and
12 so forth.

13 COMMISSIONER GUNTER: Well, later on tonight,
14 about midnight, we are going to get to the point that
15 is concerning some of the Commissioners, and let me
16 just be very candid with you, there are some
17 diametrically opposed recommendations from one part of
18 this recommendation to another part of the
19 recommendation, and that is part of the concern we are
20 having here is we don't want to lock ourselves in, that
21 is the reason of my support of the Chairman's, previous
22 Chairman's, simply Your Lordship now, what His
23 Lordship, the concept, and that's the reason -- I'm
24 reading off the vote sheet and not going in trying to
25 get all the details, that a limited -- yes, a limited

1 type of STS is in the public interest. And there are
2 all kind of details I've got some real belly twitch
3 heartburn about, that I, you know, if we start talking
4 about all of them today and trying to wrap them all in
5 that and make them all inclusive in that ball of
6 twine -- I had a little old kitten one time that took
7 my kite string and, you know, Solomon couldn't have
8 undone it after he had spent 15 minutes with it. And I
9 think that's where we are today.

10 MR. MCAULEY: I share that feeling with you about
11 some parts of the recommendations, but nonetheless what
12 I was trying to do is point out the use of the term,
13 even on the vote sheet, STS or the acronym STS is
14 identifying that service which falls within the
15 statute.

16 COMMISSIONER GUNTER: But it's still, in the
17 statute it's concept, Counselor.

18 MR. MCAULEY: Yes, sir, Commissioner.

19 COMMISSIONER GUNTER: That's what I'm saying, the
20 concept.

21 MR. MCAULEY: We may be talking past one another.

22 COMMISSIONER GUNTER: We are. We are just going
23 sideways, and Staff's recommendation, for instance, you
24 get one, two, three and four, Page 66 of the
25 recommendation, you talk about the conditions as set

1 forth in the statute, as I understand.

2 COMMISSIONER MARKS: If I understand correctly,
3 Madam Chairman, as you indicated we do get to those
4 issues later on. But if I'm looking at my sheet
5 correctly, Issue 6 deals with STS certification
6 requirements.

7 MR. CROUCH: That is correct.

8 COMMISSIONER MARKS: Issue 14 deals with direct
9 access to tenants and --

10 CHAIRMAN NICHOLS: Issue 2 is the single building.

11 COMMISSIONER MARKS: Issue 2 is the single
12 building definition, and those are the -- what was the
13 other one? What was the fourth one?

14 CHAIRMAN NICHOLS: Bypass restriction.

15 COMMISSIONER MARKS: Bypass restriction. I don't
16 know if that -- I didn't see an issue on bypass
17 restriction.

18 MS. NORTON: Issue 13.

19 MR. O'PRY: Issue 13.

20 COMMISSIONER MARKS: Issue 13.

21 MR. O'PRY: Also Issue 7 on whether or not they
22 should file rates.

23 COMMISSIONER MARKS: Yeah, that deals with
24 certification requirement, as relates to the
25 certification requirement. So my motion is still

1 Staff's recommendation with the understanding as we now
2 have it.

3 COMMISSIONER GUNTER: Call the question, Madam
4 Chairman.

5 CHAIRMAN NICHOLS: Vote. It's been moved and
6 seconded that, yes, a limited type of STS is in the
7 public interest. Any objection?

8 COMMISSIONER MARKS: No objection.

9 CHAIRMAN NICHOLS: Okay, that is five-zip.

10 Now, do you want to go back and start with Issue 4
11 and move on? Move right through the vote sheet?

12 COMMISSIONER GUNTER: I think that would be
13 appropriate.

14 CHAIRMAN NICHOLS: Issue 4 starts on Page 50.

15 COMMISSIONER MARKS: Or alternatively,
16 Commissioner, does it make -- is it feasible to address
17 those issues surrounding the limitations, and look at
18 those limitation issues and then go to the others?

19 MR. SHAFER: Commissioner, I think in all honesty
20 it might be easier for the Staff if we just go through
21 by the vote sheet, and I think that will all fall out.

22 CHAIRMAN NICHOLS: Okay, Issue 4 starting on
23 Page 50.

24 MR. MCAULEY: Commissioners, Issue 4 was designed
25 to tell you what the statute said or what STS was

1 before going into whether it was in the public
2 interest. But since you, to the extent that we have
3 already talked about the statute to some degree, I'll
4 just reiterate that it defines shared tenant services
5 as those services which duplicate or compete with local
6 exchange service and are furnished through a common
7 switching or billing arrangement to commercial tenants
8 within a single building. That is pretty restrictive,
9 and that is the definition as laid out in Section 1.

10 Section 2 provides an exemption for the government
11 entities from Paragraph 1-B of Section 1.

12 And basically we have interpreted, applied an
13 interpretation to indicate that some of the positions
14 of the companies in their briefs and in their
15 prehearing statements were that the governmental
16 entities should also be required to be certificated
17 under the statute because they were only exempt from
18 the single building restriction, but not from
19 certification by the Commission regulation. We have
20 made an interpretation, I think an appropriate one,
21 that the government, when it serves itself, it's not
22 offering service to the public for hire. It is simply
23 serving itself.

24 And this particular provision of the statute, too,
25 says the STS provided to government entities which

1 contemplates those situations where a private STS
2 provider may serve the government as well as other
3 entities; that entity would be certificated. But when
4 the Commission uses the PBX for its own use or any
5 other government entity, such as colleges and
6 universities, they would not be within the statute and
7 they would not fall within the definition of STS.

8 COMMISSIONER MARKS: You are trying to draw a
9 distinction, let me make sure I understand, that if a
10 governmental entity is in a building that is normally a
11 commercial building, then under those circumstances it
12 comes, whoever is providing that service, that STS
13 service has to be certificated.

14 MR. McAULEY: They would be certificated, right.

15 COMMISSIONER MARKS: In other words, if we have
16 the State Attorney's Office moving into what was once
17 the Lewis State Bank Building as they did, then under
18 those circumstances that building could not obtain the
19 exemption that governmental entities obtain?

20 MR. McAULEY: That is correct.

21 COMMISSIONER MARKS: But what happens if the
22 reverse would occur, if it would occur? I think we do
23 have that.

24 MR. McAULEY: What is that?

25 COMMISSIONER MARKS: Where there is a governmental

1 building and private enterprises are in that building.
2 Well, we do have that, obviously.

3 COMMISSIONER GUNTER: The Federal Building.

4 COMMISSIONER MARKS: The Federal Building.

5 COMMISSIONER GUNTER: The Federal Building, there
6 are -- assume the Federal Building was served by a PBX,
7 and you had a single non-governmental customer there.
8 As I read the Staff's recommendations the whole
9 facility then becomes STS, or is it only for that non-
10 governmental piece?

11 MR. McAULEY: We are looking at it from the point
12 of view of who is providing the service. If it's a
13 shared tenant provider that is providing the service to
14 commercial tenants, they would be required to be
15 certificated. When the government is providing the
16 service to itself, it is not offering service to the
17 public for hire.

18 COMMISSIONER GUNTER: You didn't hear my question.
19 We are talking by one another again. If the government
20 has a PBX in the Federal Building, and they've got a
21 snack bar in there --

22 MR. McAULEY: Oh, I understand your question all
23 right.

24 COMMISSIONER MARKS: Make it even more clear than
25 that. The classic example of one we have all been

1 hearing about is the Orlando Airport.

2 MR. MCAULEY: Right.

3 COMMISSIONER MARKS: Which is apparently a
4 governmental entity, and it's not a special taxing
5 district, but it's a special district apparently
6 authorized by Florida statute, I believe.

7 COMMISSIONER GUNTER: An authority.

8 COMMISSIONER MARKS: An authority. That is the
9 example we are talking about. I mean, that is --

10 MR. MCAULEY: We have addressed that in the
11 recommendation, and we said to the extent that the
12 government goes beyond serving itself and offers itself
13 or offers to serve the public for hire in general, like
14 if we, the government said we have a PBX here, and it's
15 a private building across the street, we'll run lines
16 over there and begin to serve all the commercial
17 tenants out of our PBX, or anybody else who wants to
18 come in and take service. They would be offering
19 themselves to the public for hire, and to the extent
20 they are doing that they would be required to be
21 certificated under the statute.

22 CHAIRMAN NICHOLS: All right, under your
23 interpretation of the statute are you saying that the
24 Orlando Airport, as long as it served only the
25 governmental entities, the gates, the ticket counters

1 and so forth, they would not need to be certificated.
2 But when they start serving the flower shop and the
3 gift shop and the shoeshine man and the cafeteria and
4 so forth and so on, then they need to be certificated
5 as an STS provider?

6 MR. MCAULEY: Yes, ma'am.

7 COMMISSIONER GUNTER: Is that for everybody behind
8 the PBX or only those non-governmental portions behind
9 the PBX?

10 MR. MCAULEY: They would be required to obtain a
11 certificate because they are serving commercial
12 tenants.

13 COMMISSIONER GUNTER: For the commercial tenants
14 or for the governmental body?

15 MR. MCAULEY: For the commercial tenants.

16 COMMISSIONER GUNTER: Only the commercial tenants?

17 MR. MCAULEY: Yes, sir.

18 MR. CROUCH: The tenants would not be
19 certificated, only the provider.

20 MR. MCAULEY: The tenants won't be certificated.
21 You're asking me the question --

22 COMMISSIONER GUNTER: I understand what we are
23 saying. The recommendation, as I understand,
24 Mr. Crouch, is that the recommendation would be then
25 the governmental body, Orlando Airport Authority, would

1 become certificated as an STS provider. Now, my
2 question is would all of the people on the downstream
3 side of that PBX, government and non-government, would
4 they be subject to the rates as established here?

5 MR. MCAULEY: Yes, we haven't made any distinction
6 between who would be --

7 COMMISSIONER GUNTER: I'm just trying to get where
8 you all are coming from.

9 MR. MCAULEY: -- receive certain rates behind the
10 PBX.

11 COMMISSIONER WILSON: Let me ask a question.

12 MR. MCAULEY: I have one other thing to say.

13 COMMISSIONER WILSON: Go ahead.

14 MR. MCAULEY: There is a case, and the title of
15 the case is Department of Revenue versus Merit Square
16 Corporation, and it involved a shopping center, which
17 argued that it was a private utility and exempt from
18 payment of sales tax. I bring this up because this was
19 a case where there was a shopping center. They had
20 their own generator, and they were providing
21 electricity to individual tenants in the shopping
22 center. But the Court ruled that in that case they
23 were not offering service to the public for hire when
24 they were serving the individual tenants in the
25 shopping center, who were separately metered, and

1 therefore they weren't a public utility.

2 I bring that case up only because, to the extent
3 that we are saying when you go ahead and begin to serve
4 commercial tenants, you are offering yourself out to
5 the public for hire. This case stands for one building,
6 one circumstance, where they said that wasn't to the
7 public for hire and that is not a utility.

8 COMMISSIONER WILSON: If you have an airport that
9 is an authority, such as Orlando, and they serve
10 themselves, and they serve the ticket gates and the
11 boarding gates, the ticket counters of different
12 airlines, those incidental services, they would then be
13 exempt from 1-B or not?

14 MR. MCAULEY: To the extent that the government
15 was providing -- yes, the short answer is yes.

16 COMMISSIONER WILSON: All right. If they then
17 start serving flower shops and the shoeshine shop and
18 the restaurants and duty-free liquor stores and things
19 like that, they then lose that exemption and must be
20 certified as an STS --

21 MR. MCAULEY: No.

22 COMMISSIONER WILSON: No?

23 MR. MCAULEY: No.

24 COMMISSIONER WILSON: All right. Then --

25 MR. MCAULEY: 1-B would simply not operate when

1 the government was providing service to other entities.

2 COMMISSIONER WILSON: But 1-B says absent the
3 exemption from 1-B you are confined to one building,
4 though.

5 MR. MCAULEY: Right.

6 COMMISSIONER WILSON: So if you are an airport
7 authority and you are doing your governmental function,
8 you are exempt from the single building limitation.
9 All right, you start serving commercial customers, you
10 lose your exemption under 1-B, in more than one
11 building, so you are now under the one-building
12 requirement.

13 MR. MCAULEY: Right.

14 COMMISSIONER WILSON: I don't understand how an
15 airport can be certificated as an STS carrier.

16 COMMISSIONER MARKS: Under a one-building concept?

17 MR. MCAULEY: We have made a recommendation
18 that --

19 COMMISSIONER WILSON: If they lose the exemption
20 under the 1-B exemption --

21 MR. MCAULEY: Well, it could be the argument that
22 they would not be required to serve only in one
23 building to the extent that they are providing service.

24 COMMISSIONER WILSON: I'm sorry, I didn't follow
25 that.

1 MR. MCAULEY: When the government is providing
2 service to commercial tenants, your hypothesis could be
3 accepted, that is that they would lose that exemption,
4 and they would be required to serve only in one
5 building as well.

6 COMMISSIONER MARKS: And then what would kick in,
7 I assume, another part of the Staff's recommendation
8 that exempts, further exemption on the one-building
9 concept, airports alone.

10 MR. MCAULEY: Right, because we have defined an
11 airport as a single building because of the nature of
12 the services.

13 COMMISSIONER MARKS: Say the airport for the
14 purposes of definition.

15 MR. MCAULEY: Right.

16 COMMISSIONER MARKS: Is a single building, then
17 that would have to kick in in order to do that.

18 COMMISSIONER HERNDON: Generally, Mr. McAuley,
19 isn't there a tenant in the law that the statute speaks
20 for itself?

21 MR. MCAULEY: Excuse me?

22 COMMISSIONER HERNDON: Isn't there a tenant in the
23 law that generally the statute speaks for itself?

24 MR. MCAULEY: Yes, a plain reading of the statute
25 should be followed.

1 COMMISSIONER HERNDON: Why is it necessary that we
2 interpret the statute in this instance? Isn't the
3 statute pretty plain and pretty clear, and can't we let
4 it speak for itself?

5 MR. MCAULEY: To the extent that it was raised as
6 an issue in the case, and that there was some
7 controversy over the operation of Section 1-B, we have
8 addressed it as it was an issue in the case and --

9 COMMISSIONER HERNDON: That doesn't impose an
10 obligation on the Commission to address it. We could
11 choose to not address the issue and just say the
12 statute, plain and simple on its face, speaks for
13 itself.

14 MR. VANDIVER: The issue that did come up among
15 Staff was that the statute says provided to
16 governmental entities rather than by governmental
17 entities, and that's why some of these gyrations are
18 taking place, simply because of that plain language.

19 COMMISSIONER GUNTER: Well, let me just pull a
20 situation. Say you've got a prison, and a prison has a
21 PBX, at least most -- I have visited two prisons, and
22 they have a PBX.

23 COMMISSIONER WILSON: In an official capacity?

24 COMMISSIONER GUNTER: Yeah. I want to tell you it
25 was a tourist and a look-see, it would be a nice place

1 to visit once, but you wouldn't want to live there.

2 They are provided services, at least the two
3 prisons that I was at, they were provided services, and
4 we do have in the State of Florida a private
5 organization, non-profit organization, which exists.
6 And the reason I'm trying to make sure I understand
7 what you just said, PRIDE is a non-profit private
8 organization that functions within the prison system.
9 Now, you were making a distinction between providing
10 service to or service being provided by governmental
11 agencies. With your definition every prison and most
12 work camps in the State of Florida would be required to
13 be certified as an STS provider, is that correct?

14 MR. MCAULEY: Well, Commissioner, I don't know all
15 the facts of the cases with --

16 COMMISSIONER GUNTER: All right, you have a non-
17 governmental, a non-governmental entity represented in
18 most prisons, in all prisons in most road camps of the
19 state.

20 MR. MCAULEY: If it was a non-governmental entity
21 that owned the PBX and was serving the government --

22 COMMISSIONER GUNTER: No, no. The government owns
23 the PBX.

24 MR. MCAULEY: And therefore it would fall within
25 the exemption because the government would be serving

1 itself.

2 COMMISSIONER GUNTER: But they would be providing
3 services to a non-governmental customer.

4 MR. MCAULEY: That would be to a customer, and to
5 the extent that they were providing service to a
6 commercial customer, they would be required to be
7 certificated.

8 COMMISSIONER GUNTER: Okay. So carrying that to
9 its broadest conclusion, the Staff recommendation, the
10 Staff opinion is that we should expand this in every
11 prison and most road camps in the State of Florida
12 would have to be certified as an STS provider?

13 MR. VANDIVER: Frankly, I'm not sure how tight the
14 relationship between PRIDE is and the State of Florida.
15 I think there may be some --

16 COMMISSIONER GUNTER: There is a legal
17 distinction, though, Counselor, and that's what we are
18 talking about.

19 MR. VANDIVER: I'm not exactly certain what that
20 legal distinction is. I seem to recall some reference
21 to PRIDE in the Florida Statutes and so forth, and
22 certainly we could interpret it to get out of
23 certificating all the prisons.

24 COMMISSIONER GUNTER: I'm just trying to see what
25 is legal.

1 MR. VANDIVER: I think our point is when the
2 government crosses that line and starts serving
3 commercial tenants, they need to be certificated. When
4 they stop serving themselves and start serving
5 commercial third parties, they have crossed the STS
6 line and they need to be certificated at that point.

7 MR. MCAULEY: To the extent that, by offering
8 service they are offering service to the public for
9 hire. If the government is not offering service to the
10 public for hire, they are not duplicating and competing
11 with local exchange service, and they would not be --

12 COMMISSIONER MARKS: We get kind of in that old
13 definition we used to use in transportation, "for hire
14 service," what is for hire and what is not, and I
15 think in the PRIDE situation, which is a good example
16 that needs to be raised --

17 COMMISSIONER GUNTER: The line and where do you
18 cut it.

19 COMMISSIONER MARKS: I believe we are trying to
20 figure out where we cut the line, where we draw the
21 line. I think PRIDE is referenced in the statute
22 someplace as well as -- the example came up to me of
23 blind services that provide cafeteria services in this
24 building.

25 COMMISSIONER GUNTER: That's right.

1 COMMISSIONER MARKS: I think there is a reference
2 in the statute that can reasonably be interpreted that
3 is reasonably related to governmental, a governmental
4 enterprise, a certificate, if that is the only service
5 being provided and need a certificate. And this
6 building would not need a certificate.

7 MR. VANDIVER: And one might also question, since
8 it's blind services and it's PRIDE, is that a, quote,
9 commercial enterprise in that they are given all of
10 these breaks by the State and so forth and so on.
11 Maybe they are not a commercial enterprise.

12 COMMISSIONER MARKS: I would suggest to you also,
13 Commissioners, that we are probably not going to be
14 able to weed out every thorny issue associated with
15 STS, and that probably we are going to --

16 MR. VANDIVER: As these things crop up, we can
17 deal with them on a case-by-case basis.

18 MR. MCAULEY: By the way, this particular issue
19 does not require a vote by the Commission. We
20 brought this out so that we could give you our
21 interpretation of the statute, and we have tried to
22 interpret it in a way that would eliminate the burden
23 on the Commission of regulating governmental entities
24 to the extent possible.

25 COMMISSIONER HERNDON: Madam Chairman, let me try

1 this motion and see if it has any support whatsoever,
2 and that would be to deny Staff recommendation and let
3 the statute speak for itself.

4 CHAIRMAN NICHOLS: There is a motion to deny Staff
5 and let the statute speak for itself. Is there a
6 second?

7 COMMISSIONER MARKS: On which issue?

8 COMMISSIONER HERNDON: On Issue 4.

9 CHAIRMAN NICHOLS: 4.

10 COMMISSIONER WILSON: Let me just express a
11 certain amount of confusion here.

12 COMMISSIONER GUNTER: How about me adding a lot?

13 COMMISSIONER WILSON: I think it probably -- that
14 probably would be shared. We could probably sit here
15 for many, many hours debating the inconsistencies that
16 are contained within the statute, of which there are
17 many. I guess I'm unclear as to the purposes -- the
18 purpose that we are here for. As I understand it we
19 are supposed to go back to the Legislature, or we are
20 supposed to make a finding as to whether shared tenant
21 services is in the public interest, and that we may or
22 may not be limited, if we were to go back to the
23 Legislature with that finding, to this statute that was
24 passed last year. So debating the niceties of this
25 statute, I don't know whether it would be waste of time,

1 but what we may want to do is decide what we think is
2 right or wrong or in the best interest of the public,
3 and then we decide how you even make that legal or
4 illegal. And if we have to revise the statute, we
5 propose we revise the statute. The statute is clearly
6 the jumping off point, and I think we should begin with
7 that, because most of the hearing revolved around that.

8 The section that says the service provided to a
9 governmental entity doesn't make a lot of sense to me.
10 I don't even understand what it means, quite frankly.
11 I don't know that that means that the Public Service
12 Commission hires XYZ Company to come in and run our
13 PBX, and they are thereby exempted from STS
14 certification, because that is the only way that I can
15 see it's service provided to a governmental entity is
16 if you have got, or that it would mean anything, is
17 that you have got a private company providing STS
18 service to the Public Service Commission or to the
19 State of Florida, or to the Legislature or whomever.

20 MR. VANDIVER: I agree, Commissioner. I think this
21 is an eleventh hour attempt to get the colleges and
22 universities out from under the single building
23 requirement, and it didn't work.

24 CHAIRMAN NICHOLS: What I'm hearing you say, I
25 think --

1 COMMISSIONER WILSON: I think the statute does
2 speak for itself. I don't think we have a choice about
3 your motion. I mean, whatever we vote, the statute
4 speaks for itself. I can support your motion a hundred
5 percent.

6 CHAIRMAN NICHOLS: I think we can support, if we
7 have to make a finding on Issue 4, to deny the Staff
8 and let the statute speak for itself, and we can go
9 through all the other issues, and anybody who wants to
10 sit around here and debate the philosophical nuances of
11 the statute is free to do so after midnight.

12 COMMISSIONER MARKS: And without at least one
13 Commissioner.

14 COMMISSIONER WILSON: Well, without at least two
15 Commissioners.

16 MR. MCAULEY: We just brought it to your attention
17 to give you our thoughts on how the issues --

18 CHAIRMAN NICHOLS: All right. Is the Commission
19 more comfortable with no vote on Issue 4?

20 COMMISSIONER MARKS: No vote. Let the statute
21 speak for itself.

22 COMMISSIONER GUNTER: I would just as soon vote
23 and just say the statute speaks for itself.

24 CHAIRMAN NICHOLS: The motion is to deny Staff and
25 let the statute speak for itself. All of those in

1 favor?

2 CHAIRMAN NICHOLS: All right.

3 COMMISSIONER HERNDON: No matter how inartfully it
4 does it --

5 COMMISSIONER GUNTER: That's correct.

6 CHAIRMAN NICHOLS: Okay, Issue 3a.

7 MS. PATTON: Issue 3a is the subpart of the public
8 interest issue in 3 that you have already voted on.
9 Would you like to go through that?

10 CHAIRMAN NICHOLS: No. Issue 3a essentially says
11 23 firms may be providing the service.

12 MS. PATTON: Yes, ma'am.

13 COMMISSIONER MARKS: Madam Chairman, I move it.

14 COMMISSIONER HERNDON: One question. For the
15 purposes of answering 3a, are you defining service to
16 be long distance and local, local, or long distance?
17 Pick one of the three.

18 MS. PATTON: That's why I used the word "may," and
19 I tried to explain that under cross examination some of
20 the telephone companies that provided the responses
21 indicated that they may not be using the definition of
22 STS as found in the statute in providing their
23 responses on this list.

24 COMMISSIONER HERNDON: Well, let me ask the
25 question another way. I understand what you are

1 saying. If you had your druthers, how would you
2 interpret the word STS service in this instance, to be
3 long distance and local?

4 MS. PATTON: Local.

5 COMMISSIONER HERNDON: Only local?

6 MS. PATTON: Yes.

7 COMMISSIONER HERNDON: Okay.

8 MS. PATTON: However, I do clarify that some of
9 these arrangements may be partitioned and may not be
10 providing local.

11 COMMISSIONER HERNDON: Right, that's what I'm
12 wondering.

13 CHAIRMAN NICHOLS: Staff recommendation on
14 Issue 3a?

15 COMMISSIONER MARKS: Yes, that's what I move.

16 CHAIRMAN NICHOLS: Issue 3f, geographic extent.

17 COMMISSIONER MARKS: Move Staff. I mean, most of
18 them are in Tampa.

19 CHAIRMAN NICHOLS: Of the ones that we know about,
20 they are mostly in Tampa.

21 COMMISSIONER MARKS: I will move it. Really, they
22 require a vote --

23 MS. PATTON: That is correct, informational.

24 COMMISSIONER MARKS: That's one of those fact
25 issues. You take judicial notice of the fact that most

1 of them are in Tampa or official notice in this case.

2 COMMISSIONER WILSON: The statute requires that we
3 look at that.

4 COMMISSIONER MARKS: Where they are?

5 CHAIRMAN NICHOLS: Yes, that we look at all of
6 these various wonderful little nuances.

7 Issue 3b, is the service available from other
8 firms?

9 MS. PATTON: To our knowledge it was not. It was
10 a situation where they got local service from the STS
11 provider or from the local exchange company. There
12 were not multiple STS providers operating in one given
13 building.

14 COMMISSIONER HERNDON: Okay. Can we get some
15 clarification, Madam Chairman, because I think this is
16 an interesting point, not a major one, but interesting
17 nonetheless. If I understand what was just said, the
18 interpretation of service in this instance by the Staff
19 is whether there is a competitor in the building. The
20 interpretation by the parties for the most part is
21 whether there is a competitor in the community. And I
22 think that is a distinction that does bear some thought
23 as we answer this question.

24 CHAIRMAN NICHOLS: It was my understanding that
25 Staff looked at it from the point of view of the

1 tenant, what is available to the tenant?

2 MS. PATTON: Yes, ma'am.

3 CHAIRMAN NICHOLS: And was any other service
4 available, from any other firm available to the tenant.

5 COMMISSIONER GUNTER: And except for the local
6 exchange company and the STS provider, that answer
7 could just as easily have been yes, and Staff's
8 recommendation could have been yes from a local
9 exchange company and the STS provider.

10 MS. PATTON: Yes.

11 COMMISSIONER GUNTER: As well as it is no that it
12 can only be provided by the STS provider. But the
13 answer is really yes, there are two in every instance.

14 MS. PATTON: Right, but viewing it from the
15 traditional competitive definition --

16 COMMISSIONER GUNTER: I understand. I know what
17 you are talking about, but it could have been, the
18 answer could have been either way and both of them have
19 been correct, isn't that right?

20 COMMISSIONER MARKS: Yes. Just say yes and we'll
21 zip on through this sucker.

22 MR. SHAFER: Semantics.

23 MS. PATTON: Yes.

24 COMMISSIONER GUNTER: See, you've got the
25 disadvantage that I read this thing twice.

1 CHAIRMAN NICHOLS: All right. Staff
2 recommendation on Issue 3b?

3 COMMISSIONER GUNTER: yeah.

4 CHAIRMAN NICHOLS: Issue 3c, is the service
5 available from the certificated LEC?

6 COMMISSIONER MARKS: Move Staff. That is a fact
7 situation.

8 CHAIRMAN NICHOLS: Staff recommendation?

9 COMMISSIONER GUNTER: I think the only problem we
10 had there is the full array of services, but the local
11 service would be available.

12 MS. PATTON: Right.

13 COMMISSIONER MARKS: I think we need to make a --
14 let me see if this helps on that particular issue
15 without belaboring the point is, as I understand it
16 without the current statute or with the current statute
17 the STS providers can provide all manner and all kinds
18 of services within a building anyway.

19 MS. PATTON: That is correct.

20 COMMISSIONER MARKS: The only thing we are talking
21 about is the local voice telecommunications services.

22 MS. PATTON: Yes.

23 COMMISSIONER MARKS: So I took this question to
24 mean was the service available from the certificated
25 LECs was to be that voice in telecommunications

1 services.

2 CHAIRMAN NICHOLS: Right.

3 COMMISSIONER MARKS: Okay, all right.

4 CHAIRMAN NICHOLS: Issue 3d, what is the quality
5 of service from the alternate suppliers?

6 COMMISSIONER MARKS: Who knows and who --

7 COMMISSIONER GUNTER: We just don't have any idea.

8 CHAIRMAN NICHOLS: Staff. Issue 3e, what effect
9 will provision of STS have on local telephone rates of
10 the certificated LEC?

11 COMMISSIONER MARKS: We addressed that question
12 earlier to some extent.

13 MS. PATTON: Yes, we discussed it a little bit.

14 COMMISSIONER MARKS: To the extent we didn't know.

15 MS. PATTON: We again point out that we would
16 expect that other services, especially those involved
17 in STS would be looked to as revenue producers before
18 the Commission decided to increase local rates.

19 CHAIRMAN NICHOLS: Let me ask you a question on
20 this. You have approached this issue from the point of
21 view of future STS situations, have you not?

22 MS. PATTON: Yes, ma'am.

23 CHAIRMAN NICHOLS: Because insofar as any
24 situation where there has been, and I'm using the broad
25 generic sense of sharing services in effect where it

1 has been in effect for a significant period of time,
2 the revenues associated with that service or those
3 customers has already been taken into effect in terms
4 of the latest rate case. When we have had a company
5 that has come in for a rate case and they have had a
6 dormitory situation with a sharing of services, we have
7 looked at those revenues. We have included them in the
8 rate case, and revenues were set for local service
9 based on total revenues that the company was already
10 receiving. So in that instance they would not have any
11 effect on the general body of ratepayers.

12 MS. PATTON: Right.

13 MR. SHAFER: I think that's right.

14 COMMISSIONER MARKS: As I understand it, I don't
15 know if I'm taking that a little bit further, am I
16 understanding correctly the Staff's approach is to make
17 anything we do revenue neutral, and as you indicated
18 earlier that we would not allow or should not allow a
19 movement in a direction where there are no subsidies
20 flowing from the local or from the general body of
21 ratepayers subsidizing this kind of service, and that
22 we ought to jealously avoid that and make sure STS
23 service, if nothing else, supports its own self and
24 that the residential -- well, the general body of
25 ratepayers should not in any way subsidize the service,

1 and that's what we ought to jealously guard, at least
2 that's the approach that I have been taking in looking
3 at --

4 MS. PATTON: That's right, we agree with that. We
5 think that is very important.

6 COMMISSIONER MARKS: I agree.

7 MR. SHAFER: Let me also qualify my agreement.

8 COMMISSIONER HERNDON: Greg, before you do, this
9 Staff recommendation to this particular issue does not
10 speak to the same degree or distance that Commissioner
11 Marks just spoke to with respect to making sure that
12 STS pays for itself, does it? I appreciate the fact
13 that you agree, but this particular recommendation does
14 not speak to that.

15 MR. SHAFER: I think that is correct.

16 COMMISSIONER HERNDON: Okay.

17 MR. SHAFER: There is a relationship there, but
18 it's not direct. As clarification to what Commissioner
19 Nichols is alluding to as far as the rate case scenario
20 and so forth goes, I would agree with that
21 characterization, however I would suggest that to the
22 extent that STS were to proliferate, and the magnitude
23 of any problem there got to be very significant in
24 dollar terms, then I think there would in fact or could
25 possibly be a flowthrough back to local rates, that you

1 would have to be on guard for. In other words, you
2 would recognize that right up front in setting other
3 rates, but the trickle down effect could still be
4 there, so --

5 CHAIRMAN NICHOLS: My concern was I would have
6 been more comfortable if the issue had read what effect
7 will future provisions of STS have on the local
8 telephone rates, because that's really what we are
9 talking about, is if this becomes common and we see a
10 lot of it.

11 COMMISSIONER MARKS: Yes, fine. I just want to
12 make sure the way I'm approaching is what Staff was
13 thinking about as far as revenue neutrality and other
14 (matters). I'll move Staff, Commissioner, on
15 Issue 3e.

16 CHAIRMAN NICHOLS: Staff recommendation?

17 COMMISSIONER MARKS: Yes. It's unknown, but they
18 give an explanation.

19 CHAIRMAN NICHOLS: Any objection?

20 Issue 3g: Who are the beneficiares of STS --

21 COMMISSIONER MARKS: I'll move Staff again.

22 CHAIRMAN NICHOLS: -- providers? No doubt in my
23 mind.

24 COMMISSIONER HERNDON: Can we get some
25 clarification, Madam Chairman? I want to make sure

1 what we are saying and what we are not saying in
2 answering this question. Clearly the providers of STS
3 services are beneficiaries. If I understand you
4 correctly, there are essentially three answers to this
5 question. The providers are beneficiaries. Tenants of
6 buildings may be beneficiaries. End users outside the
7 buildings may be beneficiaries, but we don't know. And
8 the likelihood of benefit decreases as you go down the
9 scale.

10 COMMISSIONER MARKS: And can I add a little bit
11 more to that? That last group does not receive - I
12 don't know if this is a -- well, this is an economics
13 term - any disbenefits as a result of STS services.

14 MR. SHAFER: That's our desire.

15 COMMISSIONER WILSON: I would like a cite to a
16 textbook. Is it Ingleson (phonetic) or --

17 COMMISSIONER MARKS: Do we have a resident
18 economist in here? Isn't that a word?

19 MR. SHAFER: We have some residents and we have
20 some economists but I don't know if we have any
21 resident economists.

22 COMMISSIONER MARKS: Isn't that a word that you
23 all use sometimes? Disbenefits?

24 MR. SHAFER: I think diseconomies or externalities
25 are terms.

1 CHAIRMAN NICHOLS: Negative externalities.

2 COMMISSIONER MARKS: Negative externalities.

3 MR. SHAFER: You're in the ball park anyway.

4 CHAIRMAN NICHOLS: I think we need to go back and
5 revisit your rule.

6 COMMISSIONER HERNDON: Well, I told you.

7 COMMISSIONER WILSON: Commissioner Marks, I think
8 you brought up a real good point. I mean, the question
9 is who are the winners and losers, and all this asks is
10 who are the winners.

11 COMMISSIONER MARKS: Fine, and I'm just taking it
12 a little bit further.

13 COMMISSIONER WILSON: From some of the stuff that
14 I have read it is also possible that the tenants of
15 shared tenant services are also going to suffer some
16 detriment as well from being a tenant in a shared
17 tenant service.

18 MR. SHAFER: That could be possible, sure.

19 COMMISSIONER WILSON: And we have not -- we need
20 to look at both sides of this coin.

21 MR. SHAFER: Certainly our hope is that at least
22 the third rung of the ladder when you are talking about
23 the general body is no worse off by allowing STS.

24 COMMISSIONER MARKS: Right.

25 MR. SHAFER: And hopefully in some long run in a

1 very marginal sense they are somewhat better off, but,
2 you know, basically we want to hold the line that they
3 are no worse off than they are now.

4 COMMISSIONER WILSON: That is for the general body
5 of ratepayers.

6 MR. SHAFER: Right.

7 COMMISSIONER WILSON: The tenants, there are some
8 benefits to the STS, but there are also some
9 detriments.

10 MR. SHAFER: Yes, and I think as -- you almost
11 have to adopt the attitude of let the buyer beware in
12 terms of customers of STS providers. I think that for
13 the most part they are going into it with open eyes as
14 to what their choices are and what the costs of those
15 choices are. And if they are dissatisfied with the
16 provision of the STS provider gives them, with the
17 service that he gives them, then we are hoping to
18 ensure that they have an alternative, which is the
19 local exchange company, which gets them back to where
20 they were before.

21 COMMISSIONER MARKS: And they also have another
22 alternative, move out of the building.

23 MR. SHAFER: Sure, sure.

24 COMMISSIONER WILSON: Well, the problem is, and we
25 heard testimony on this, that if you move in a building

1 you sign a five-year contract. You can't just say,
2 "Well, I don't want your STS anymore. I'm going to get
3 local service." There are termination penalties, and
4 you may incur continuing liability under a contract.
5 You can't just get up and move out of a building. So
6 you don't really have that. It's not a free choice.

7 MR. SHAFER: It's clearly a risk to being a
8 customer of an STS provider. And I think that is where
9 you let the buyer beware comes in.

10 COMMISSIONER MARKS: Commissioner, let me make
11 sure now, I don't know whether or not this
12 recommendation contemplates this Commission getting in,
13 and I want to make this clear, and understand this,
14 contemplates this Commission getting in the business of
15 attempting to protect those STS tenants, and if it
16 does, I want to make sure because I have not approached
17 this matter in that manner that we are going to try and
18 provide some protection for the tenants or the users of
19 STS services, or for that matter for the users of STS
20 services. If that is contemplated by this, I want to
21 know.

22 MR. SHAFER: Your characterization is absolutely
23 correct.

24 CHAIRMAN NICHOLS: The further you get from the
25 provider, the benefits diminish.

1 MR. SHAFER: Right, and furthermore the only, I
2 think the only thing that could be viewed as a
3 protection to the tenant of the STS location is that we
4 are insisting that the local exchange companies provide
5 them direct service, if that is what they desire.

6 COMMISSIONER MARKS: And I think that is
7 important; that is obviously a very important factor,
8 because if we did not provide that alternative to the
9 STS provider, then I think under those circumstances
10 this Commission may very well have an obligation to
11 provide some sort of protection for that STS tenant or
12 for the user of that service.

13 CHAIRMAN NICHOLS: All right.

14 COMMISSIONER HERNDON: Let me ask one more
15 question, and I apologize, Madam Chairman. I want to
16 go back to when we were talking about the benefits that
17 accrue and Commissioner Marks brought up the issue of
18 the winners and losers. If I understand the Staff
19 recommendation correctly, it says there are clearly
20 benefits to the providers. There may be benefits to
21 the tenants. There may be benefits to the end users.
22 It does not say that anyone is harmed, nor does it say
23 that the end users or the tenants are left revenue
24 neutral. It just says there may be benefits. And
25 obviously by the choice of that term it's problematic.

1 There may not be. There may be no benefits or
2 detriments to either party. It may be totally neutral
3 on both sides.

4 MR. SHAPER: Sure. I think the downside position
5 is something like there may be harm to the providers,
6 the tenants and the general body. And again, it's a
7 may. Unfortunately I don't think there -- you can't
8 say with any certainty that any of those parties will
9 be harmed.

10 CHAIRMAN NICHOLS: Staff recommendation on
11 Issue 3g?

12 COMMISSIONER GUNTER: Yes.

13 CHAIRMAN NICHOLS: All right, let's take a five-
14 minute break before we begin Issue 11.

15 (Recess)

16 CHAIRMAN NICHOLS: Issue 11: What should the rate
17 structure and level be for services provided to an STS
18 provider by a LEC? Let me ask a question even before
19 we begin. When you say for services provided to an STS
20 provider, are you talking about STS only in a
21 commercial sense, or are you talking about dormitories,
22 ACLFs?

23 MS. NORTON: No, Commissioner, this Issue 11
24 applies to the commercial STS providers only as defined
25 in the statute. So any ruling here would affect only

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1 the pure STS providers and have nothing to do with
2 other sharing arrangements; that comes later.

3 CHAIRMAN NICHOLS: Okay.

4 MS. NORTON: Okay. As you stated, the issue
5 concerns the rates and rate structures that are
6 appropriate, to the extent that you have determined
7 that STS is in the public interest. The rates that we
8 have recommended include a trunk charge that we are
9 recommending be about 60% of the flat PBX trunk rate
10 and trunk termination charge, DID number charges and
11 usage charges with time of day discounts. The usage
12 charges we are recommending are 6 cents for the first
13 minute and 2 cents for each additional minute. We have
14 also recommended the various non-recurring charges be
15 applied.

16 I would like to ask your indulgence that we would
17 like to make one slight modification to that which we
18 have recommended with respect to non-recurring charges,
19 and that is simply that come July 1st, okay, when this
20 tariff must go into effect, there will be existing
21 grandfathered STS providers. And we recommend that the
22 non-recurring charges that we have recommended in this
23 tariff be waived for those customers. And we have
24 precedent for that.

25 COMMISSIONER MARKS: For grandfathering purposes.

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1 MS. NORTON: That is correct, and the non-
2 recurring charges be applied only to new customers
3 after July 1st.

4 CHAIRMAN NICHOLS: Let me ask a question. Where
5 did you come up with the 6 cents and the 2 cents?

6 MS. NORTON: We have recommended adoption of the
7 Bell's proposal in that respect. Bell provided us with
8 an illustrative tariff, and that was included in that
9 tariff. Much of what we have recommended here is, is
10 what Bell had proposed in their illustrative tariff.
11 There are some changes to it, but for the most part
12 that is what this is.

13 The tariff that Bell proposed is very similar to
14 that which they proposed and which this Commission
15 adopted for interconnection services for radio common
16 carriers and cellular carriers. So this rate structure
17 or something very similar to it is currently in effect
18 in Bell's territory, in General's territory and in
19 Central Telephone's territory. The facilities used are
20 very, very similar. It's DID trunks, usage charges,
21 DID numbers.

22 COMMISSIONER HERNDON: Do we know whether the
23 charges as proposed cover the cost?

24 MS. NORTON: Bell's intent in developing this
25 tariff, their goal was to approach revenue neutrality

1 with respect to the trunks and DID numbers and usage.

2 And so the tariff does that, as far as weekly --

3 COMMISSIONER HERNDON: Let me, I don't mean to be
4 obstreperous, but is that a yes or a no? Is that a
5 no?

6 MS. NORTON: Okay, let me -- one thing that has
7 not been brought up that I think probably would be good
8 to be brought up, Bell in its testimony, and they are
9 the ones -- I keep referring to them because they are
10 the ones who really provided the most specific numbers.
11 It's all hypothetical.

12 COMMISSIONER HERNDON: We never accepted their
13 study, did we?

14 MS. NORTON: No. In fact, we recommended that
15 their study, as I look back over it, I think I used the
16 word "horrific" projections.

17 COMMISSIONER HERNDON: Let me make sure I
18 understand. So based on figures in the study, we have
19 never accepted it, and in fact described it in
20 adjectives that we won't repeat here. We are going to
21 impose local measured service cost rates that I think
22 you are about to say don't cover costs.

23 MS. NORTON: No, sir, I don't believe that is the
24 case. The tariff, the revenues contemplated to be
25 recovered by this tariff will recover -- it will

1 recover costs. Moreover, it will recover, we believe
2 that it will recover those revenues that would have
3 been collected absent STS for the trunks in the DID
4 numbers and usage, and that is what we mean by revenue
5 neutrality. What this tariff will not recover, and
6 what Bell has testified that they will lose are other
7 indirect revenues such as CALC revenues by virtue of
8 having traffic concentrated over fewer lines, so they
9 will lose CALC revenues. They have stated there will
10 be losses due to bypass and several other losses. And
11 that is when I think I used the word "horrific." And
12 they predicted such dire results I think that we
13 believe that those projections are perhaps a little bit
14 overstated. But the actual rates in the tariff will
15 recover the direct trunk revenues and usage revenues
16 that they would have recovered absent STS.

17 COMMISSIONER HERNDON: And these rates would apply
18 statewide?

19 MS. NORTON: We have recommended that the rates be
20 applied statewide.

21 COMMISSIONER HERNDON: Uniformly statewide.

22 MS. NORTON: That is correct.

23 COMMISSIONER MARKS: Let me ask a question. I
24 assume, I'm not going to really delve into the trunk
25 charges, trunk termination charges and those. The one

1 that bothers me more than any of them is the usage
2 charge, 6 cents for the first minute and 2 cents for
3 the next minute in that structure. Can you make a
4 determination of what would be the equivalent of that
5 charge on a message rate basis?

6 MS. NORTON: Well, the average holding time that
7 we have heard is about three minutes, and so under
8 these rates that would be 10 cents a minute. Bell
9 currently charges in their message rates, they charge
10 12 cents. Other companies charge 10 cents under some
11 tariffs and 12 cents under others. And I know United
12 has some out buyers. They also have different message
13 rates.

14 COMMISSIONER MARKS: Was there any particular
15 reason -- I understand. Was there any particular
16 reason why you all went to a, what I will call a
17 minutes of use charge on this?

18 MS. NORTON: As opposed to message rated?

19 COMMISSIONER MARKS: A message rate.

20 MS. NORTON: Commissioner, we believe that
21 ultimately access charges should apply. Those are on a
22 minute of use basis. This approaches that.

23 COMMISSIONER MARKS: And that was the rationale
24 for that?

25 MS. NORTON: Basically, yes.

1 COMMISSIONER MARKS: I understand.

2 MR. SHAFER: I think there was perhaps even more
3 substance to the rationale than just we think that
4 access charges should apply. There is a reason why we
5 think that. We have historically, the Commission and
6 almost all regulatory agencies have historically priced
7 local service on a residual basis. Understanding that,
8 you know, what we are talking about is that we go
9 through and price private line and the custom calling
10 features and all the gamut of other services that the
11 telephone company provides before we price local
12 services. Then we look at the revenue requirement and
13 how much money we have generated from those services to
14 see how much we need from local in order to cover the
15 revenue requirement.

16 COMMISSIONER MARKS: Sure.

17 MR. SHAFER: We believe that in this situation
18 where you have someone purchasing that local service,
19 and then re-provisioning it to someone else again for
20 profit and for hire that it is not appropriate to do
21 that with residually priced offerings because you are,
22 as we alluded to earlier, asking the general body of
23 ratepayers through all the other services that the
24 telephone company provides to subsidize, basically
25 subsidize that industry.

1 And we had a lot of discussion in the WATS docket
2 along those same lines of we've got a WATS provider,
3 AT&T, for instance, who is capped at the amount of
4 revenues that they can recover because of the rate
5 structure, allowing someone to come in and resell that
6 service for profit when AT&T can't even provide it for
7 profit because their costs continue to go up, while the
8 amount of revenue that they can recover is fixed. The
9 argument is parallel in that we see a residually priced
10 service being provided to not only directly to the
11 telephone customers but to an intermediary, a broker,
12 if you will, who then takes that local service and
13 further subsidizes and provides it to more customers
14 for profit and for hire.

15 And I think that philosophically the Staff has
16 some difficulty with taking a residually priced service
17 and allowing that to happen without taking a look at
18 the rate structure and trying to make some adjustment
19 that gets it more in line with what it costs, if you
20 will, to provide that service.

21 COMMISSIONER GUNTER: You see, you just brought up
22 the problem I have with your analysis, though, the
23 Staff recommendation, is I don't see any cost analysis.
24 I don't see on an access line basis what the individual
25 cost would be and what the savings are. And I have

1 not, I haven't been able to find that kind of analysis
2 that I would need. For instance, and let me just tell
3 you where I'm coming from, assuming that I were
4 inclined to agree that there ought to be some usage
5 measurement, but versus you all's recommendation maybe
6 a message rate. I haven't seen the calculations of the
7 number of calls. You know, if you are kind of trying
8 to do this, how many calls the average business line
9 make in a day. I haven't looked at the total revenue,
10 and I haven't seen anything on the avoidance of even
11 making some assumptions, the avoidance of expense, and
12 the avoidance of investment that the local exchange
13 company would have to make.

14 See, I understand your philosophy, but I don't see
15 anything that would lead me -- for instance, say I
16 adopted, personally, say I were to adopt the message
17 rate that we established, which we made a determination
18 at that time was at least compensatory for PATS
19 providers of 12 cents. Say I dropped it to a dime, and
20 you had anybody that made, averaged 10 calls a day
21 through the week. It doesn't take a genius to say that
22 is the minimum of \$30. I don't know how many calls an
23 average business line makes.

24 But see, my intuitive reasoning, I don't think
25 it's any different than you all's, I want this thing to

1 be revenue neutral. I don't want anybody to make money
2 off of it. I don't want anybody to lose money off of
3 it. I don't want there to be winners and losers, that
4 kind of situation. But to put an intuitive logic in
5 it, such as you all have in coming up with your
6 recommendation, there is an entirely different train of
7 logic that you can come to a different conclusion than
8 Staff has come to, and it's a flip the coin absent a
9 real hard analysis. That analysis is not in this
10 record.

11 MS. NORTON: Commissioner, you are correct, there
12 is not a lot of cost data in this record. And I
13 address that on Page 102 of the recommendation that
14 traditionally these PBX trunks have been residually
15 priced and typically the telephone companies do not --
16 they don't make a lot of cost studies on those. It's
17 not the way they are approached. These have been
18 residually priced. And so that is one reason they are
19 not there.

20 In addition, this tariff is -- the whole concept
21 of STS is new, and there's not history behind it. And
22 so it's -- the data, I mean we could work out stuff,
23 but it would be very hypothetical. And that is one
24 reason that we have recommended that we require reports
25 from the companies to be provided on a quarterly basis

1 that will give us a better, more concrete, real data on
2 exactly what the impact is.

3 COMMISSIONER GUNTER: But let me flip it over on
4 the other side. Say you are pro competition. You are
5 pro technology. You are pro, pushing technology and
6 moving telecommunications into what can be a new vista
7 for this state. There are those that might say Staff's
8 recommendation would be anti.

9 MS. NORTON: Probably would.

10 COMMISSIONER GUNTER: Okay.

11 MS. NORTON: Okay.

12 COMMISSIONER GUNTER: Whereas say as a medium
13 point a message rate might not be considered anti.

14 MS. NORTON: I think what you are saying is put a
15 limit on what they would pay.

16 COMMISSIONER GUNTER: That's right.

17 MS. NORTON: Whereas under the minutes of use rate
18 there would be no limit. And in that sense I think you
19 are saying it would be considered inimical.

20 COMMISSIONER GUNTER: Staff is talking philosophy.
21 I'm talking philosophy back to you, saying that there
22 is another side to that coin. But whatever.

23 MR. SHAFER: Commissioner, I think your point is
24 well taken. There is a distinct lack of good, solid
25 factual information regarding not only cost, but

1 forecasted revenue impacts and so forth. I think the
2 Staff felt more comfortable with a structure such as we
3 have recommended that that would be compensatory; that
4 it would in the short run allow us to evaluate the
5 impacts on the market and the way it was developing, as
6 well as the impacts to the company, and hopefully all
7 of the ratepayers. It is a coin toss, you know,
8 message versus minutes of use. There is not a lot of
9 information regarding either one of those choices.

10 COMMISSIONER GUNTER: Well, one of the problems I
11 have, and a very basic problem, and when I was looking
12 through this I hoped to find maybe that the local
13 exchange companies had addressed a real problem they
14 had when once before Southern Bell Telephone Company
15 came to this Commission and tried to get in the front
16 what we are getting around at the back door, the same
17 thing, the lack of definitive data, and how much did it
18 cost the company. Those that were available, how much
19 did it cost them to provide the service. There is not
20 even an analysis of how much it would cost to provide
21 this kind of service.

22 COMMISSIONER MARKS: Well, Commissioner, let me --

23 COMMISSIONER GUNTER: I'm going to throw one up
24 the flag. I'm going to say as far as a particular
25 section of Staff recommendation, I'm going to move that

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1 the flat monthly charge for PBX trunk be adopted, and
2 that a message charge, a message charge per local
3 message would be the same as we established in our PATS
4 docket. And should we, after our investigation as to
5 the proper charges in PATS, because I think there's an
6 analogy here. In one situation we said for the PATS
7 provider 12 cents a call was appropriate. We are
8 investigating to find out the appropriateness of that
9 charge, to find out, and that should give us a real
10 clue as to recovery in this area and should really give
11 us a clue. We should have that vehicle which we should
12 use for more than that single purpose. But mine would
13 be to mirror the 12 cents a message as we had in PATS.

14 MS. NORTON: PATS is currently 12 cents, and what
15 your motion is is to adopt the 12 cents for STS and any
16 changes that are made in PATS would also then flow over
17 to STS?

18 COMMISSIONER GUNTER: No, no.

19 CHAIRMAN NICHOLS: I wouldn't go that far.

20 COMMISSIONER GUNTER: You use it as a vehicle to
21 make a determination, because there's a little
22 difference in PATS, because you have an access line
23 that goes to each PATS provider. You have a different
24 question of where you have a bundle of access lines
25 going in and splitting them. So there would be, you

1 would use part of the data that you get from that. If
2 we ask the right questions we can get -- if you think
3 of the right questions, you would get some good
4 answers.

5 COMMISSIONER MARKS: I'll second the motion, Madam
6 Chairman.

7 MR. SHAFER: A point of clarification. Would that
8 be the full PBX rate or just a portion of it?

9 MS. PATTON: Sir, the PATS PBX rate is only the
10 60%, and then it adds the 12 cents.

11 COMMISSIONER GUNTER: That is correct.

12 MS. PATTON: With a \$30 minimum.

13 COMMISSIONER MARKS: Right.

14 COMMISSIONER GUNTER: That is correct.

15 COMMISSIONER MARKS: The only thing I understand
16 the motion is changing as you look at Issue 11, the
17 usage charge --

18 COMMISSIONER GUNTER: That's right. It's a usage
19 charge, to establish the usage charge at 12 cents, and
20 we will address each one of the other elements --

21 MS. PATTON: And the other ones would stay as is
22 in the recommendation?

23 CHAIRMAN NICHOLS: We haven't addressed the
24 others. We have just addressed the usage charge.

25 MS. PATTON: I'm sorry.

1 COMMISSIONER GUNTER: The usage charge is all we
2 are talking about. The usage charge is 12 cents a
3 message.

4 MS. NORTON: Would you want to consider time of
5 day discounts?

6 COMMISSIONER GUNTER: 12 cents a message.

7 MS. NORTON: Okay.

8 COMMISSIONER WILSON: Do the PATS have a time of
9 day discount?

10 COMMISSIONER GUNTER: No, they don't.

11 MS. NORTON: No, sir.

12 COMMISSIONER WILSON: Are there PATS providers
13 that have more than one instrument --

14 MS. PATTON: Yes.

15 COMMISSIONER WILSON: -- where they buy a trunk?
16 Do they have an access line that they have to buy to
17 each instrument?

18 MS. PATTON: They are required under our orders to
19 purchase an access line per PATS instrument.

20 COMMISSIONER MARKS: So you can tell.

21 MS. PATTON: So even if it ran through a PBX, the
22 requirement is still one instrument per PBX trunk.

23 COMMISSIONER WILSON: Do we have enough data on
24 any of the STS providers to determine what effect this
25 rate structure will have on the bill that they pay in

1 the month?

2 MS. NORTON: No, but -- yes, we are recommending
3 that sample bills be provided to anybody impacted by
4 the decisions made in this docket, and we'll know then.
5 But as far as --

6 COMMISSIONER WILSON: You don't know now?

7 CHAIRMAN NICHOLS: We don't have any now.

8 MS. NORTON: No, no, we don't. You see, this was
9 an illustrative tariff that was proposed by Bell. Most
10 of this was, and it's not been a Commission directive.
11 We don't have the billing data.

12 COMMISSIONER MARKS: I'm sure there are STS
13 providers out there running this through.

14 MS. NORTON: They have predicted dire results.

15 COMMISSIONER HERNDON: Let me ask a question in
16 that vein. The recommendation is that rates proposed
17 are interim. How long is that interim period and,
18 Commissioner Gunter, does the interim that you are --
19 does the rate that you are proposing to substitute also
20 intended to be an interim?

21 COMMISSIONER GUNTER: My motion did not include
22 the word interim. I rejected that portion on the part
23 of Staff. The Commission has a responsibility, just as
24 we have done in PATS, we have got some experience on
25 PATS where there was compensatory charges on both sides of

1 the ledger, and the Commission on its own motion, as I
2 understand, is reviewing that to find out where we are.
3 I don't want the connotation of interim. One of the
4 things that we can do in reading the record, all of the
5 STS providers and their customers are big boys and
6 girls. They are supposed to be very sophisticated.
7 There was a piece in there about the sophistication and
8 the business environment and what have you that all of
9 these folks were in. I think if this gets to be unduly
10 whatever, these folks will be back in and let us know
11 about it.

12 MS. NORTON: Commissioner Herndon, in answer to
13 your question, the use of the word interim is probably
14 not intended in what we typically think. Just we would
15 note that Staff's position is that ultimately access
16 charges should apply for all interconnection to the
17 local exchange network, and until that is the case,
18 until it is possible, until the Commission decides that
19 it can be implemented, if the Commission decides that
20 is the way we should go, this tariff, we see this
21 tariff being applied until that time.

22 CHAIRMAN NICHOLS: Well, anytime a telephone
23 company comes before us for a rate case, all tariffs
24 are laid upon the table. I think this is only
25 temporary insofar as if we impose something statewide

1 and absent any hard data it's kind of the best shot in
2 the dark and --

3 COMMISSIONER GUNTER: What I'm trying to do is
4 find a middle ground where to meet it would be the
5 least harm done. Let me tell you what my logic is, and
6 I want to make sure everybody in this room understands
7 what the logic is.

8 We go through access charges, and we have had some
9 company specific reductions in access charges. We've
10 got a process underway to see if we can make a
11 determination as to what the proper access charges are
12 and how to treat the non-traffic sensitive portion. We
13 have the docket underway to make a determination as to
14 what is the proper charge for the PATS providers. We
15 have got this third Staff recommendation or Staff
16 recommendation to put it on a measured activity. I'm a
17 little uncomfortable with that because that process has
18 never, to my knowledge, been presented to this
19 Commission to show what the costs to the local exchange
20 company are. You know, there are some real costs in
21 starting to try and track all of those activities and
22 provide that data. That has not been presented to the
23 Commission with its attendant revenue that they would
24 receive.

25 I haven't seen that kind of analysis, so that is

1 the reason for my recommendation of saying, hey, this
2 is the least potentially harmful that may exist. I
3 agree there should be some offset. There should be
4 some degree of measurement, but the message rate
5 appears to be the most logical at this juncture.

6 I think it's incumbent upon this Commission to
7 make sure that we get the pot right as we get more and
8 more data. I agree with Staff's portion of getting the
9 quarterly reports. You have a later item which you
10 talk about the necessity for record-keeping and what
11 have you for regulatory assessment fees and the gross
12 receipts tax. We will have the availability of a lot
13 of data as we move into this area. So my logic is
14 let's do something that is relatively simple that we
15 can move in that is, I think -- I sit and think about
16 how many phone calls I make a day, and I don't run a
17 real estate office or a lawyer or a brokerage house or
18 what have you. It's not inconceivable that each line
19 that goes in could make 30, 40 or 50 calls a day. That
20 is not beyond my realm of thought, and that would be
21 more than, perhaps more than compensatory.

22 COMMISSIONER MARKS: Well, my reason for seconding
23 that and agreeing with that is probably a little bit
24 not as complicated. I like the message rate service
25 for its simplicity and for its ease of administration,

1 frankly, and that those customers out there probably
2 can determine exactly what they are being charged for.
3 And we have simply opposed in the past measured rate
4 service for local telecommunications services because
5 of the complicated nature of it. And I don't see any
6 reason at this point in time to deviate from that
7 process.

8 And as I said, I second Commissioner Gunter's
9 motion to make this a message rate service, and
10 12 cents sounds to be reasonable, since that's what we
11 have done with the PATS providers as well. And at some
12 point in the future we can take a look at it. Not only
13 that, GenTel has that plan out there, too, that seems
14 to be working fairly well on a message rate basis.

15 COMMISSIONER GUNTER: You have it in two other
16 locations, don't you, Winter Park and somewhere else,
17 that you have a message --

18 MR. O'PRY: Orange City.

19 COMMISSIONER GUNTER: Orange City and Winter Park?

20 MR. O'PRY: Yes.

21 COMMISSIONER GUNTER: That are presently operating
22 on a message rate.

23 MS. NORTON: There are various message rates,
24 either optional or mandatory, throughout the state in
25 General, well, in General and Southern Bell's

1 territory.

2 COMMISSIONER MARKS: Southern Bell has a message
3 rate?

4 MR. O'PRY: Southern Bell has message rates on
5 hotels.

6 COMMISSIONER MARKS: Hotels. They don't have them
7 on residential yet.

8 MS. NORTON: Oh, no.

9 COMMISSIONER MARKS: They are not bold enough to
10 come forward with that kind of a program.

11 COMMISSIONER WILSON: They also have them on
12 business. Business has an optional message rate
13 service as well.

14 COMMISSIONER MARKS: But at any rate that's why I
15 like the message.

16 COMMISSIONER HERNDON: One more question, Madam
17 Chairman, on this. If I understand correctly,
18 Commissioner Gunter, your recommendation is only
19 speaking to the usage for message, not to the balance
20 of the --

21 COMMISSIONER GUNTER: That is correct. I just
22 wanted to get rid of that one first.

23 COMMISSIONER HERNDON: I understand, and I have
24 one question on that specific topic, if I may, and that
25 is on Page 103 there is a discussion about the study

1 that Southern Bell did, and the indication is that
2 there were higher revenues to Bell for each of the
3 three and a half years for which revenue impact
4 estimates were projected. What was the methodology of
5 the study? Was it message rate, usage rate, flat rate?

6 MS. NORTON: No, the impact, the tariff used was
7 their illustrative tariff.

8 COMMISSIONER HERNDON: The illustrative usage?

9 MS. NORTON: Right, that included a six and two
10 with 50% time of day discounts.

11 COMMISSIONER HERNDON: We don't have any basis for
12 a seat of the pants wild --

13 CHAIRMAN NICHOLS: Swag method.

14 COMMISSIONER GUNTER: Swag method.

15 COMMISSIONER HERNDON: -- of comparison between
16 the results that they achieved using the usage and what
17 Commissioner Gunter is articulating?

18 MS. NORTON: No, sir, and if memory serves me,
19 though, I believe that the average holding time on a
20 per message approached three minutes. Under the 6 and
21 2 cents that would be 10 cents per message, assuming
22 three minutes. And then there would be time of day
23 discounts, and there were, I believe, assumptions
24 associated with proportion of off-peak and on-peak
25 calling.

1 COMMISSIONER HERNDON: That is three minutes for
2 this particular Bell study, or is that a --

3 MS. NORTON: That I believe was what they used, an
4 average duration per call, that was like 2.9, and that
5 was applied to certain calls. So I believe that seat
6 of the pants, I believe that without time of day
7 discounts and imposing a flat 12 cent rate based on the
8 presumptions in the study, it may come out higher
9 revenues. However, if they, to the extent that they
10 assumed that three minutes was the holding time for all
11 calls and that most, many calls are longer than three
12 minutes, then putting a cap on it, in other words, a
13 flat message rate.

14 COMMISSIONER HERNDON: Okay. Assuming for a
15 moment that that 3 cents or, excuse me, that three
16 minutes is an accurate recollection, we were talking
17 about the minutes of use rate as probably costing more
18 than the flat rate that the customer could have
19 otherwise received from the local exchange company. If
20 you used three minutes as the average time, then the
21 message rate is also higher than the flat rate that the
22 customer could receive.

23 MR. SHAFER: Yes. I think clearly when you take
24 into account the time of day discounts, your 12 cents
25 is very likely going to be higher and, you know, at the

1 three-minute mark it's already 2 cents higher.

2 COMMISSIONER GUNTER: Let me ask you one question,
3 anybody on Staff. Isn't my motion a good way to smoke
4 all the mothers out and find out exactly what it is?

5 MR. CROUCH: Yeah.

6 COMMISSIONER GUNTER: And to get some competent
7 stuff before this Commission? If it's punitive in any
8 way, non-discriminatory, because everybody has it, if
9 it is punitive in any way, if anybody is suffering
10 economic hardship because of the imposition of a
11 message rate, it will smoke them out to get the data to
12 us. We'll quit dealing with assumptions and we'll quit
13 dealing with words, and we'll start dealing with facts
14 and figures, isn't that correct?

15 MS. SHAFER: I believe you are correct.

16 COMMISSIONER GUNTER: All right.

17 MR. SHAFER: I think we'll probably have an
18 indication of that if the recommendation on petition
19 for reconsideration is greater than 580 pages. All
20 levity aside, I think you are correct.

21 COMMISSIONER GUNTER: In a petition for
22 reconsideration, you can't do anything more than
23 reconsider the decisions that were made based on the
24 record, and if the record is devoid of any data, the
25 petition for reconsideration should be less than half

1 a sheet.

2 MR. SHAFER: Let's hope so.

3 COMMISSIONER GUNTER: Well, I'm saying --

4 MR. SHAFER: All levity aside, I think you are
5 correct.

6 COMMISSIONER GUNTER: -- the recommendation to
7 the Commission should be less than half a sheet, if the
8 record is incomplete.

9 MR. SHAFER: Sure, and, you know, one of the best
10 ways to get information is to throw something out there
11 and --

12 COMMISSIONER GUNTER: Well, the reason for the
13 petition for reconsideration is not to add to the
14 record, but to point out to the Commission where we may
15 have erred based on the record.

16 MS. NORTON: Commissioner, I see some
17 similarities. There was a decision made in the PATS
18 docket, and we collected data, and it's before the
19 Commission again to see if it needs fine tuning, and I
20 don't see why this should --

21 CHAIRMAN NICHOLS: It's been moved and seconded.
22 Are there any further comments?

23 MS. NORTON: Commissioner, I mean, Ms. Chairman,
24 on Issue 11 there are a few other things that I
25 wanted --

1 CHAIRMAN NICHOLS: We are not finished with it.

2 COMMISSIONER GUNTER: We just finished one piece
3 of it.

4 COMMISSIONER HERNDON: You said are there any
5 further comments. I wasn't sure whether you meant are
6 there any objections.

7 CHAIRMAN NICHOLS: No, I'm going to call right now
8 for a vote on the usage charge, it would be a message
9 rate of 12 cents per message. All of those in favor?
10 Those opposed?

11 COMMISSIONER HERNDON: Aye.

12 CHAIRMAN NICHOLS: All right, that passes four-to-
13 one. Now, let's go back and talk about the trunk
14 charges. 60% of the flat PBX trunk rate.

15 COMMISSIONER MARKS: Let me ask the Staff a
16 question on that. As a result of what we did on the
17 usage charges, do you see any reason to change your
18 recommendation on the trunk charges of 60% of flat PBX
19 rate?

20 MS. NORTON: No, Commissioner.

21 COMMISSIONER MARKS: All right, I'll move Staff on
22 that.

23 COMMISSIONER GUNTER: I'll second it.

24 COMMISSIONER HERNDON: Could I ask some questions?

25 CHAIRMAN NICHOLS: Sure.

1 COMMISSIONER HERNDON: On Page 103 you talk about
2 a filler purpose. What is a filler purpose?

3 MS. NORTON: Okay, that refers to the client
4 charge that Bell proposed in their illustrative tariff,
5 which is set at \$20 per client per month to be assessed
6 to the STS provider. The purpose of that rate element,
7 according to Bell, was primarily as a plug figure to
8 bring them up to revenue neutrality. Okay, the target
9 level of revenues that they said would leave them
10 revenue neutral. Bell also in their -- we disagreed
11 with that. We didn't believe that was a necessary
12 tariff element. And I would just note that the, if you
13 go back to the trunk charge that Bell recommended that
14 equates to about 55% of the flat PBX trunk rate. We
15 have recommended 60%. And so with some of the rough
16 calculations that I did, I believe that about offsets
17 by dropping their proposed client charge and by putting
18 them at 60% of the flat PBX, I believe they are left
19 revenue neutral or thereabouts.

20 COMMISSIONER HERNDON: On DID charges on Page 107
21 you talk about the only unbundled DID numbers rate that
22 currently is in effect is that charged RCCs is \$4 per
23 20-number block. The Staff recommends this rate be
24 used. Was the \$4 justified originally, or is it just a
25 handy --

1 MS. NORTON: In the RCC docket or earlier in this
2 docket?

3 COMMISSIONER HERNDON: Is there a justification
4 for it other than the fact that it exists out there
5 somewhere?

6 MS. NORTON: Okay --

7 COMMISSIONER MARKS: Commissioner, would it be
8 helpful if I go ahead on and move the Staff
9 recommendation and all the rest of the --

10 COMMISSIONER HERNDON: I thought you did.

11 COMMISSIONER MARKS: No, I just moved on the trunk
12 charges. Let me go ahead and move the Staff
13 recommendation. Let me ask a question first. Is there
14 any reason that you see why any of the other charges
15 should be changed as a result of what we voted on in
16 the usage charge?

17 MS. NORTON: No, sir.

18 COMMISSIONER MARKS: All right, I'll move Staff
19 recommendation on the rest of the charges. I'm just
20 moving them on the rest of the charges.

21 COMMISSIONER GUNTER: I'll second it so we have
22 got it up for discussion.

23 COMMISSIONER WILSON: I still want to hear an
24 answer to Commissioner Herndon's question, is there any
25 justification --

1 MS. NORTON: The rationale behind a \$4 per 20 --

2 COMMISSIONER WILSON: Other than the fact that it
3 got negotiated out.

4 MS. NORTON: What the evidence shown there, we
5 never went to hearings in the RCC cellular docket,
6 however the cost support that was provided did show
7 that that was, did provide a substantial contribution.
8 So we, Staff, are not concerned that is below cost at
9 all. And it was the rate proposed and accepted then.
10 It was the rate proposed in this docket, and we saw no
11 reason to vary or to diverge from that.

12 COMMISSIONER HERNDON: It was never any finding
13 that that was in fact, that covered cost or that made a
14 contribution?

15 MS. NORTON: In the other docket, yes.

16 COMMISSIONER HERNDON: You did not reach that
17 point in the process, is that correct?

18 MS. NORTON: That is correct, we did not hold
19 hearings, but we did ask Bell to provide us with some
20 cost data, and I have it in there somewhere.

21 COMMISSIONER HERNDON: And you were satisfied --

22 MS. NORTON: Yes, sir.

23 COMMISSIONER HERNDON: -- that that was an
24 accurate, sufficient explanation of the basis of the
25 \$4?

1 MS. NORTON: We were satisfied that we would not
2 be below cost.

3 COMMISSIONER HERNDON: One other question, Madam
4 Chairman. On Page 109, there are a list of tariff
5 specifications that are part of Recommendation 11. I
6 assume they are part of Recommendation 11. They are
7 contained within the text of Recommendation 11. Is it
8 your intent or desire that the Commission adopt these
9 tariff specifications when we adopt Recommendation 11?

10 MS. NORTON: Yes, sir, it is, most definitely.

11 COMMISSIONER HERNDON: All right, in that case --

12 COMMISSIONER WILSON: We better discuss it.

13 COMMISSIONER HERNDON: -- we need to talk about
14 them.

15 COMMISSIONER WILSON: Yeah.

16 COMMISSIONER HERNDON: Why should there be a limit
17 to the number of trunks ordered by a single STS
18 subscriber?

19 MS. NORTON: Commissioner --

20 COMMISSIONER HERNDON: Why 500, Part 2?

21 COMMISSIONER WILSON: Why not fewer?

22 COMMISSIONER HERNDON: Why not more?

23 MS. NORTON: There was a lot of discussion --
24 thanks a lot. There was discussion during hearings
25 about the trunk limit, and there was argument about it,

1 whether there should or should not be, and if so, what
2 level. I would say this probably comes under the same
3 type of thing we don't really know what the impact of
4 these rates are going to be, and we are going to
5 determine that hopefully to know whether that is a wise
6 number, or whether it should be something less or
7 something more, or if it should exist at all. We will
8 know, we will have more facts as we gain data.

9 I felt I had to pick a number, and I picked that.
10 Georgia has 950 after a lot of bellyaching by the STS
11 providers. The evidence shows so far the largest
12 single building operation in Florida is a 128 trunks.
13 I did not think that if we impose this limit of 500
14 that any STS providers current or future would be
15 harmed, at least in the short run, and they won't be
16 harmed before we consider this again. I don't think
17 that the local exchange companies will be hurt. Bell
18 did put this one forth, and I think the reason that we
19 should probably address ourselves to it and have a
20 limit in there is simply because of the potential for
21 putting in one PBX and putting out partitioned trunks
22 to an unlimited number of buildings, that that is
23 theoretically possible to have that be, without a trunk
24 limit, that you could go citywide.

25 COMMISSIONER WILSON: Did you go any further and

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1 use a trunk station ratio to determine how many access
2 lines that would serve per customer?

3 COMMISSIONER MARKS: Did you find out that number?
4 As I understand we have several numbers --

5 CHAIRMAN NICHOLS: We have several numbers.

6 COMMISSIONER WILSON: I'm looking back at notes,
7 and I have ratios running from 4-to-1 to 17-to-1.

8 MS. NORTON: Well, I heard about 20-to-1, and I
9 used 8-to-1.

10 COMMISSIONER WILSON: So that would give you --

11 COMMISSIONER HERNDON: 4,000.

12 MS. NORTON: Yeah, 4,000.

13 COMMISSIONER WILSON: I think that we have
14 actually erred on the side of liberality. I would
15 actually make the trunk limitation less than 500.

16 MR. SHAFER: Let me also speak to the rationale.
17 I think there is another, a little bit more amorphous
18 reason for having some limitation. We have local
19 exchange companies in the state with access lines in
20 the neighborhood of 12 to 1400. We treat them as phone
21 companies. We fully regulate their rates. We regulate
22 their rate of return and so on and so forth. The
23 potential is always there that you get a single
24 building that has more access lines than that perhaps,
25 or more customers than that, more tenants than that.

1 And the Commission needs to be I think cautious about
2 allowing or taking a hands off attitude to an operation
3 that large, and therefore I think that's one of the
4 reasons behind having a limit at all.

5 COMMISSIONER HERNDON: Do we know how many trunks
6 Greater Orlando Aviation Authority has or Tampa or
7 Miami Dade Airport, out of curiosity?

8 MS. PATTON: I have that information. I don't
9 have it right this second. I can bring it back to you
10 after lunch.

11 COMMISSIONER HERNDON: Less than 500, though?

12 MS. PATTON: Yes.

13 COMMISSIONER HERNDON: Per installation?

14 COMMISSIONER GUNTER: That is optimism talking
15 about lunch.

16 COMMISSIONER WILSON: Commissioner, I think 500
17 trunks is too many. I think that is erring on the side
18 of liberality. I would think something more along the
19 lines of 200 trunks or perhaps 250 would be more
20 reasonable.

21 COMMISSIONER HERNDON: That is per installation or
22 per provider?

23 MS. NORTON: Per PBX.

24 MR. CROUCH: Per certificate, I would say, because
25 we may have cases of one PBX certificated to serve more

1 than one building.

2 COMMISSIONER HERNDON: I thought you were going to
3 certificate the provider, not the installation.

4 MR. CROUCH: They would have to have a
5 certificate -- what we are recommending is a
6 certificate for each building that he is serving.

7 COMMISSIONER HERNDON: There is a decision that is
8 implicit in that statement that we haven't reached yet,
9 and that is the way you are going to certificate.

10 CHAIRMAN NICHOLS: Commissioner, could you be a
11 little more specific, 200 or 250?

12 COMMISSIONER WILSON: I would go 200.

13 COMMISSIONER HERNDON: That is 200 per --

14 CHAIRMAN NICHOLS: Per PBX.

15 COMMISSIONER HERNDON: Per PBX, Commissioner?

16 CHAIRMAN NICHOLS: Is there a second to that
17 motion?

18 COMMISSIONER WILSON: Yes.

19 COMMISSIONER GUNTER: Yeah, I'll second that,
20 because I figure, if you look at 8-to-1 on 200, that
21 gives you 1600 instruments; that's a lot of
22 instruments. If somebody can come back and demonstrate
23 that they have locations that would exceed 1600
24 instruments, that is something that we can change.

25 MR. CROUCH: Could that possibly be held in

1 abeyance until you decide whether you are going to
2 certificate per PBX or per building operated off a PBX?
3 It could have a bearing.

4 COMMISSIONER MARKS: Why, per PBX, what --

5 MR. CROUCH: You could have one large PBX serving
6 several different buildings. We are recommending that
7 you certificate each building, even though that one PBX
8 is partitioned, so many trunks per building --

9 CHAIRMAN NICHOLS: Let me ask you a question,
10 though. If you have that monster PBX and --

11 COMMISSIONER HERNDON: It's a mega PBX.

12 CHAIRMAN NICHOLS: Would this be 200 trunks per
13 the PBX or 200 trunks on a non-partitioned basis? And
14 you've got this monster PBX --

15 COMMISSIONER WILSON: I think that he is
16 suggesting that we wait until --

17 MR. SHAFER: That is the question.

18 COMMISSIONER WILSON: And just sort of
19 conditionally hold this until we get that --

20 CHAIRMAN NICHOLS: I see. All right, let's hold
21 that piece in abeyance. Anything further on all the
22 rest of Issue 11?

23 COMMISSIONER GUNTER: Well, one of the things, let
24 me tell you, the way this is kind of broken up, you get
25 back again, and we discuss in length Item 3 at a later

1 issue, Item 3 on Page 110. You discuss that at some
2 length, and it's a problem I kind of have with the
3 recommendation. You start getting in and talking about
4 access to, and you want to propose rental and access to
5 the building, and who is the STS provider, the building
6 owner and one thing and the other. I agree that
7 language needs to be there, but I don't want to leave
8 this issue as this is -- do you understand what I'm
9 saying? Here you are just saying the language that
10 affects the LECs must provide direct access to the
11 subscribers through their own leased facilities should
12 be included as a condition for providing service.
13 There is a whole lot more. Who has the responsibility
14 of seeing that an individual STS subscriber could get
15 to the LEC?

16 CHAIRMAN NICHOLS: Let's do this, then,
17 Commissioner --

18 COMMISSIONER GUNTER: You understand what I'm
19 saying?

20 CHAIRMAN NICHOLS: Let's go ahead and vote on the
21 charges that are in Issue 11 and TP the tariff
22 specifications until we have completed those other
23 issues, and come back to just the tariff
24 specifications.

25 All right, is there a motion to accept Staff's

1 recommendation on the trunk charges, trunk termination
2 charges, DID number charges and the non-recurring
3 charges and the trunk termination charge with
4 the Staff modification that the non-recurring charges
5 would be waived for grandfathered situations?

6 COMMISSIONER MARKS: That was my motion.

7 COMMISSIONER GUNTER: And I seconded.

8 CHAIRMAN NICHOLS: All right. All of those in
9 favor? Okay.

10 MR. TRIBBLE: Commissioner, does that include the
11 recommendation that these be on an interim basis?

12 COMMISSIONER GUNTER: No, interim is not in there.

13 COMMISSIONER MARKS: No, my motion did not include
14 that.

15 CHAIRMAN NICHOLS: Issue 11 as to the charges
16 passes five-zip, and we will come back to the tariff
17 specifications.

18 MS. NORTON: Commissioner, there is a couple of
19 other things in terms of when tariffs should be filed
20 and that kind of thing that probably wouldn't have
21 discussion elsewhere, if you wanted to go ahead and
22 take note of those and decided whether those should be
23 approved or not.

24 CHAIRMAN NICHOLS: All right. If you will look,
25 Commissioners, on the vote sheet under Issue 11 --

1 COMMISSIONER GUNTER: Next to the last paragraph.

2 CHAIRMAN NICHOLS: Next to the last paragraph,
3 those last two paragraphs. Is there a motion to accept
4 those?

5 COMMISSIONER MARKS: Move it.

6 COMMISSIONER GUNTER: Yeah.

7 CHAIRMAN NICHOLS: Tariff dates and the reports.

8 COMMISSIONER GUNTER: And the reports.

9 COMMISSIONER MARKS: That's right.

10 CHAIRMAN NICHOLS: Okay. Issue 13, Commissioners.

11 COMMISSIONER WILSON: Let's make sure that when
12 this is done that we underscore and put in very bold
13 letters this fact that STS customers are going to be
14 notified of the change by March 2nd, and that the
15 Commission Staff be given copies of those notices and
16 advised that those notices have been given out.

17 MS. NORTON: Yes, Commissioner.

18 COMMISSIONER WILSON: I want to avoid problems
19 that have arisen in other context so that I hope that
20 never happens again.

21 MR. COPPIN: Commissioners, Issue 13 concerns
22 whether the implementation of shared tenant service
23 would increase the risk of bypass. Intuitively the
24 answer is yes, and the rationale is that bypass allows
25 for aggregation of traffic. You will find that many

1 small and medium-sized users would combine access
2 charges and the shared tenant provider will in effect
3 become a large volume user. Large volume users
4 are a threat of bypass. The shared tenant providers
5 will have certain bypass options available to him,
6 which are aligned in Staff recommendation here.

7 But further, Commissioners, if I may, in the body
8 of Staff's analysis on Page 121, Staff hinted that the
9 Commission could impose bypass restrictions on STS
10 operations. However, specific restrictions were not
11 delineated in Staff's recommendation. And the
12 restrictions to which Staff alluded that the Commission
13 could impose are, and Staff has prepared a list of
14 restrictions that Staff would like to see imposed on
15 STS providers, and these are the: prohibition of STS
16 providers establishing dedicated facilities, private
17 line, to an interexchange carrier's point of presence.
18 That is one of two. Paragraph 2: the prohibition of
19 shared wide area telephone service, WATS, unless the
20 STS provider has been granted, along with his/her STS
21 certificate, a certificate of public convenience and
22 necessity by the Commission.

23 This point was already raised in the rulemaking
24 Orders 15444 and Orders 16726.

25 And the third bypass restriction Staff would like

1 to see imposed is: the prohibition of STS providers
2 constructing private facilities, for example,
3 microwave towers, for interconnecting other STS
4 locations or interconnecting with an IXC point of
5 presence.

6 COMMISSIONER GUNTER: Well, I want to tell you one
7 of the things that bothers me about the recommendation,
8 particularly the third one, well, even the first one,
9 is this Commission has addressed the bypass issue, and
10 we said we prefer, and our direction has been to
11 prohibit uneconomic bypass, unless there can be a
12 demonstration that they can economically bypass the
13 system.

14 MR. COPPIN: Yes, sir, and the body of Staff --

15 COMMISSIONER GUNTER: -- In here to have the
16 prohibition of establishing dedicated facilities has
17 nothing to do with, about the economics of it. If it
18 is economical for someone to bypass, why shouldn't they
19 be allowed to bypass?

20 MR. COPPIN: Well, sir, first of all, the STS
21 provider is treated as a different animal. He has the
22 bypass incentive.

23 COMMISSIONER GUNTER: What is the difference in
24 the STS provider than Martin-Marietta in Orlando, a
25 place that employs, has employed up to 10,000 people?

1 MR. COPPIN: The difference of the STS provider --

2 COMMISSIONER WILSON: The difference is, and the
3 concern that I have had all along is we are creating
4 little tiny telephone companies all over the state, and
5 if you let them do this, it's either -- it exacerbates
6 the situation, because they can do anything and
7 everything that a local exchange company can do if they
8 are allowed to construct private bypass facilities to
9 an interexchange carrier.

10 MR. COPPIN: That's perfectly correct,
11 Commissioner Wilson. In fact, what the STS provider is
12 doing, normally those small and medium-sized
13 businesses, which individually cannot have bypass
14 because they did not have the traffic volume or the
15 incentive. This STS provider, because there is the
16 incentive, he is combining a number of small and
17 medium-sized volume users and making the bypass
18 incentive more feasible to him. And as a result of
19 that, he can do a lot of things that Commissioner
20 Wilson has just alluded to. And the Staff is very much
21 concerned about that because already bypass is a
22 threat, and we do not want to see this problem
23 aggravated.

24 MR. SHAFER: In addition, I would suggest that
25 these restrictions are really just an extension of

1 already existing restrictions that clearly pertain to
2 IXCs and LECs and other large customers, if that
3 happens to be the case. And all we are really doing is
4 clarifying those same basic types of restrictions ought
5 to apply to STS providers.

6 COMMISSIONER WILSON: I would move Staff
7 recommendation.

8 COMMISSIONER WILSON: Let me just suggest an
9 editorial change in two. I think it ought to say in
10 addition to his or her STS certificate, not "along
11 with." They do not have to be obtained at the same
12 instant.

13 MR. SHAFER: Yeah, right.

14 CHAIRMAN NICHOLS: All right, there's a motion.
15 Is there a second?

16 COMMISSIONER GUNTER: I'll second that. I hadn't
17 thought about it.

18 COMMISSIONER HERNDON: One question, Madam
19 Chairman, and I frankly confess to some confusion.
20 Parens 3 of the recommendation says that inter-
21 communication is a causative factor in bypass
22 potential, or it's poorly phrased, but in effect you
23 are saying that is one of the bypass risks is
24 intercommunication.

25 MR. COPPIN: That's true, and that has been taken

1 into account, the type of rate structure that Staff was
2 proposing, which involved access charges, and which is
3 a usage sensitive charge. And we are saying if we
4 allowed the STS provider and users to intercommunicate
5 behind the PBX trunk, they would be circumventing those
6 charges. But because of some of the administrative
7 problems and because of some of the other
8 recommendations we have, we are not to put that as a
9 bypass restriction.

10 COMMISSIONER HERNDON: Okay, that's exactly what I
11 want to get at. You just said in Parens 3 that one of
12 the risks of bypass is intercommunication behind the
13 PBX switch. On Page 473 you recommend that we permit
14 STS providers to intercommunicate.

15 MR. COPPIN: Yes, sir.

16 COMMISSIONER HERNDON: Directly contrary, as I
17 understood the lawyers earlier to say was good
18 Commission law to the Holywell decision. So I don't
19 understand how you reconcile the two positions. How
20 can it be a bypass potential in one instance and a
21 recommendation that we do it in the other?

22 MR. COPPIN: Staff really wanted to bring to the
23 Commission's attention, because in discussing the
24 potential to bypass, what I did was I outlined clearly
25 all the ways by which the local exchange companies can

1 be bypassed. But taking a pragmatic approach in our
2 recommendation I'm taking in account all the other
3 analysis the Staff have taken into account. We have
4 decided not to, for pragmatic reasons, impose a --

5 COMMISSIONER HERNDON: Tell me what the difference
6 is between Smith, Jones and Klein on the second floor
7 of the Southeast Bank Building in Miami and Jones,
8 Smith and Wharton on the thirtieth floor of the bank
9 building, why should they be allowed to
10 intercommunicate without a message rate, without
11 anything else taking place behind that switch when if
12 they were two tenants side-by-side on the street we
13 would not allow them to do that. I don't understand
14 the difference between those situations.

15 MR. COPPIN: Sir, I agree with you, there is no
16 difference between those situations. But as I said,
17 because of pragmatic reasons, I definitely agree, and
18 Staff, we discussed that point. We realize that there
19 is, that is the reason why it was still placed here.

20 COMMISSIONER HERNDON: So why should we let
21 intercommunication behind the switch take place as the
22 Staff recommended in the latter part of the document on
23 Page 473? There is no difference.

24 COMMISSIONER WILSON: Commissioner Herndon, if you
25 are moving that we not allow that, I'll second that

1 motion.

2 COMMISSIONER HERNDON: Well, I'm about to, but I
3 was honing in on Number 3, but I want to let Mr. Shafer
4 talk, too.

5 MR. SHAFER: From a pragmatic standpoint you have,
6 the minute that you say that STS can be allowed and
7 that we can allow that kind of an arrangement to go on,
8 you then have a tremendous administrative problem in
9 tracking any activity behind that PBX.

10 COMMISSIONER HERNDON: Who has the tremendous
11 administrative problem?

12 MR. SHAFER: Be it the -- if we charge, for
13 instance the STS provider, with the responsibility of
14 accounting for all of that traffic and hence paying to
15 the local exchange company some recompense, you have
16 created a situation that is virtually unenforceable and
17 from a pragmatic standpoint it's administratively
18 burdensome to the --

19 COMMISSIONER HERNDON: I don't understand why. I
20 mean, I don't understand the difference between the
21 local -- the LEC's burden to account for a call made
22 from Smith, Klein on 2001 Main Street and a call made
23 from Smith, Klein on the third floor to the thirtieth
24 floor. I don't understand why --

25 MR. SHAFER: A LEC is never going to be able to

1 tell what goes on behind that PBX, so they're --

2 COMMISSIONER WILSON: If we certificate the STS
3 carriers, all we have got to do is drop in one day and
4 say, "Hi, I'm from the PSC, I would like to look at
5 your PBX and see if you are doing intercommunications
6 behind the switch." Can't you do that?

7 MR. SHAFER: I think you probably could.

8 MR. CROUCH: It's technically possible to do that,
9 yes, sir, but if you walk in and you check it today,
10 with the software programming that they have capable in
11 digital PBXs, you walk out of the building, it can be
12 programmed right back to allow intercommunication.

13 COMMISSIONER WILSON: That's fine; that's fine.

14 COMMISSIONER HERNDON: But it seems to me --

15 COMMISSIONER WILSON: We just fine them every time
16 we catch them.

17 COMMISSIONER HERNDON: A firm that occupies four
18 floors of an office building, they ought to have every
19 right and opportunity to intercommunicate all they
20 want. But if you have got two different commercial
21 tenants in a facility, I don't understand why we
22 would allow them to intercommunicate, when our
23 finding in Parens 3 says that that is enhanced bypass
24 opportunity and ought to be discouraged. We are
25 discouraging it on the one hand and permitting it on

1 the next, and I don't --

2 MR. SHAFER: I totally agree there is an
3 inconsistency from a theoretical standpoint or from a
4 philosophical standpoint. I think our main concern was
5 that we have created something that we have no way of
6 enforcing. It's strictly the honor system and, you
7 know, to that extent it creates perhaps an additional
8 burden on the Commission and the service evaluation
9 team, and administrative burdens for both the STS
10 provider and the local exchange companies in tracking
11 all of that activity and so forth.

12 COMMISSIONER HERNDON: I suspect you're right, I
13 mean, in that regard.

14 MR. SHAFER: And that's really in a nutshell our
15 rationale for saying that ought to be allowed.

16 COMMISSIONER HERNDON: It seems to me, as
17 Commissioner Wilson points out, if there is a tariff
18 restriction and a certificate restriction applying to
19 that STS provider that they not be allowed to
20 intercommunicate between unrelated commercial
21 activities in a building; that there are a lot of
22 people who would be more than willing to keep an eye on
23 what is going on in that particular building and bring
24 it to the Commission's attention and anybody else's.
25 And if it is in fact a certificate restriction,

1 presumably we could remove their certificate if they
2 chose to violate it, knowingly and willingly, and they
3 are all going to read this record and they are all going
4 to know exactly what we are talking about. And the risk
5 of a small marginal gain of a few interconnections
6 versus losing their entire certificate just doesn't seem
7 to me to be worth it.

8 So, Madam Chairman, if I might, in an unrelated
9 manner, but nevertheless germane, move to deny Staff
10 recommendation on intercommunication behind the switch
11 to unrelated commercial activities.

12 MR. MCAULEY: Commissioner Herndon, I would offer
13 one other observation, because you mentioned the
14 Holywell decision, and this is not to deny that there
15 is some sort of inconsistency in that you are going to
16 allow people to communicate behind the PBX, and yet you
17 are not going to allow them to construct a private line
18 and communicate in another building. The only
19 observation is that the statute itself says that shared
20 tenant services may take place in a single building.
21 To the extent that takes place, we are saying, fine,
22 communicate in that single building behind the PBX. If
23 you were going to run a line, a private line to some
24 other location, then that goes outside the
25 contemplation of the statute. And so that's one, at

1 least, reason why we came to that point.

2 COMMISSIONER HERNDON: Mr. McAuley, it seems to me
3 quite reasonable for the Commission to define the
4 manner in which the communication, that
5 intercommunication takes place within the building. I
6 have no problem with intercommunication within a
7 company taking place all over the building, from the
8 first floor to the fiftieth floor. If they want to
9 intercommunicate amongst themselves, that's fine. If
10 they want to intercommunicate to somebody totally
11 unrelated, I think that is unreasonable and
12 inappropriate, and we ought not approve that.

13 COMMISSIONER WILSON: In addition, as I recall,
14 Mr. Smith of the Amerisystem testified as a matter of
15 policy they partitioned behind the switch anyway.

16 MR. MCAULEY: They do. There was evidence in the
17 testimony that there was partitioning for privacy
18 reasons, I believe they indicated.

19 COMMISSIONER MARKS: Let me belabor the point.

20 CHAIRMAN NICHOLS: Let me just announce I have
21 sent out for lunch.

22 COMMISSIONER MARKS: Let me belabor the point.
23 What is, and I'm going back to Staff to find out,
24 because I'm about to agree with Commissioner Herndon,
25 but I want to make sure when we vote on this we

1 understand the implications behind it, that is the
2 practical effect of this is that we would withdraw the
3 certificate of the STS provider if indeed we find out
4 that there is some communications behind the PBX, is
5 that right?

6 MR. CROUCH: If Commissioner Herndon --

7 COMMISSIONER MARKS: Ultimately without penalty.

8 COMMISSIONER HERNDON: Mr. Chairman, Mr. Former
9 Chairman, if I might --

10 COMMISSIONER MARKS: Yes, please --

11 COMMISSIONER HERNDON: You are the Chairman, but
12 if I might ask the ex-Chairman a question.

13 COMMISSIONER MARKS: Sure, as long as you get
14 permission from the Chairman.

15 COMMISSIONER HERNDON: I assumed that the
16 Commission has within its bag of tricks fines and other
17 kinds of things that it might apply for, if a
18 certificate was withdrawn, and certainly in that
19 instance where an otherwise ignorant STS provider
20 inadvertently made that kind of error, they might get a
21 fine or something like that.

22 COMMISSIONER MARKS: I would agree. I'm just
23 looking, I was going to the ultimate, and you're right.
24 Interim, there are interim measures you can find and do
25 a lot of things. Let me finish now, but ultimately if

1 they ignore the fines and do all of that kind of stuff,
2 what we are going to do is withdraw the certificate
3 from the STS provider, okay, that is fine. I see what
4 would happen under those circumstances, then, is that
5 the local exchange company would have to come in and
6 take over that service, or another STS provider come in
7 and take over that service. Okay, I just wanted to --

8 MR. SHAFER: Madam Chairman, if I can make one
9 more last ditch observation at the risk of taking
10 unnecessary lumps. We have in the IXC arena experienced
11 in the last 18 months to two years a continual
12 refinement of how much regulation we want and where do
13 we draw the line. And we seem to wind up in one
14 proceeding after another trying to more clearly define
15 that. I think we are kind of in the same position in
16 this area. We've got a new market developing. We
17 don't -- it's called, characterized as being
18 competitive in some instances, and we're trying to walk
19 down the line on saying how much control do we want,
20 and where do we want to wind up in the future, and all
21 of those same kinds of questions that we have been
22 mulling over in the IXC arena. My guess is that this
23 is at least one point that we'll see again in the
24 future. And I would hate to see us get bogged down in
25 a number of proceedings over drawing the line in this

1 area again. It may not be avoidable.

2 COMMISSIONER MARKS: I don't think it is.

3 Frankly, I don't think it is avoidable. We're going to
4 do some things here today that is going to please a lot
5 of people. We're going to do some things here today
6 that displease a lot of people. I don't care how we do
7 it, how we vote on these matters. The only thing that
8 we can do, and what you have done and I think you have
9 frankly I think you have done an admirable job, is take
10 your best shot.

11 MR. CROUCH: Commissioners, like somebody brought
12 up, somebody referred to Mr. Smith in the Amerisystem
13 and his testimony, there is today in existing shared
14 tenants in other states and things very, very little
15 intercommunications between these not affiliated.
16 Merrill-Lynch is not going to be calling McDonald's
17 office down there in the same building. There is very
18 little of it. Is it necessary for us to go in and say
19 you have to have this partitioned and everything to
20 prevent something that there is going to be very little
21 of?

22 COMMISSIONER MARKS: I think what the Commission
23 is saying we want to make a statement to that effect so
24 everybody will understand that the Commission does not
25 want you intercommunicating behind the PBX.

1 COMMISSIONER HERNDON: I think that's an element
2 of certification of an STS provider is that it's clear.

3 COMMISSIONER WILSON: Madam Chairman, I move the
4 question.

5 MR. VANDIVER: Just to clarify, this is just pure
6 STS as defined in the building.

7 COMMISSIONER WILSON: All we have been talking
8 about so far is STS --

9 CHAIRMAN NICHOLS: Let me restate, and I hope I
10 took down Commissioner Herndon's motion correctly, but
11 it would be to prohibit intercommunication between
12 unrelated commercial entities within a single building.

13 COMMISSIONER HERNDON: That is correct.

14 CHAIRMAN NICHOLS: And all of those in favor?
15 Those opposed? All right, let's add that to this list
16 of bypass restrictions as point 4. And we need to
17 vote on the rest or the remaining, the one that Staff
18 just handed out.

19 COMMISSIONER WILSON: Issue 13.

20 CHAIRMAN NICHOLS: Issue 13, bypass restrictions.

21 COMMISSIONER MARKS: Move it.

22 CHAIRMAN NICHOLS: All of those in favor? Those
23 opposed? Okay, Issue 13 is amended to include this
24 sheet that Staff just handed out, which now includes a
25 fourth item.

1 Issue 5: Is sharing and resale of local exchange
2 service necessary to provide shared tenant services
3 generally?

4 MR. CROUCH: Commissioners, this one almost runs
5 parallel with the Issue 3 that we started off with, is
6 it in the public interest and everything. As we
7 studied this we recommend that while sharing and resale
8 of the local exchange service is not specifically
9 required, if the answer is a no, however, because Staff
10 agrees with the premise that the prohibition of such
11 sharing would cause the inefficient use of modern
12 technology of that PBX. It would substantially
13 increase the size of the STS switch and could
14 unnecessarily add to the overall cost to the STS
15 system. Prohibiting sharing and resale of local
16 exchange service would artificially restrict technology
17 and increase the cost to the individual tenant.

18 If we are going to allow the PBX and the
19 technology there, then the resale of local service runs
20 hand-in-hand with that if it's going to be economically
21 used.

22 CHAIRMAN NICHOLS: Staff recommendation, Issue 5?

23 COMMISSIONER WILSON: The recommendation is no?

24 CHAIRMAN NICHOLS: No.

25 COMMISSIONER WILSON: I move it.

1 COMMISSIONER HERNDON: What page is that?

2 CHAIRMAN NICHOLS: 124.

3 COMMISSIONER MARKS: What page is it on in the
4 summary?

5 MR. CROUCH: Summary Page 4.

6 COMMISSIONER MARKS: Oh, I see it, I'm sorry, it's
7 down at the bottom there.

8 CHAIRMAN NICHOLS: Without objection.

9 Issue 8: Should STS providers be required to
10 comply with PSC required service standards on their
11 side of the demarcation point? If so, what should the
12 service standards be?

13 MR. TAYLOR: Commissioners, we have recommended
14 the very minimal requirements more as a safety valve
15 than anything else, that would allow the STS provider
16 or the tenants access to the local exchange.

17 CHAIRMAN NICHOLS: You have required zero access,
18 and I believe it says somewhere in here in,
19 specifically for areas that don't have 911, would this
20 recommendation also require 911 access?

21 MR. TAYLOR: You would have 911 access, just an
22 out line, so yes, they would. We don't require it, but
23 I would expect that no STS provider would block it. My
24 concern was that they might block zero to allow access
25 to the local company.

1 COMMISSIONER HERNDON: Why did you choose --

2 CHAIRMAN NICHOLS: Let's specifically state that
3 access to 911 must be available just in case somebody
4 comes up with an arrangement that --

5 MR. CROUCH: From the building or specifically
6 from each office is the question we have there.

7 COMMISSIONER WILSON: I would say from each
8 office.

9 COMMISSIONER MARKS: Same as when you go to zero.

10 COMMISSIONER WILSON: What are you proposing on
11 the zero access? From the building or from the --

12 MR. CROUCH: Well, if they go into an enhanced 911
13 where you just dial a number that would tell them you
14 are in Suite 203 of the building. It could get more
15 specific, if we do require 911, do we want it that just
16 identifies the building that they are calling from
17 where that PBX is located, or identify right down to
18 the switch?

19 CHAIRMAN NICHOLS: You are talking about an
20 enhanced 911 where an emergency service has
21 automatically --

22 MR. CROUCH: Automatic number identification
23 location.

24 CHAIRMAN NICHOLS: Location.

25 COMMISSIONER WILSON: If we don't, if we don't,

1 this is one of the disbenefits that Commissioner Marks
2 was talking about that the tenant of an STS provider
3 may enjoy.

4 CHAIRMAN NICHOLS: Yeah, the problem you have
5 is -- well, we are still talking about commercial
6 installations here. We are not talking about airports
7 and so forth.

8 COMMISSIONER MARKS: To the building.

9 MR. TAYLOR: I'm not certain that the local
10 exchange company or the enhanced --

11 COMMISSIONER HERNDON: They don't have that
12 capability now, do they?

13 CHAIRMAN NICHOLS: No. It would have to be to the
14 building, because where the STS provider places the
15 instruments on the provider side of the --

16 MR. SHAFER: Subject to being moved and relocated,
17 it might not change the number.

18 CHAIRMAN NICHOLS: It would be simply to the
19 building.

20 MR. TAYLOR: Right.

21 CHAIRMAN NICHOLS: All right. All of those in
22 favor of Staff recommendation to Issue 8?

23 COMMISSIONER HERNDON: I'm sorry.

24 COMMISSIONER GUNTER: As amended.

25 CHAIRMAN NICHOLS: As amended.

1 COMMISSIONER HERNDON: Can I ask a question before
2 you do that?

3 CHAIRMAN NICHOLS: All right.

4 COMMISSIONER HERNDON: Why did you choose not to
5 apply any other standards? There is no blockage rates,
6 no dial tone time. There is no repair service. I
7 mean, we apply all of those things to the LECs, which
8 is the only competitor that the STS provider has in
9 that building. Why are none of those applicable to the
10 STS provider?

11 MR. TAYLOR: Well, that gets to the question of
12 competition, I suppose, and we have a lesser degree of
13 regulation on interexchange carriers, for instance, and
14 it just seems as long as we have the safety valve that
15 there was no real reason to apply different standards.

16 COMMISSIONER HERNDON: Is it going to be clear in
17 that STS provider's tariff and marketing paraphrenalia
18 that their quality of service may be less than a LEC?

19 MR. TAYLOR: Well, we are not going to --

20 CHAIRMAN NICHOLS: Not necessarily, but as long as
21 it's clear to the tenant that he has the option of
22 going directly to the LEC, there is a certain amount of
23 safety built into that.

24 COMMISSIONER HERNDON: Yeah, I don't disagree with
25 you, but my concern goes back to the point that

1 Commissioner Wilson made earlier, and that is that you
2 have a vendor -- a tenant who goes in with a five-year
3 contract, and then he has got a breach of contract
4 facing him for service that he thought was the
5 equivalent of, but nobody told him, because that is
6 clearly not something they are going to tell him.

7 COMMISSIONER MARKS: That works two ways.

8 MR. TAYLOR: That is just like your copy machine.

9 COMMISSIONER MARKS: If the building owner or
10 provider does not disclose the type of
11 telecommunications services that he is going to provide
12 to the tenant up front in the contract, he should, and
13 that tenant should understand that, the kind of
14 telecommunications service he is providing. If he
15 should not provide that kind of service, then the
16 landlord has breached the contract, and to that extent
17 he can get out of it.

18 COMMISSIONER WILSON: But the resort, then, is to
19 the circuit courts of this state and not to this
20 Commission, because we don't have any separate quality
21 of service standards or basically any others for that
22 STS provider to provide to that company.

23 COMMISSIONER MARKS: It's a breach of contract,
24 that's what it is, a breach, one way or the other. So
25 I'm saying --

1 COMMISSIONER HERNDON: Let me just ask you a
2 question, Commissioner, if I may, or Mr. McAuley or
3 Mr. Vandiver, in the instance where an STS provider
4 does not speak to blockage rates, for example, just
5 pick that, because that is an affirmative standard that
6 we have on the LECs, and presumably we are not going to
7 impose on an STS provider. But he doesn't speak to it
8 at all, and the client, Sam's Barber Shop on the first
9 floor of the Southeast Bank Building doesn't know ⁶
10 blockage rates from scissors quality, he is not going
11 to ask.

12 COMMISSIONER MARKS: But that can apply to any
13 other terms of the building's lease as well.

14 COMMISSIONER HERNDON: Well, perhaps so, but is
15 that undisclosed bit of information grounds for a
16 successful breach?

17 COMMISSIONER MARKS: It could be. With a decent
18 lawyer, it could be.

19 MR. SHAFER: Commissioners, I believe there is --

20 COMMISSIONER MARKS: Let the buyer beware concept.
21 What I'm saying, Commissioners, is this, that terms and
22 conditions of the lease are just, you just have one
23 other term and condition of the lease imposed when
24 you've got a building with STS, and that is the
25 provision of that service of STS. If the landlord of

1 the building for some reason fails to disclose or fails
2 to provide the kind of services that is in that lease,
3 then I think that the tenant has a right to get out of
4 that contract as easy as any other terms and conditions
5 of that lease.

6 COMMISSIONER WILSON: If you are familiar with the
7 dockets of Dade County or Hillsborough County, you may
8 realize that it will probably take you nine months to
9 fifteen months to get a hearing date in a courtroom.

10 COMMISSIONER MARKS: Yeah, I don't think we want
11 to take on that responsibility.

12 COMMISSIONER WILSON: Well, I think that is what
13 we need to talk about.

14 COMMISSIONER HERNDON: I don't understand why we
15 are going to say that you have got to have access to
16 the operator and not say you have got to have some sort
17 of reasonable blockage standards.

18 MR. VANDIVER: The STS folks argued --

19 MR. TAYLOR: Commissioner, if you have access to
20 the operator and you have access to the available
21 interexchange carriers, if the blockage rate is --
22 doesn't suit you, then you can go elsewhere; that is
23 your option.

24 COMMISSIONER HERNDON: If you can get out of the
25 contract.

1 COMMISSIONER WILSON: If you can get out of
2 the contract, you can go somewhere else.

3 CHAIRMAN NICHOLS: You can get access to the
4 operator.

5 MR. TAYLOR: It doesn't say, I don't think they
6 say -- well, the contracts may say all your calls will
7 go over us, but at least you would have the option of
8 dialing from your phone these alternatively available
9 means of transmission.

10 COMMISSIONER WILSON: If you have got 6,000 access
11 lines and you buy a hundred trunks or 10 trunks, and
12 your blockage is peak 50, you may not be able to get
13 the operator. I mean, sure, you can get the operator
14 if you are willing to sit there and dial the phone from
15 now until five o'clock this afternoon.

16 MR. TAYLOR: That's true, and the safety valve --
17 if you want local service.

18 CHAIRMAN NICHOLS: Isn't this just the flip side
19 of, if there are benefits in competition there are also
20 risks?

21 MR. SHAFER: Risks.

22 CHAIRMAN NICHOLS: And this is one of the risks.

23 COMMISSIONER HERNDON: I don't have any problem
24 with that, Madam Chairman. As an alternative, for
25 example, it seems to me quite appropriate that if an

1 STS provider is going to offer service at a lesser
2 quality than that available to the LEC that he say so;
3 and that that be part of his tariff. And then the
4 customer is on notice, affirmative notice up front that
5 it is a different quality, of service, and then the
6 Commission, it seems to me, is safeguarded because we
7 have made sure the customer made a knowledgeable
8 decision.

9 COMMISSIONER GUNTER: Or a statement such as the
10 telephone service provided by XYZ provider is not
11 regulated by the standards established by the Public
12 Service Commission.

13 COMMISSIONER HERNDON: Or does not meet the same
14 standards as those imposed --

15 COMMISSIONER GUNTER: Or can exceed --

16 COMMISSIONER MARKS: Or does not minimally meet --

17 COMMISSIONER HERNDON: What I'm trying to say is
18 it seems to me we have an obligation to say to the
19 customer, you have a LEC out here that we regulate and
20 we impose quality standards on, and you have another
21 guy here that we're going to give a certificate to, by
22 the way, who is going to put that on his front door.
23 It's certificated by the Florida PSC. We're not going
24 to impose any quality standards on nor are we going to
25 make him tell the customers that are going to buy his

1 service and get into --

2 COMMISSIONER MARKS: No, I can't --

3 COMMISSIONER HERNDON: -- if nothing else, if I
4 can't get the equivalent standards, I want notice in
5 there so the customer makes an informed decision.

6 COMMISSIONER WILSON: Don't we require
7 interexchange carriers that we certificate to disclose
8 in their tariffs what their blockage rate is?

9 MR. SHAFER: Right, and by virtue of that comment
10 and alluding to a tariff, let me clarify that Staff's
11 position has been that we will not require STS
12 providers to tariff the local services that they
13 provide to end users. If they are in the resale of long
14 distance business, we will require them to tariff that,
15 so --

16 COMMISSIONER HERNDON: That's here to be discussed
17 later.

18 MR. SHAFER: So you are already presupposing
19 something. So beyond that, that again, we are walking
20 the line between how much regulation do we want and how
21 much do we want to get involved in that process, you
22 know, to me, if you are concerned about that in a
23 disclaimer in the rules or on the certificate or in the
24 contract that says the standards that you receive from
25 the STS provider is not Commission approved or

1 authorized or whatever the words are, that is a much
2 better, cleaner way to go than getting involved in the
3 tariff process.

4 COMMISSIONER HERNDON: All I want to do is make
5 sure the customer can make an informed decision. If he
6 is told up front that the standards aren't the same,
7 then he can decide on his own initiative, and it is
8 clearly a caveat emptor, and the barbershop can make
9 its own choice.

10 COMMISSIONER MARKS: I think what you are saying,
11 let me suggest, Commissioner, I don't know if we can do
12 this, and we'll have to look at it, let me suggest that
13 they put it in their tariff that they will provide to
14 each tenant in their lease or their contractual
15 services for STS, because the tenant will have the
16 affirmative right to choose who they want to use. So
17 apparently it's either going to be in the lease, or it
18 is going to be under some other separate document, that
19 they're going to make a determination of whether or not
20 they want STS or they want the local exchange company,
21 somewhere there's going to be a document that says
22 that.

23 COMMISSIONER HERNDON: As long as there is
24 explicit disclosure to the --

25 COMMISSIONER MARKS: To the STS tenant that the

1 service that you receive from the STS provider may
2 indeed be different from the service that you could
3 receive from the local exchange company, I think that
4 is sufficient to put him on notice, put the tenant on
5 notice that, wait a minute, maybe I ought to ask some
6 questions about this STS service and get some
7 information about it.

8 CHAIRMAN NICHOLS: Commissioners, Walter is about
9 to die. Do you want to say something, Walter?

10 MR. D'HAESELEER: I sure would. Commissioners, we
11 go through this exercise every time we are in a
12 certification process, whether the first time it was
13 the resellers, and then it was the IXCs, and then it
14 was the PATS, and now it's the STS people, and who
15 knows who it will be in the future. The first thing,
16 if we had the prerogative, I don't believe that the
17 Staff would recommend that everybody and his brother who
18 is in the telecommunications business would be
19 certificated. And there comes a point in time where you
20 have to recognize that we are in a competitive
21 environment, and that is different than when you are in
22 a monopolistic environment to the degree that you want
23 to protect people.

24 Now, these are supposed to be sophisticated users
25 of telecommunications. That's one thing, and you're

1 really not protecting the general public, you are
2 protecting in this instance I think a captive market,
3 those who are tenants of this particular building. And
4 to me there comes a point in time where you just have
5 to make the break and say we can't protect everybody.

6 CHAIRMAN NICHOLS: Let me make a comment. We do
7 not, quote, protect, unquote, CPE equipment, and we all
8 know that you can go and get a phone in a jillion
9 places, and some of them are going to be great and some
10 of them are going to fall apart on Day 2. Now, they
11 all have an FCC sticker on them, but I don't think the
12 general public has ever misconstrued the purpose of the
13 FCC certificate or the FCC number on the bottom.

14 COMMISSIONER GUNTER: Walter, what is wrong with
15 the simple statement that says the standards of service
16 provided herein is not regulated by the Public Service
17 Commission?

18 MR. D'HAESELEER: I really have no problem with
19 that. In fact, it's something, we are talking about
20 something that is not going to materialize. I don't
21 imagine the sophisticated STS providers are going to
22 provide an inferior service with modern technology and
23 everything that they have got available. I'm sure it
24 will be the same or maybe better than the LEC service.

25 COMMISSIONER GUNTER: One of the things that I

1 think is probably a truism is there is probably not an
2 industry in this country that is not subject to the
3 financial failures and the thing that is in the back of
4 my mind is that someplace, if this expands far enough,
5 we're going to have somebody go belly-up. And then we
6 are on the hook, Commissioners, for the provision of
7 telephone service through the local exchange companies.
8 And I start looking at a situation where we say, okay,
9 200, 250 trunks or whatever, and somebody goes
10 belly-up, and all of a sudden they don't have any
11 telephone service; that is going to happen. Maybe not
12 to anybody that is a party to this proceeding.

13 COMMISSIONER MARKS: They will have telephone
14 service, Commissioner, I think.

15 COMMISSIONER GUNTER: How?

16 CHAIRMAN NICHOLS: Through the local --

17 COMMISSIONER MARKS: Through the local telephone
18 company.

19 COMMISSIONER GUNTER: Well, they will have to come
20 in and either take over operation or whatever.

21 COMMISSIONER MARKS: They may have to do that or
22 something like that may have to occur. But I hope we
23 are leaving an opening in this particular circumstances,
24 the ability if an STS goes belly-up, there is an
25 alternative, and that is the local exchange company.

1 COMMISSIONER GUNTER: The thing I'm talking about,
2 though, is meeting the standards of providing service.
3 If you've got 200 trunks in there and there is 1600
4 people behind that, the PBX using it, there is not 1600
5 access lines drug up there to the door. And you would
6 have 48 hours to get the job done and what have you,
7 and this is what I am talking about.

8 COMMISSIONER MARKS: I understand what you are
9 saying, and that's where I'm beginning to agree with
10 Walter. There's going to come a point in time where we
11 have to recognize the competitive nature of this
12 particular business. See, I'm not unopposed, frankly,
13 to a situation where we shift the burden from the local
14 exchange company to the building tenant as suggested by
15 Jill Hurd in one of her recommendations. Which
16 recommendation was that?

17 MS. PATTON: Her testimony as a Staff witness?

18 COMMISSIONER MARKS: That was her testimony,
19 that's right, shifting the burden from the local
20 exchange company to the STS, the tenant of the STS
21 provider and the owner of that building.

22 COMMISSIONER GUNTER: But it shouldn't be a
23 problem with a disclaimer that it's not being regulated
24 by --

25 COMMISSIONER MARKS: Oh, I agree with that.

1 COMMISSIONER WILSON: I don't think there is any
2 problem with the information that is provided, but even
3 if you are, and particularly if you are in a
4 competitive market, the proper functioning of the
5 market presumes knowledge on the part of consumers. And
6 if they don't have the knowledge then they can't make an
7 informed choice, and if we can do something to give
8 them the information to make an informed choice, then
9 we are not hindering the competitive market, we are
10 aiding it.

11 CHAIRMAN NICHOLS: Commissioners, I don't have a
12 problem. I could accept putting the caveat, a
13 disclaimer, as stated by Commissioner Gunter, on, which
14 I think is the most neutral one I have heard:
15 Standards of service provided herein are not regulated
16 by the Florida Public Service Commission.

17 COMMISSIONER MARKS: What was the one that you
18 suggested, Commissioner?

19 COMMISSIONER HERNDON: Well, I was talking about
20 trying to compare minimal standards of service.

21 CHAIRMAN NICHOLS: Then I think we are going to
22 get into all kinds of little nuances that worry me.

23 COMMISSIONER HERNDON: Fine, that's fine. I just
24 want to make two points with respect to what Walter
25 said. One, I understand your point about all of the

1 various competitive kinds of industries and so forth
2 and so forth. The problem is we are certificating
3 these particular providers, number one. So there is a
4 PSC better seal of housekeeping on these groups, number
5 one.

6 Number two, I'm not at all sure I agree with you
7 about the level of sophistication of some of the people
8 that are going to be in these facilities. They may
9 know a hell of a lot about cutting hair, a hell of a
10 lot about shining shoes, and a hell of a lot about the
11 practice of law and very little about telephone
12 service, and very little about the kind of service they
13 get now versus what this alternative guy is going to
14 offer them. And if we do nothing else, if we just say,
15 pause 30 seconds and reflect before you sign this
16 contract, I think we have done a service.

17 MR. D'HAESELEER: Commissioner, I would have
18 agreed with you three or four years ago, but these
19 people have been buying CPE, which is pretty
20 sophisticated, and has a lot of features, so they know
21 how to answer or ask the right questions.

22 COMMISSIONER WILSON: Maybe, they have been buying
23 and being burned a lot of times.

24 COMMISSIONER HERNDON: They have been buying and
25 getting burned right and left.

1 CHAIRMAN NICHOLS: Commissioners, I think we have
2 to vote on this.

3 COMMISSIONER MARKS: Yes.

4 CHAIRMAN NICHOLS: As I now think Issue 8 --

5 COMMISSIONER GUNTER: I move my amendment.

6 CHAIRMAN NICHOLS: -- has been amended, it would
7 include access to 911 but for the building and a
8 statement that standards of service provided herein are
9 not regulated by the Florida Public Service Commission.
10 And the three earlier points listed on the vote sheet
11 under Issue 8.

12 All of those in favor, aye? Those opposed?

13 COMMISSIONER WILSON: No.

14 MR. VANDIVER: The forms as to that takes you
15 really don't have a problem with. I was thinking about
16 putting it in the application for certification that
17 each contract shall contain --

18 CHAIRMAN NICHOLS: The following language.

19 MR. VANDIVER: Yeah, something to that effect. I
20 mean, I would like some flexibility in implementing it.

21 CHAIRMAN NICHOLS: Fine. Issue 8 as amended.

22 Issue 6: What certification procedure should
23 apply to STS providers?

24 MR. CROUCH: This was pointed out by the statute
25 that certification was required. All the LECs have

1 agreed it should be certificated, and most of the
2 shared tenant providers or potential shared tenant
3 providers have agreed to that. We have -- I have
4 recommended application which is very, very similar.
5 It's on Page 139, several pages after that of the big
6 recommendation. It's very similar to the application
7 used today by the IXC. The major differences that we
8 would not require them to file tariffs as to what they
9 were charging for the local service.

10 COMMISSIONER HERNDON: Why?

11 MR. CROUCH: Well, here again, in one of our
12 future recommendations later on, I think it's
13 Recommendation 7, they say that at this time the
14 Commission -- we recommend that the Commission does not
15 want to regulate the tariffs that they charge the
16 tenants, but reserve the prerogative for later on if
17 you decide you want to --

18 COMMISSIONER HERNDON: But the regulation and
19 filing are two different things, as far as I knew. I
20 mean, do we not currently receive the charges, the
21 tariffs, quote, unquote, by the IXCs, the minor IXCs?

22 MR. CROUCH: We would require it from the IXCs.

23 COMMISSIONER HERNDON: -- we don't regulate their
24 charges, but we do receive them.

25 MR. CROUCH: That is correct.

1 COMMISSIONER HERNDON: And that is the distinction
2 I would make. I would like to see what is being
3 charged. That doesn't imply that I want to regulate
4 them at the present time. Seems to me that we are in
5 an awkward posture of being unable to know whether they
6 are gouging customers or not, since we don't see them.

7 COMMISSIONER MARKS: But, Commissioner, the reason
8 why we required the interexchange carriers to provide
9 us with that information is to determine whether or not
10 they are meeting the standards that they say they are
11 going to meet, which we just said we don't want these
12 other folks, the shared tenant people to provide.

13 COMMISSIONER HERNDON: If I might, we wound up
14 saying that only because I wasn't able to prevail on a
15 more extensive --

16 COMMISSIONER MARKS: I know it.

17 COMMISSIONER HERNDON: That doesn't mean I want to
18 give up on this issue.

19 MR. O'PRY: Commissioners.

20 COMMISSIONER HERNDON: There may be help coming
21 from another country here.

22 MR. O'PRY: The reason for the recommendation for
23 no tariff is local service is the only thing that we
24 would be receiving a rate on. The STS provider offers
25 many enhanced services and he can merely adjust the

1 charges for providing the other dozen or so services,
2 and it will have really no effect upon --

3 COMMISSIONER HERNDON: We are going to get long
4 distance rates, aren't we?

5 MR. O'PRY: Yes.

6 CHAIRMAN NICHOLS: Only if he has a reseller's
7 certificate. What you are saying is if the STS
8 provider provides seven services, one of which is local
9 service, and he charges \$40 a month, he would send us a
10 tariff which says he is charging 50 cents for local
11 service, and he is charging 29.50 for the other six
12 services, and it would be meaningless.

13 MR. O'PRY: That is correct.

14 COMMISSIONER HERNDON: That may be the fact, but
15 I'm not sure the customers would accept and understand
16 it under those terms and conditions. It seems to me what
17 his tariff says ought to apply. If he files a tariff
18 that says local service for 50 cents and
19 teleconferencing for 29.50, that that customer ought to
20 know that on the way in.

21 CHAIRMAN NICHOLS: If you want a tariff at all,
22 why wouldn't you want the total charges he charges the
23 tenant and then a list of what services are provided
24 that tenant?

25 COMMISSIONER HERNDON: That's fine.

1 CHAIRMAN NICHOLS: I mean, it's not asking anybody
2 to break out the charges he is going to get, you know,
3 some guy sitting around saying, well, I'll put down
4 five bucks for this, 2.50 for that, 7.50 for this.

5 MR. CROUCH: You would have to list this out,
6 then, specifying the type of CPE that is being
7 installed as part of the package. You're asking for a
8 very extensive tariff filing here.

9 COMMISSIONER HERNDON: I just want to see it. I
10 don't want to regulate it. All I want to do is see it.

11 MS. PATTON: Commissioner Herndon, would this
12 tariff be filed 30 days in advance of approval?

13 COMMISSIONER HERNDON: Same as anything for a
14 minor IXC.

15 MR. SHAFER: I just think that is opening a can of
16 worms that is almost unmanageable, and I view that sort
17 of as --

18 COMMISSIONER WILSON: -- to receive tariffs and put
19 them on file?

20 MR. D'HAESELEER: Commissioner, may I respond?

21 CHAIRMAN NICHOLS: Yes.

22 MR. D'HAESELEER: From a practical standpoint, the
23 minute we get some tariff filings, all the competitors
24 will want copies of those tariffs.

25 COMMISSIONER WILSON: It's a competitive market.

1 COMMISSIONER HERNDON: You charge them a dollar a
2 page, don't you?

3 MR. D'HAESELEER: That's great, but if takes
4 people to do that, and there is nothing in our budget
5 that is --

6 COMMISSIONER HERNDON: Walter --

7 MR. D'HAESELEER: Commissioner, I'm looking at it
8 from a practical standpoint. I'm not getting the
9 people to do all of these things we have to do.

10 COMMISSIONER WILSON: We don't make decisions to
11 regulate or not regulate by how many people we have got
12 in the building, Walter.

13 MR. D'HAESELEER: To effectively regulate, you do.
14 You can only do so much with the limited number of
15 resources.

16 COMMISSIONER WILSON: And if you don't have the
17 resources you go over to the Legislature and ask for
18 more.

19 MR. D'HAESELEER: I'm sorry, I wish it were that
20 simple.

21 CHAIRMAN NICHOLS: Let's leave this for a second.
22 Let me ask a question, which I think was in the earlier
23 part of Walter's point that may have some real
24 validity. These are competitive organizations, rates
25 and charges may be -- they may consider that

1 proprietary information and may not wish to disclose
2 that information.

3 MR. SHAPER: I think you touched on something to
4 me that is a real salient point, and that is you enter
5 into that contract, that is much like buying an
6 automobile and renting an apartment, and just because
7 you are willing to pay what the car lot is asking or
8 what the renter is asking, without saying, hey, I can
9 go across the street and get it for \$50 less, and
10 trying to bargain with that individual, doesn't mean
11 that the next person that comes in there isn't going to
12 haggle and isn't going to get a better rate.

13 And I just think it's meaningless to get a piece
14 of paper that says this is what my rates are, when in
15 fact if you are entering into a contract for service,
16 all of those rates are negotiable. At least in my mind
17 they would be, unless I was convinced that that
18 organization was fully regulated as a telephone company
19 and they had tariffs and operate under all the terms
20 and conditions that other telephone companies operate
21 under.

22 CHAIRMAN NICHOLS: We do have buildings, I mean
23 commercial buildings that, you know, if you will sign
24 up for the lease in advance of construction, you get
25 one price on a five-year contract, and then the

1 building gets about 50% full, and then everybody is
2 getting a little nervous.

3 COMMISSIONER MARKS: Let me ask a question on
4 that. What you are saying is -- excuse me, Madam
5 Chairman, is there any reason why the STS provider who
6 is also the landlord can't offer a different contract
7 to each individual tenant in the building? Would he
8 have to file a tariff then for each one of those
9 potential different tenants in that building?

10 CHAIRMAN NICHOLS: He may be willing to serve you
11 on the fourth floor where you only have four stations
12 with one rate, but he wants to charge Commissioner
13 Gunter on the twenty-first floor for 25 stations an
14 entirely different rate.

15 COMMISSIONER MARKS: To make it even more
16 complicated, there is nothing to say that he can't
17 charge a different customer, who has the same number of
18 telephones, the same kind of service, a different rate.
19 I don't think there is any prohibition against that.

20 MR. O'PRY: If you recall, there was testimony at
21 the hearing that this in fact was being done.

22 COMMISSIONER MARKS: See, I think we have to look
23 at the STS, as the STS providers and the landlord said
24 they were going to use. This is a bargaining tool for
25 the ability to come in this building. They want to be

1 able to say, look, I got this service, and they're
2 going to use it not only in competition with another
3 building, but they may use it differently for different
4 tenants, to entice a different tenant, to entice the
5 tenant to come into the building. They are not going
6 to necessarily offer the same services to the same
7 tenant of the same building. Not only that, they may
8 offer different kinds of services through the STS
9 arrangement. Some of them might want the computer
10 services. Some might want the speed mail and whatever
11 that thing is, and some might want different services.
12 They may even offer that at different rates to
13 different tenants.

14 COMMISSIONER WILSON: Let me see if I understand
15 what you are saying here. We are not going to require
16 the STS providers to tell their tenants what the rates
17 are. And under your argument we are not going to
18 require the STS providers to tell us what their rates
19 are.

20 COMMISSIONER MARKS: No, I'm not saying that they
21 are not going to --

22 COMMISSIONER WILSON: We voted in the prior issue
23 not to require the STS providers to disclose to their
24 tenants all the rates and charges that they are going
25 to charge. Now, we are arguing not only are we not

1 going to have them tell them, they are not going to
2 tell us either.

3 CHAIRMAN NICHOLS: We don't require a landlord to
4 tell us when, you know --

5 COMMISSIONER MARKS: And I'm saying the nature
6 extension of that, we don't regulate the STS services
7 as well, and whether or not, if a tenant moves into the
8 building without determining what the charges are for
9 that space and for what he is getting, then, you know,
10 that is -- you know, he is in bad shape. He is in
11 mighty, mighty bad shape. If I move in any building I
12 want to know what the charges are. And if that level
13 of sophistication is not there for a tenant, then we're
14 in a very, very bad situation. Even from a shoeshine
15 guy to the barbershop in the building, I would think he
16 would want to know what kind of services he is going to
17 be provided. He may not know enough sophistication to
18 understand exactly what the STS service is or what they
19 are there, but my goodness, I would think he would have
20 some level of sophistication or know something if he is
21 going to enter into a lease contract.

22 MR. SHAFER: I think everybody shares the concern
23 that is on the table in terms of the customer having
24 some assurance that he is not going to get taken to the
25 cleaners completely. And I just don't know where the

1 happy medium is, but I haven't heard anything aside
2 from perhaps a disclaimer of some sort or a restriction
3 in the local company's tariff to the STS provider that
4 he is -- that it's incumbent upon him to notice the, or
5 to inform all of the customers of the STS provider that
6 all the terms or all the conditions that are regulated
7 by the Commission are out the window in regard to his
8 service, that is not very much, and that is not very
9 tangible when you are sitting down to negotiate, but at
10 least it's a flag. It's a disclaimer that says, hey,
11 you're on your own. Nobody is protecting you at this
12 point other than yourself.

13 COMMISSIONER MARKS: I think the other, the
14 question that Commissioner Herndon is getting at is
15 another question, and that is not necessarily
16 regulating that, but requiring them to file those
17 tariffs with the Commission so that -- well, I'm not
18 sure why we need to file the tariffs.

19 COMMISSIONER HERNDON: That's why -- Madam
20 Chairman, if you recall, I started this discussion
21 saying what I wanted was them to file the local rate.
22 That's all I wanted was the local rate. I don't care
23 what they charge for teleconferencing. If they want to
24 finesse the figures, fine. I just want to see what
25 they charge for local service. I think that is

1 straightforward. We certificate them. That is
2 basically what this whole discussion is about, is their
3 ability to resell local service. I think they would to
4 tell people what they're going to charge for it on the
5 front end. And that to me doesn't imply anything other
6 than notice, just like we do for minor IXCs. You tell
7 us what you are going to charge, and if anybody raises
8 an objection, we'll see whether or not your charges are
9 in fact what you said you were going to charge. That's
10 it.

11 CHAIRMAN NICHOLS: Commissioners, we are on Page 4
12 of a 55-page vote sheet. I think we need to move on.

13 COMMISSIONER WILSON: Commissioner Herndon, are
14 you going to make a motion?

15 COMMISSIONER HERNDON: I would like to, Madam
16 Chairman, if I may, amend Staff recommendation to
17 include the requirement that local rates be filed with
18 the Commission.

19 COMMISSIONER GUNTER: Tariffed local rates.

20 COMMISSIONER HERNDON: Tariffed local rates to be
21 filed with the Commission.

22 CHAIRMAN NICHOLS: Is there a second?

23 COMMISSIONER WILSON: I second.

24 CHAIRMAN NICHOLS: All right. All of those in
25 favor.

1 (Wilson, Gunter and Herndon voted affirmatively)

2 CHAIRMAN NICHOLS: Opposed.

3 (Nichols and Marks voted negatively)

4 CHAIRMAN NICHOLS: All right, that passes three-
5 to-two.

6 COMMISSIONER GUNTER: Madam Chairman, voting in
7 the majority, just in an abundance of caution, and I
8 think this won't take just a second, I want to bring
9 back up the vote on Issue 8 for one little further
10 clarification.

11 CHAIRMAN NICHOLS: All right.

12 COMMISSIONER GUNTER: That there be a requirement
13 that the customers, potential customers be notified as
14 the standards of service the STS provider is intending
15 to provide to them. There is nothing wrong with that.

16 CHAIRMAN NICHOLS: Let me go back. You are saying
17 in Issue 8 you would require the STS provider to notify
18 the tenants what?

19 COMMISSIONER GUNTER: As to the quality of
20 service. You know, you've got a new building that you
21 are building, and you say, you sign up, and you're
22 going to be provided the gongs and the whistles and all
23 the rest of this and local service for a total package
24 of 40 bucks. And we want to tell you that the
25 standards of service are going to be thus and so.

1 CHAIRMAN NICHOLS: Are you saying you want this
2 done prior to signing a lease?

3 COMMISSIONER GUNTER: Sure.

4 CHAIRMAN NICHOLS: Prior to signing the contract?

5 COMMISSIONER GUNTER: Sure.

6 CHAIRMAN NICHOLS: Is there a second to that
7 motion?

8 COMMISSIONER HERNDON: I'll second the motion.

9 CHAIRMAN NICHOLS: All of those in favor?

10 COMMISSIONER MARKS: I'm not so sure I understand.

11 COMMISSIONER WILSON: This is in addition to the
12 disclaimer.

13 COMMISSIONER GUNTER: In addition to the
14 disclaimer. They just tell them what the standards of
15 service are.

16 COMMISSIONER WILSON: All right.

17 COMMISSIONER MARKS: Are we going to -- what
18 standards of service?

19 COMMISSIONER GUNTER: None. If they tell them
20 we're going to have a blockage rate of 92%, but you're
21 going to get a hell of a deal.

22 COMMISSIONER MARKS: I guess what I'm saying, not
23 the level of the standards, but what the actual
24 standards you are going to require the STS provider to
25 disclose?

1 COMMISSIONER GUNTER: No.

2 CHAIRMAN NICHOLS: None.

3 COMMISSIONER GUNTER: None.

4 CHAIRMAN NICHOLS: Whatever he is providing.

5 COMMISSIONER GUNTER: That he tells them what he
6 is going to provide.

7 CHAIRMAN NICHOLS: It's a tin can and two
8 strings -- or one string and two tin cans.

9 COMMISSIONER GUNTER: That's right. And if they
10 want to accept that, that's fine.

11 MR. CROUCH: That's including blockage rate?

12 COMMISSIONER GUNTER: Huh?

13 MR. CROUCH: You are including blockage rate?

14 COMMISSIONER MARKS: No, that's the point.

15 COMMISSIONER GUNTER: Whatever standards of
16 service they are going to provide, Bob. It's like if
17 you go down to a grocery store down at the corner, and
18 you want LeSueur peas and they don't have them, and
19 you've got one choice, you either take whatever kind
20 there are or you go somewhere else to get the LeSueur
21 peas. But they tell you what the standards of service
22 they intend to provide. There has to be some intent.
23 They have to go through the analysis when they -- you
24 know, we are just hung up on blockage rate, but there
25 are a lot of other quality of service, right?

1 CHAIRMAN NICHOLS: All right, the motion is before
2 us. All of those in favor, say aye. Those opposed.

3 COMMISSIONER MARKS: I don't oppose. I don't
4 know.

5 CHAIRMAN NICHOLS: I don't either.

6 COMMISSIONER MARKS: That's a maybe.

7 CHAIRMAN NICHOLS: All right. Issue 8a and
8 Issue 6 have been approved as amended.

9 MR. CROUCH: Further on in Issue 6, if they
10 require only shared tenant service and not IXC, not
11 offering long distance service --

12 CHAIRMAN NICHOLS: This is all of those as
13 pertains to shared tenant service.

14 MR. CROUCH: Right.

15 CHAIRMAN NICHOLS: In the commercial context.
16 Issue 14.

17 MS. NORTON: This issue concerns the terms and
18 conditions under which direct access should be
19 provided, and Staff simply put some items that we
20 believe should be there. The LECs should be required
21 to provide direct service at the request of the tenant
22 at currently tariffed rates and subject to facilities.
23 And that is, that matches what is currently in the
24 tariffs.

25 The LEC must be able to gain access to all

1 facilities up to the demarcation point, and as noted
2 in the recommendation there are or could be two
3 demarks, one up to the building and one up to the
4 tenant's premises.

5 And the LEC must be able to gain access to the
6 network side of the demark in both instances.

7 COMMISSIONER GUNTER: Go ahead.

8 MS. NORTON: On the next one, on Number 3 we want
9 to make a slight modification in the way it reads
10 saying the LEC should provide reasonable compensation
11 for such facilities as riser cable, and we had
12 originally put in "and conduit space," and it was
13 brought to our attention on several occasions that it
14 is currently in the tariffs that it is the
15 responsibility of the subscriber to provide floor and
16 space at their own expense, and so we would like to
17 modify the recommendation to delete the word "conduit
18 space" from having to be compensated. And therefore
19 that should be the responsibility of the STS provider.

20 Number 4 is that provision of direct access should
21 be made a condition of certification. In other words,
22 should be, in our opinion, in the certificate that the
23 STS provider sign something that says that he will do
24 that. And it was also brought to our attention that in
25 some cases the provider in the building and the owner

1 might be two different people, and we believe that it
2 should be the responsibility of the STS provider when
3 he applies for a certificate to make direct access
4 possible for the LEC, and therefore you should get,
5 secure in writing the permission of the building owner
6 to the extent that it's different to allow direct
7 access, and that is Number 5.

8 CHAIRMAN NICHOLS: I think there might be a little
9 discussion on this item.

10 COMMISSIONER WILSON: Well, the last part is very
11 similar to what we do in water and sewer cases where we
12 require them to hold title to the property on which the
13 plant is built or a 99-year lease so we assure there is
14 going to be that access. And the STS provider is the
15 one responsible for that, I don't really have a problem
16 with that.

17 CHAIRMAN NICHOLS: With 5.

18 COMMISSIONER WILSON: With 5, I don't have any
19 problem with that at all.

20 COMMISSIONER GUNTER: I've got a real heartburn
21 with the way Item 3 of the recommendation is written.
22 I have no problem with the local exchange company
23 reimbursing up to their tariffed costs of providing the
24 inside wire, but not to exceed that, because that
25 shifts to the general body of ratepayers, that shifts

1 the additional burden, the way it's couched, because
2 you say a reasonable cost and what have you. I would
3 say that reasonable cost would not exceed the cost that
4 the local exchange company would have to pay anyway.
5 Do you understand what I'm saying?

6 MS. NORTON: Inside wire is going away anyway.

7 COMMISSIONER GUNTER: I'm talking about inside the
8 damn building.

9 COMMISSIONER MARKS: Riser cable.

10 COMMISSIONER GUNTER: Riser cable.

11 MS. NORTON: Riser cable, okay.

12 COMMISSIONER GUNTER: Use of that, if you are
13 using one pair, if you are using one pair of wire,
14 you're not going to go put in a riser cable, you're
15 going to string something significantly less than that.
16 And say you had 300 pairs going up the line, 1/300ths
17 of that cost, and figure in the labor that that would
18 be the maximum that the local exchange company should
19 have to pay. We should put an upper limit because
20 having some reasonable cost, we had a previous deal
21 where there was a company in the Tampa Bay area wanted
22 to hold up the local exchange company \$10,000. I don't
23 know whether it was one time or --

24 CHAIRMAN NICHOLS: 12,000.

25 COMMISSIONER GUNTER: \$12,000, a one-time shot or

1 a multi-time shot for access into the building. My
2 comment at that time was just let them do without
3 telephone service until such time as they get their
4 minds right because there ain't nobody going to move in
5 without a telephone. And I think it got settled. I
6 don't think that free use of somebody else's facilities
7 is appropriate. But I do feel that any charge above
8 the cost that the local exchange company would have to
9 incur themselves is inappropriate.

10 CHAIRMAN NICHOLS: In the process approved by this
11 Commission?

12 COMMISSIONER GUNTER: That is correct.

13 MS. NORTON: We did not put in the recommendation
14 anything that required the STS provider to state what
15 the costs would be and --

16 COMMISSIONER GUNTER: I ain't talking about the
17 STS provider. I'm talking about an identification of
18 the cost that the local exchange company might have to
19 make.

20 CHAIRMAN NICHOLS: I don't have any problem if
21 they want to try and negotiate a lesser rate, but I've
22 got real problems if it exceeds the cost that this
23 Commission would have approved for that type of
24 service.

25 MS. NORTON: What I'm hearing you say is the LEC

1 might go in there and use STS providers' facilities at
2 a cost that is greater than it would cost them to run
3 their own?

4 CHAIRMAN NICHOLS: Yes.

5 COMMISSIONER WILSON: They may be charged.

6 CHAIRMAN NICHOLS: They may be charged.

7 COMMISSIONER GUNTER: They may be charged that
8 much.

9 MS. NORTON: If they are charged that much, then
10 they would want to say, no, we will put in our own. We
11 will do it more cheaply.

12 COMMISSIONER GUNTER: Then you go into a deal
13 about paying rental and what have you to the building
14 owner for space.

15 CHAIRMAN NICHOLS: But if the building owner says
16 you can use my cable, and there is not room enough for
17 you to put a whole lot more cable in there, and we have
18 no problem with you having access to this tenant on the
19 thirtieth floor. And now we're going to sit down and
20 negotiate what you're going to pay for use my cable.
21 And at that point, you know, I think there has to be
22 some upward limitation.

23 COMMISSIONER GUNTER: You've got that right.

24 CHAIRMAN NICHOLS: Because otherwise that is a
25 cost of providing service, which gets rolled over into

1 the general body of ratepayers when we set rates, and
2 that's a valid cost.

3 MS. NORTON: Commissioners, I think it's a good
4 point, and it's something we went round and round
5 about, and we tried to think of all different ways to
6 set up some criteria, and decided it could just get so
7 complicated that we believed -- we just had to hope
8 that the market would regulate it, and that if there
9 were problems they would be dealt with before this
10 Commission on a case-by-case basis.

11 CHAIRMAN NICHOLS: Isn't there in the tariffs now
12 of the major telephone companies a charge for riser
13 cable?

14 MR. SHAPER: I don't believe so, Commissioners. I
15 think that is --

16 MS. NORTON: It's not a tariffed item.

17 CHAIRMAN NICHOLS: In materials?

18 MS. NORTON: It's not a separately tariffed item.

19 COMMISSIONER GUNTER: We have a separate tariff
20 that gives us time.

21 MS. NORTON: There's a time and materials charge.

22 COMMISSIONER GUNTER: A 15-minute increment of
23 time for at least all the major telephone companies in
24 the state.

25 MR. TAYLOR: These negotiations go on with the

1 building owners now that are not STS providers, and
2 your --

3 COMMISSIONER GUNTER: One of the things I don't
4 want to see, and let me tell you, I'm trying to look
5 down the road, and there's a whole lot of short-
6 sightedness. I'm trying to look down the road and say
7 that you have some problem that occurs and standards
8 are not met, and folks get out of their contract. And
9 it may be all of the fifth floor. And all of a sudden
10 the local exchange company gets a request to service us
11 on the fifth floor. And it's all well and good to say
12 we will look at it on a case-by-case basis.

13 But then you have a situation of, you know, 20
14 people sitting on the fifth floor wanting service, and
15 the local exchange company, you know, we are sitting on
16 one side with a hammer to them, "You will provide that
17 service on such-and-such a date or we'll ding you on
18 standards of service, and we'll ding you for failure to
19 perform." And on the flip side, on the other side they
20 will say, "Well, you know, hell, we'll go cut a deal,
21 pay additional rental, or bring it to the Commission."
22 And they bring it to the Commission, and I want to ask
23 some of you, some of the lawyer folks here, what
24 authority do we have over the building owner at that
25 juncture? It's easier to fix it on the front end than

1 it is to say, "Well, that is not a problem today."

2 But you've got to look at and be rational that
3 there are going to be problems down the road. So why
4 not establish an upper limit? You're talking about an
5 STS provider that will have facilities in there. And
6 if the occasion is that they use those facilities, what
7 is the upper limit that we will allow to be recovered
8 from the local exchange company or allow the STS
9 provider to charge the local exchange company? I don't
10 think that is irrational personally. You haven't got
11 any authority over that building owner, not once all of
12 those tenants are in there.

13 CHAIRMAN NICHOLS: The only authority we have is
14 over how much the upper limit the local exchange
15 company could pay and expect to get recovery of cost.

16 COMMISSIONER GUNTER: And as a piece of that
17 certification how much we would allow the STS provider
18 to charge.

19 MS. NORTON: It seems there are two ways to
20 approach that, and one would be to require something in
21 the certificate, some indication by the STS provider as
22 to what they would intend to charge, whether it would
23 be a one-time charge, a recurring charge, an estimate
24 of the level or range of charges, depending, or we can
25 put it in the LEC tariff saying this is what we will

1 pay.

2 COMMISSIONER GUNTER: I would rather put it on the
3 flip side, because we have no authority over the
4 building owner. And if we make a requirement as a
5 condition of certification that access be provided to
6 the local exchange company to any tenant in that
7 facility and that the cost be capped on which the STS
8 provider can recover from the local exchange company,
9 be capped at no more, should they use their facilities,
10 at no more than it would have cost the local exchange
11 company to have installed themselves, period.

12 MS. NORTON: And you would put that where?

13 COMMISSIONER GUNTER: I would put that as a
14 condition of certification.

15 MS. NORTON: In the certificate?

16 COMMISSIONER GUNTER: Yes.

17 CHAIRMAN NICHOLS: And it would have to say
18 something in terms of at no more than it would have cost
19 to serve, than that tenant's cost. What I'm grappling
20 with in my mind is the tenant on the fifth floor that
21 says, okay, I want LEC service, and the STS provider
22 says, okay, it will cost you the total charge to run
23 the riser cable, everything as if there was only one
24 tenant in this whole building, and we charge the whole
25 cost to the one tenant, and then when the tenant on the

1 ninth floor decides they want LEC service also, we can
2 charge again the whole amount to get to the ninth
3 floor.

4 MR. CROUCH: Commissioner, we're assuming the
5 shared tenant provider owns that riser cable. He may
6 in fact be leasing it from the building owner himself,
7 leasing portions of it.

8 COMMISSIONER GUNTER: Mr. Crouch, I understand.
9 But in negotiation between two business entities there
10 are, if you've got a very stiff contractor, about that
11 thick, and they have all the whereins and wherefores,
12 and that can be a condition of the contract on the
13 front end. I haven't got any problem with that.
14 Whoever owns it, it can be handled on the contract on
15 the front end. If we put it in as a condition of
16 certification and they don't, we've got enough actions
17 that we --

18 CHAIRMAN NICHOLS: A prorated basis of that
19 tenant's cost of service.

20 COMMISSIONER GUNTER: See, at that point when you
21 are talking about that tenant, that is when I start
22 getting real growly. I am not real growly about the
23 competitive kind of situation, but if somebody really
24 needs to get in there, then that is the sheep getting
25 back in the fold. You and Walter can talk about

1 competition all you want to, but say somebody moves
2 into a vacant facility and, you know, a business or
3 what have you, and says, "No, I don't want any part of
4 that."

5 MR. TAYLOR: I would like to point out on Page 151
6 our existing Commission rule as to the availability of
7 service. In Paragraph 1 the last sentence, the
8 telephone company, if you will, is sort of protected in
9 that it can insist on or the availability of service is
10 subject to its ability to secure and provide without
11 unreasonable expense.

12 CHAIRMAN NICHOLS: Yeah, but what is unreasonable
13 to the phone company may be \$12,000 to the STS
14 provider. He may have spent 50,000 on that whole
15 system, and he figures 12 is a super bargain.

16 MR. TAYLOR: If it's unreasonable to the telephone
17 company, he doesn't have to provide the service.

18 CHAIRMAN NICHOLS: Well, that doesn't help the
19 tenant.

20 MR. TAYLOR: It doesn't help the tenant, that's
21 true.

22 CHAIRMAN NICHOLS: That's our concern is the
23 tenant.

24 COMMISSIONER GUNTER: To make sure the general
25 body of the ratepayers is not gouged. Now, I'm trying

1 to understand what is the reluctance on the part of
2 Staff to put a cap on that that would allow the STS
3 provider to recover.

4 MR. SHAFER: Let me ask for some clarification.

5 MR. CROUCH: Determining that cap --

6 COMMISSIONER GUNTER: Huh?

7 MR. CROUCH: Determining that cap, is it a rental
8 for six months or a rental for twelve months or buying
9 it? What is the cap?

10 COMMISSIONER GUNTER: Whatever it would cost, the
11 maximum cap would be -- now, I have said this about
12 four times, whatever the maximum cost would be, that
13 would be the upper limit, whatever it would cost the
14 local exchange company to provide that service.

15 MR. TAYLOR: Some telephone companies don't pay
16 anything. They take the position they are not going to
17 pay for it. And if you say it's appropriate that there
18 be an upper limit --

19 COMMISSIONER GUNTER: Well, now, Mr. Taylor, let
20 me just ask you a question, and I realize I'm kind of
21 mush-mouthed sometimes, but obviously there isn't
22 anybody listening. When you've got a guy on the fifth
23 floor, you've got to run at least a pair of wires up to
24 him, don't you?

25 MR. TAYLOR: Yes.

1 COMMISSIONER GUNTER: All right, and you've got to
2 get up there, and you have to get the protector, and
3 you've got to get on the downstream side, and you've
4 got to put him an instrument in up there, don't you, in
5 the old days?

6 MR. TAYLOR: Uh-huh.

7 COMMISSIONER GUNTER: But now if it's on the
8 downstream side of the protector, he has to do that and
9 put his CPE in. What it costs to get that wire, to buy
10 that wire and put a guy on it and write that service
11 order and do all of that kind of stuff, put the wire, and
12 get it out of supply and put it on the truck and, you
13 know, the staples and the wraps and all of that kind of
14 stuff, and he drives down here to, say it's this
15 building. And he gets down here at the bottom, and he
16 strings the wire up there to the fifth floor, and he
17 runs it to the protector. That is not too hard for me
18 to envision that that has an identifiable cost. Is
19 that fair?

20 MR. TAYLOR: I understand that.

21 CHAIRMAN NICHOLS: State your motion.

22 COMMISSIONER GUNTER: That's my motion, that it be
23 capped, any charge, rather than just saying any
24 reasonable charge, that it be capped at no more than --

25 MR. SHAFER: You are not suggesting that we, in

1 each certificate, put a number that represents --

2 CHAIRMAN NICHOLS: No.

3 COMMISSIONER GUNTER: No.

4 MR. SHAFER: You are just suggesting some language
5 that says to the effect that it shall not exceed what
6 it would cost --

7 CHAIRMAN NICHOLS: The prorated cost to the
8 company.

9 COMMISSIONER GUNTER: I haven't said anything
10 about any dollar figure.

11 MR. SHAFER: Okay, then if there were, say, some
12 controversy, then you would expect that they would
13 petition the Commission for an audience, and we would
14 be the final arbiters?

15 COMMISSIONER GUNTER: I don't expect to see any
16 \$12,000 for access into some building. If we hadn't
17 had that, and that's not a real situation, I wouldn't
18 be nearly as concerned. But that was solely for access
19 to that building.

20 CHAIRMAN NICHOLS: Those in favor of the motion,
21 say aye. Those opposed. The motion passes.

22 COMMISSIONER WILSON: What is the motion?

23 CHAIRMAN NICHOLS: You liked it. Okay, reverting
24 now to the remaining issues as proposed by Staff under
25 Issue 14, that was an amendment to Issue 3. Issues 1,

1 2, 3, 4 and 5. All of those in favor, say aye. Those
2 opposed. That is amended.

3 COMMISSIONER GUNTER: We ain't got to the good
4 ones, the controversial ones yet. We'll get to them
5 about 11:30.

6 CHAIRMAN NICHOLS: Okay. Issue 15, rule change.

7 MR. TAYLOR: Commissioners, we recommend no rule
8 changes are needed. The rules are stated on Page 151
9 and 152 and 153. I'll spare you reading them, but I
10 think there is enough latitude there to allow
11 flexibility in dealing with these situations.

12 COMMISSIONER GUNTER: Mr. Taylor, let me ask you a
13 question. Normally it's within three days, is that
14 right?

15 MR. TAYLOR: Yes.

16 COMMISSIONER GUNTER: So in essence the Staff's
17 recommendation says you've got 10 days to tell us if you
18 can't make it within 30, and then within 30 would be
19 bringing in those new facilities and what have you.

20 MR. TAYLOR: Right.

21 COMMISSIONER GUNTER: I think that is reasonable.

22 COMMISSIONER WILSON: Are we contemplating that
23 they will report held orders for STS separately from
24 others?

25 MR. TAYLOR: Yes.

1 COMMISSIONER WILSON: Okay, so they wouldn't be
2 lumped in?

3 MR. TAYLOR: I expect them to be identifiable,
4 yes.

5 COMMISSIONER GUNTER: And therefore there wouldn't
6 be any penalty, any service standards penalty to the
7 local exchange company to conform to this.

8 MR. TAYLOR: That's right.

9 COMMISSIONER GUNTER: You couldn't get in there or
10 whatever. There wasn't enough trunking available or
11 something. That is a problem with where the STS
12 provider would order 500 trunks, and you wouldn't pull
13 in a thousand trunks or 600 to service that facility
14 because that would just be wasting some money. And I
15 tried running through this in my head last night on
16 this particular issue. The biggest problem I could
17 foresee is perhaps lack of trunking on the front end in
18 order to provide that; that is the kind of thing you
19 are really talking about, guarding against.

20 MR. TAYLOR: The local exchange company's
21 facilities should the STS provider leave, go out of
22 business or --

23 CHAIRMAN NICHOLS: All of those in favor of Staff?

24 COMMISSIONER GUNTER: Move it.

25 CHAIRMAN NICHOLS: Those opposed. Approved.

1 Issue 7.

2 MR. O'PRY: Commissioners, Issue 7 has been
3 somewhat discussed previously in the certification
4 Issue 6 about the tariff rates for local service would
5 be filed. The Staff, the Staff believes that the
6 Commission should retain the right as to the rate level
7 in case at some future day, because of circumstances
8 that the Commission should regulate the rate. So we
9 would make that recommendation. And also this issue
10 includes the continued filing of the resale and
11 interexchange carrier rates.

12 CHAIRMAN NICHOLS: We have discussed this
13 extensively. All of those in favor of Issue 7, Staff
14 recommendation.

15 COMMISSIONER WILSON: Some of our prior votes
16 were --

17 CHAIRMAN NICHOLS: Slightly --

18 COMMISSIONER GUNTER: Embodied.

19 COMMISSIONER WILSON: Slightly inconsistent -- not
20 inconsistent with.

21 CHAIRMAN NICHOLS: As amended by any prior votes.

22 COMMISSIONER WILSON: Right.

23 COMMISSIONER GUNTER: And again here is the, under
24 the certification where they must keep those financial
25 records.

1 CHAIRMAN NICHOLS: Okay. Issue 7 is approved.
2 But see the prior votes for certain nuances.

3 Issue 2.

4 MR. MCAULEY: Commissioners, this is an issue
5 which we felt the statute did speak for itself, and
6 that's all that needs to be said on it.

7 COMMISSIONER HERNDON: Let me ask a question.

8 COMMISSIONER GUNTER: I second.

9 COMMISSIONER MARKS: We second that the statute is
10 speaking for itself.

11 COMMISSIONER HERNDON: That's fine, I agree. I
12 just want to ask a question before we vote of
13 Mr. McAuley. Is the Capitol a single building?

14 MR. MCAULEY: I think the statute speaks for
15 itself.

16 COMMISSIONER HERNDON: It's a hypothetical that is
17 going to come to the Commission one of these days, and
18 somebody is going to say the House and the Senate
19 chambers is the Capitol and is a single building.

20 MR. MCAULEY: Well, the question really begs the
21 question, does the statute really speak for itself. To
22 the extent that it does, I would say it speaks for
23 itself and it is.

24 COMMISSIONER WILSON: It is a single building?

25 COMMISSIONER HERNDON: The Capitol is a single

1 building.

2 MR. MCAULEY: I would refer you to the definition
3 that we attempted to glean from the, from the different
4 briefs, and we suggested a single building would be
5 under one roof, regardless of design, but not to
6 include two separate buildings which are superficially
7 connected in any way by underground concourse,
8 breezeway, et cetera.

9 COMMISSIONER HERNDON: And that is precisely what
10 I am getting at.

11 COMMISSIONER GUNTER: The Capitol is not a single
12 building.

13 MR. MCAULEY: Under that definition I guess it
14 isn't, since they are superficially connected.

15 COMMISSIONER WILSON: It depends upon your
16 definition of a concourse.

17 UNIDENTIFIED PERSON: A walkway.

18 COMMISSIONER GUNTER: Because that is the only
19 connection between the House and Senate with the --

20 COMMISSIONER MARKS: There is very little
21 connection between the House and --

22 MR. MCAULEY: Between the House and Senate, there
23 is no --

24 COMMISSIONER WILSON: Even less than there used to
25 be.

1 COMMISSIONER GUNTER: Well, you could say the
2 foundation structure of the two.

3 COMMISSIONER MARKS: Move it.

4 MR. CROUCH: We can come up with 300 examples that
5 will --

6 COMMISSIONER MARKS: Staff's recommendation has
7 been moved and I hope seconded.

8 CHAIRMAN NICHOLS: Move it. All of those in
9 favor. Staff.

10 MR. SHAFER: Commissioners, perhaps we need to go
11 back to the trunk limit and the tariff provisions
12 before we get into the sharing arrangements that are
13 separate and apart from STS.

14 COMMISSIONER GUNTER: That was just that one TP'ed
15 item?

16 MR. VANDIVER: You TP'ed 250, I believe.

17 CHAIRMAN NICHOLS: 250 lines.

18 MS. PATTON: You had asked me earlier to find out
19 how many trunks Orlando had.

20 COMMISSIONER GUNTER: Yeah.

21 MS. PATTON: They currently have 120, but they are
22 expanding and they expect to double that amount in the
23 next two years to at least 240.

24 COMMISSIONER HERNDON: So 250 is on the lower
25 limit, then, pretty close to --

1 CHAIRMAN NICHOLS: Those tariff specifications are
2 listed on Page 109, Commissioners. They start at the
3 bottom of 109, and I think the only one that was in
4 dispute was the number of trunks, and then we have
5 slightly modified 3 in terms of the access.

6 COMMISSIONER WILSON: Commissioners, I think we
7 need to remember here now we are talking about single
8 building, commercial, STS trunk limitation of 200
9 trunks.

10 COMMISSIONER GUNTER: I'll second 200 trunks.

11 CHAIRMAN NICHOLS: All of those in favor, say aye.

12 (Nichols, Gunter and Wilson voted affirmatively)

13 CHAIRMAN NICHOLS: Those opposed.

14 (Herndon and Marks voted negatively)

15 COMMISSIONER WILSON: Now we have to decide where
16 we --

17 MR. SHAFER: Well, let me, before you get into
18 that too much, clarify what Julia said about the
19 airports, recognizing that they exist as an exception
20 to the single building situation so --

21 COMMISSIONER HERNDON: We haven't voted on that
22 yet.

23 MR. SHAFER: Right. All I'm saying is that 240
24 number that she forecasted should be recognized as more
25 than one business.

1 COMMISSIONER GUNTER: Don't make any assumptions
2 at this juncture. That is probably the safest thing to
3 do.

4 COMMISSIONER WILSON: The thing that Bob Crouch
5 had mentioned, are we talking about a 200-trunk
6 limitation on the PBX?

7 COMMISSIONER MARKS: What did you mean?

8 COMMISSIONER WILSON: Or on the service location?

9 MR. CROUCH: Yes, if one PBX is serving three
10 buildings. Let's say the Koger Center up here, and you
11 go in with one PBX, and you partition so many trunks
12 over to Building A, so many to Building B, we are
13 recommending that each building be certificated,
14 although the one provider, he has a certificate for
15 Building A, a certificate for Building B, and a
16 certificate for Building C, 200-trunk limit for
17 Building A, for Building B and Building C.

18 COMMISSIONER MARKS: You are saying a building
19 certificate.

20 MR. CROUCH: Per certificate, yes.

21 CHAIRMAN NICHOLS: And your motion was 200 per
22 building, per location.

23 COMMISSIONER WILSON: To be honest with you, I'm
24 trying to think right now what that means, what
25 implications of doing it, where you're doing a 200-

1 trunk limitation on a building as opposed to a switch.

2 CHAIRMAN NICHOLS: You've got the World Trade
3 Center and Two Towers, and you put one PBX in, and it's
4 limited to 200 trunks per building.

5 COMMISSIONER GUNTER: Which would probably give
6 you a total of 10,000 telephones.

7 MR. CROUCH: I would recommend per certificate,
8 limitation of trunks per certificate, whether it be one
9 PBX per certificate, or if we have one PBX serving, and
10 here again, partitioned, he would have his trunk
11 partitioned to each building.

12 COMMISSIONER MARKS: Per certificate.

13 MR. CROUCH: Per certificate.

14 CHAIRMAN NICHOLS: That would be per building, per
15 limitation.

16 MS. NORTON: Commissioners, if I may speak, I
17 think that --

18 COMMISSIONER MARKS: Let me make sure of one thing
19 in the record is clear that the 200-trunk limit was
20 passed three-to-two.

21 CHAIRMAN NICHOLS: Yes.

22 MS. NORTON: To the extent that Commissioner
23 Wilson's concern was that a 500-trunk limit was too
24 liberal, the wording in Bell's illustrative tariff was
25 a 500-trunk limit per resale configuration, which to me

1 means per PBX, and that I think is more conservative
2 than saying 200 trunks per building, which would be per
3 certificate.

4 COMMISSIONER WILSON: I have a picture in mind of
5 somebody essentially buying a telephone with ordinarily
6 a telephone company switch, not a PBX, and having eight
7 or ten or fifteen buildings out here, partitioning that
8 switch, and serving each one of those buildings, and
9 literally turning into a telephone company and really
10 avoiding a single building concern and the sizing
11 limitation and everything if we go to 200 trunks per
12 certificate in that fashion.

13 CHAIRMAN NICHOLS: Per PBX you would have to go in
14 that fashion.

15 COMMISSIONER GUNTER: Per PBX.

16 MS. NORTON: Do you have a problem with the
17 language in Bell's illustrative tariff which says
18 resale configurations may not exceed a combined total
19 of, and they use 500 PBX trunks, inward/outward
20 combination and/or two-way.

21 COMMISSIONER GUNTER: We're going to have to come
22 back -- could I offer a substitute on that?

23 CHAIRMAN NICHOLS: Yes.

24 COMMISSIONER GUNTER: And suggest 250 per PBX. If
25 we start bumping up on that, somebody will come in, we

1 will have a little better feel. Today we are still
2 going through the deep fog trying to feel our way onto
3 the runway.

4 COMMISSIONER WILSON: I would accept that friendly
5 amendment, but I like I think the language that you
6 recited from Bell.

7 COMMISSIONER HERNDON: I was going to see if he
8 would accept any more friendliness, but since the mover
9 of the motion is rapidly leaving the room, I guess --
10 well, would you envision, Madam Chairman, that in the
11 instance of an STS provider who has a client who wishes
12 more than 250 trunks legitimately needs more than 250
13 that they would come in for a waiver? I mean, is that
14 the procedure?

15 COMMISSIONER WILSON: I would think if an STS
16 provider had a client that wanted over 250 trunks, they
17 would have to buy their own PBX anyway.

18 MR. CROUCH: He may be the anchor tenant, though.
19 He would be the anchor tenant of that PBX, and then
20 there would be a lot of little satellite people in that
21 same building. Barnett Bank, for example, may be the
22 major anchor tenant of that PBX, could theoretically
23 need 250 trunks. But you would have a number of other
24 brokerage firms and what have you occupying that same
25 building who may want five trunks, three trunks, ten

1 trunks.

2 COMMISSIONER MARKS: Southeast Bank Building in
3 Miami is a classic example, the tallest building down
4 there right now.

5 MR. CROUCH: But the anchor tenant can cut his
6 cost by bringing in other people to share his PBX.

7 CHAIRMAN NICHOLS: There wasn't any doubt in my
8 mind that any of these folks were going to show up in
9 front of us if they have a problem with it.

10 COMMISSIONER HERNDON: Is it a procedural waiver?

11 COMMISSIONER WILSON: My concern is, number one,
12 it not get out of hand too quickly before we --

13 CHAIRMAN NICHOLS: Know what we are doing.

14 COMMISSIONER WILSON: Have the opportunity to get
15 a little more data and know what is going on.

16 COMMISSIONER MARKS: I'll second Commissioner
17 Gunter's motion, or do you want to second his motion?

18 COMMISSIONER WILSON: No, you can second it.

19 COMMISSIONER MARKS: I'll second it.

20 COMMISSIONER WILSON: I made the initial motion.

21 CHAIRMAN NICHOLS: All of those in favor, say aye.

22 MR. McAULEY: Commissioners, a point of
23 clarification, are you amending your earlier vote to
24 use 200 trunks and you're now to 250?

25 CHAIRMAN NICHOLS: Yes, now 250 per PBX.

GOMIA AND ASSOCIATES

1 COMMISSIONER WILSON: Using the language --

2 CHAIRMAN NICHOLS: Do you want to use the Southern
3 Bell language?

4 COMMISSIONER WILSON: I think the Southern Bell
5 language is essentially per PBX.

6 CHAIRMAN NICHOLS: I do, too.

7 MS. NORTON: I believe so. It's per resale
8 configuration, which would cover --

9 COMMISSIONER HERNDON: That's a four-one, Madam
10 Chairman.

11 CHAIRMAN NICHOLS: That's 250 per the Southern
12 Bell language, all right.

13 COMMISSIONER MARKS: No, no, no, let's make it per
14 PBX, because I'm not so sure if I understand what we
15 mean per configuration.

16 MR. SHAFER: That may be like the definition of a
17 single building.

18 COMMISSIONER MARKS: Yeah.

19 CHAIRMAN NICHOLS: All right, 250 per PBX, is that
20 acceptable, Commissioner? All right, 250 per PBX. I
21 assume that is still a four-one vote.

22 COMMISSIONER HERNDON: Yes.

23 CHAIRMAN NICHOLS: Specification 3 has been
24 modified slightly by previous vote.

25 COMMISSIONER MARKS: Which page?

1 CHAIRMAN NICHOLS: We are on Page 110 of the
2 tariff specifications. Any problem with the other
3 specifications, 1 through 6?

4 COMMISSIONER HERNDON: The only concern I have is
5 with the way the issue was phrased. Does the list in
6 Appendix A, Table 19 correctly identify all tariff
7 provisions? I mean, does it matter whether it
8 identifies all tariff provisions or not?

9 MS. PATTON: I'm sorry, I lost you.

10 MR. SHAFER: I didn't realize we were on 19.

11 COMMISSIONER HERNDON: I thought that's what we
12 were on.

13 CHAIRMAN NICHOLS: No, I thought we -- no, the
14 final vote on Issue 11, Commissioners, as to the tariff
15 specifications which we TP'ed earlier. Items 1 through
16 6, tariff specifications. All of those in favor, say
17 aye. All of those opposed.

18 All right, now we are at --

19 COMMISSIONER WILSON: Let me ask a question. The
20 charge for the flat rate and then the subsequent usage
21 charges do not contemplate any allowance for a number
22 of messages for that flat price?

23 MS. NORTON: I'm sorry, I missed the beginning of
24 your question.

25 COMMISSIONER WILSON: Well, we voted to go with

1 60% of the flat PBX trunk rate.

2 MS. NORTON: Plus the message rate.

3 COMMISSIONER WILSON: A message rate of 12 cents
4 per message. Does the flat rate and all the other
5 charges they made contemplate any allowed usage --

6 MS. NORTON: Under the original minute of use
7 charge there would have been no allowance. Typically
8 under message rate, I know Bell has a 75-message
9 allowance when they implement message rates, and we
10 could do that.

11 CHAIRMAN NICHOLS: We are going to -- well --

12 MS. NORTON: No allowance on PATS, I'm told.

13 COMMISSIONER WILSON: No allowance on PATS?

14 CHAIRMAN NICHOLS: That is correct, and
15 Commissioner Gunter's motion was to --

16 COMMISSIONER WILSON: I just wanted to clarify.

17 CHAIRMAN NICHOLS: -- mirror the PATS.

18 MS. NORTON: Mirror the PATS.

19 CHAIRMAN NICHOLS: All right, Issue 19. Does
20 anybody know what page it's on?

21 MR. SHAFER: Commissioners, I was wondering if we
22 could take five real quick before we jumped into the
23 sharing arrangements.

24 CHAIRMAN NICHOLS: All right, let's take five
25 minutes.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE:

Shared local exchange telephone service.

DOCKET NO. 860455-TL

VOLUME II

BEFORE: Chairman Katie Nichols
Commissioner Gerald L. Gunter
Commissioner John R. Marks, III
Commissioner Michael Wilson
Commissioner John Herndon

PROCEEDINGS: Special Agenda

DATE: Thursday, January 8, 1987

TIME: Commenced at 9:30 A.M.
Concluded at 4:30 P.M.

PLACE: 106 Fletcher Building
101 East Gaines Street
Tallahassee, Florida

REPORTED BY: PATRICIA L. GOMIA, RPR, CSR
LORI DEZELL
Notaries Public in and for the
State of Florida at Large

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PARTICIPATING:

- JAMES MCAULEY, ESQUIRE, FPSC Legal Department
- ROB VANDIVER, ESQUIRE, FPSC Legal Department
- GEOFFREY COPPIN, FPSC Communications Department
- ROBERT CROUCH, FPSC Communications Department
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- ROBIN NORTON, FPSC Communications Department
- JULIAN O'PRY, FPSC Communications Department
- JULIA PATTON, FPSC Communications Department
- GREG SHAFER, FPSC Communications Department
- ALAN TAYLOR, FPSC Communications Department
- RICHARD TUDOR, FPSC Communications Department
- STEVE TRIBBLE, Commission Clerk

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P R O C E E D I N G S

1
2 CHAIRMAN NICHOLS: Issue 19, does the list in
3 Appendix A (Table 19) correctly identify all tariff
4 provisions and company practices which may allow joint
5 or shared use of a subscriber's local exchange service?

6 COMMISSIONER HERNDON: I move that we not vote on
7 this issue.

8 COMMISSIONER GUNTER: That's fine.

9 CHAIRMAN NICHOLS: No vote. Issue 20, which does
10 require -- no, does not require vote.

11 MR. O'PRY: Commissioners, it gets a little
12 strange at this point. Issues 20 through 30 and 32
13 pertain to each of the 19 subissues A through Q. To
14 the extent possible, Staff has grouped similar
15 arrangements together. Items -- the only items that
16 should be voted on are Item 25, whether the service is
17 duplicative or competitive; Item 28, whether it's in
18 the public interest; Item 30, what clarification is
19 needed; and Item 32 or Issue 32, the implementation
20 plan. Those four would require a vote.

21 COMMISSIONER GUNTER: I wish you had told me that
22 and put them off in a separate book and I wouldn't have
23 read all this other stuff.

24 CHAIRMAN NICHOLS: See, you had to keep looking
25 for this one sentence that says, "Information only,

1 does not require a vote." Issue 20, Commissioners, on
2 page 185 of the Staff recommendation as pertains to
3 airport sharing is for information only, does not
4 require a vote. Does any Commissioner wish any further
5 information on Issue 20?

6 COMMISSIONER MARKS: Madam Chairman, as far as
7 those that don't require a vote, I don't even know if
8 we need go over them.

9 CHAIRMAN NICHOLS: Issue 21 does not require a
10 vote either as to airport sharing. Do you want --

11 COMMISSIONER WILSON: When the final order comes
12 out in this case, will these be findings then?

13 CHAIRMAN NICHOLS: Not if we have not
14 affirmatively --

15 MR. VANDIVER: Not if you haven't voted on them,
16 Commissioner. It won't appear in the order. It's not
17 necessary to the order or to your vote. These issues
18 grew up over a long, long period of workshops among
19 Staff and the interested parties. And if Staff had its
20 druthers, many of these issues would not be here.
21 That's neither here nor there.

22 COMMISSIONER WILSON: I keep reading this and
23 wondering how in the world these things ever survived.
24 But you forget.

25 CHAIRMAN NICHOLS: Issue 22(a)?

1 COMMISSIONER MARKS: Why don't we ask the
2 prehearing officer?

3 CHAIRMAN NICHOLS: Why don't we require the
4 prehearing officer to vote and nobody else has to vote?
5 22(b)? I'm going to the issues, so if anyone wants to
6 stop me, they better speak up.

7 Issue 24 as pertains to airport sharing. All
8 right. Issue 25, as pertains to airport sharing,
9 requires a vote.

10 COMMISSIONER MARKS: So everything up to that
11 point, no vote.

12 CHAIRMAN NICHOLS: No vote. Issue 25?

13 MS. PATTON: Issue 25 deals with airports and
14 whether or not the current offering is duplicative or
15 competitive with the local exchange service provided by
16 the certificated LECs.

17 The Staff recommendation is the airport sharing
18 allows for services that are duplicative or competitive
19 with local exchange service provided by the LECs, and
20 the Staff recommends that they are STS operations
21 pursuant to the statute.

22 COMMISSIONER WILSON: Which services?

23 MS. PATTON: We are looking at the service
24 provided at Orlando and West Palm Beach, known as CLCS,
25 Common Location Communication Service, in which the

1 various airlines share a PBX much in the same way that
2 tenants in an STS building share a PBX.

3 COMMISSIONER HERNDON: Can I ask you a
4 hypothetical question? Suppose the Commission were to
5 vote that airport sharing does allow for services that
6 are duplicative or competitive but that they are not
7 STS operations pursuant to 364.339? What would be the
8 result of that?

9 MS. PATTON: I would like the attorney to address
10 that.

11 COMMISSIONER HERNDON: Whoever wishes to comment
12 here.

13 MR. McAULEY: If you do not have authority to
14 provide this service under the particular statute
15 364.339, it was the legal Staff's position that you
16 would fall back into the general statutes provided in
17 364 Chapter generally.

18 And if there was competition and duplication,
19 assuming that there is, if you make that finding, then
20 you have to go back to the other statutes and look at
21 those and say, "What happens when there is competition
22 or duplication with local exchange service?"

23 COMMISSIONER GUNTER: Let me ask you a question on
24 that. Isn't it within the authority of the Commission
25 to find that due to the uniqueness of operations at an

1 airport that it is in the public interest to maintain
2 their telecommunication system as it exists today? And
3 let me give you an example, a perfect example of what
4 I'm talking about. And perhaps my background and what
5 have you lends me to safety and security and these
6 kinds of things.

7 You've just had an item in the news within the
8 last week of a hostage taking in a portion of the
9 airport -- in an airport not in the State of Florida --
10 in which due to the nature of the telecommunication
11 system, you can isolate very quickly and evacuate very
12 quickly a portion of an airport and continue airport
13 operations except for that portion.

14 That could occur -- that hostage taking could have
15 occurred or could occur in a hotel, in a restaurant, in
16 any concourse or what have you. And it appears to me
17 that it's in the best interest of the traveling public
18 to have those services provided.

19 For instance, when I was reading the record, the
20 182 requirement, three minute requirement, response
21 requirement -- and if -- I started running through the
22 line, well, how about loud speakers? Well, hell, if
23 you get on loud speakers and say, "Hey, somebody's got
24 a hostage," well, where in the hell do you run? You
25 know, if I'm in the airport with all the stories about

1 terrorists and what have you, I'd probably be one of
2 those folks running in place because I wouldn't know
3 where to go.

4 It would appear that the majority of the
5 operations -- we could probably find some that wouldn't
6 be necessary for the traveling public. I go through a
7 remainder of the recommendation and I look at the
8 reservation service where Staff has recommended and
9 said that it's in the traveling public's interest to
10 maintain that service, to exempt it from the sharing
11 area.

12 I look at the airport as kind of being unique
13 outside of the safety angle. Safety angle and security
14 to me in today's environment that we find ourselves in
15 is paramount. But you start looking at the
16 conveniences that are there. I don't hardly go through
17 the airport that I don't get one of those old heartburn
18 hotdogs. Boy, I love them. That's convenient. Where
19 am I going to go if I can't get a hotdog in there? I
20 can't get out and walk down the street, not in that
21 airport.

22 Restaurants are provided for layovers. But the
23 majority, the vast majority of services provided there
24 are for the convenience of the traveling public.

25 And therein is where I have sort of a problem.

1 Can we find a public interest requirement there in the
2 statute which would allow us to maintain it the way it
3 is?

4 MR. VANDIVER: The duplicative and competitive
5 prohibition is apparently absolute. You would have to
6 amend Bell's certificate for you to find that it is
7 duplicative or competitive with local exchange service.
8 The only way to get around that as I see it is to make
9 a finding that it is not duplicative or competitive.

10 COMMISSIONER WILSON: Let me ask you about that.
11 I've been through the Atlanta airport -- I don't recall
12 this being true -- it's been awhile since I've been
13 through that Orlando airport -- but you essentially
14 have transient airlines at a single gate. You know,
15 the first half of the day it might be someone like
16 Southern Airways and the next three hours it may be
17 someone else, and the remaining two hours it's a
18 totally different airline.

19 And I'm not sure how the local -- at least in that
20 instance -- how the local exchange company could offer
21 the same service that's being provided in the airport
22 through the sharing arrangement, to put in and take out
23 lines unless you had -- I suppose you could have
24 multiple telephones or systems sitting there.

25 MR. VANDIVER: I believe -- and the technical

1 folks can help me out -- there's things like Centrex
2 and satellite central offices out at the airport such
3 as are in operation in Miami and Tampa that can provide
4 you with many of the same functions that the Orlando
5 PBX provides to them.

6 COMMISSIONER WILSON: Absent the provision of
7 service to what are essentially commercial enterprises
8 at the airport --

9 MR. VANDIVER: Commissioners, just the statutory
10 language, 364.335(4), it says, "The Commission shall
11 not grant a certificate for any proposed telephone
12 company or grant a certificate which would be in
13 competition with or duplicate the local exchange
14 services provided by any other local exchange company
15 unless it first determines that the existing facilities
16 are inadequate to meet the reasonable needs of the
17 public and it first amends the certificate of such
18 other telephone company to remove the basis for such
19 competition or duplication."

20 CHAIRMAN NICHOLS: So do we need to find that the
21 airport sharing is STS but it's such a unique entity in
22 and of itself that if we chose, we could exempt it from
23 certification or whatever we chose to do with it?

24 MR. McAULEY: Commissioners, Madam Chairman, when
25 you address that plus what Mr. Vandiver just told us,

1 you could do that or you could determine, based upon
2 what Commissioner Gunter -- this is my position anyway
3 -- what Commissioner Gunter just said, that this does
4 not duplicate or compete with local exchange service.
5 If you get to that position, then you don't have a
6 problem.

7 CHAIRMAN NICHOLS: Right.

8 MR. MCAULEY: But if you find -- the original
9 question of Commissioner Herndon was if you find that
10 it does duplicate and compete, but then postulate it's
11 not STS, therein lies the problem. If you say it
12 doesn't compete, then that's fine. And there is
13 grounds to be able to say that as well.

14 CHAIRMAN NICHOLS: Yes. It's sufficiently unique
15 that you could use some of those unique characteristics
16 to back up a finding that it's not duplicate. It's
17 certainly not duplicate to have common everyday.
18 ordinary residential or business service as we know it.

19 MR. MCAULEY: Mr. Pruitt, I spoke with him earlier
20 on this because I wanted some good advise -- a lawyer's
21 lawyer, if you will -- and he cited me to a case which
22 would stand for the proposition that there be would be
23 no public utility there so it wouldn't duplicate or
24 compete with local exchange service. I may be
25 misinterpreting what he said but that's what I

1 understood.

2 COMMISSIONER GUNTER: What if we took as on page
3 203 of the recommendation and we adopted the position
4 as shown by Centel and Southern Bell, that the majority
5 of the cases under review, the end user is the transient
6 and under transient conditions, the end user finds it
7 totally impractical and economically prohibited for
8 direct individual of the service. As a result, you
9 made an exception, not duplicate or competitive to the
10 individual service, options the end user would
11 realistically have available to them.

12 CHAIRMAN NICHOLS: Is that a motion?

13 MR. VANDIVER: Commissioner, that goes on to say
14 that --

15 COMMISSIONER GUNTER: I understand. I just -- do
16 you disagree with that portion?

17 MR. VANDIVER: No, sir. That's the essence of
18 Staff's position on most of these sharing rates, except
19 that --

20 COMMISSIONER HERNDON: Can you restate it please?

21 MR. SHAFER: I think there needs to be a
22 distinction made between the flier, who is the
23 transient public, and the shoe shine man or the hotdog
24 stand or the bookstore, which are really the end user,
25 if you will. They're not transient. They're there to

1 serve the transient public I would agree. But we need
2 to be careful not to characterize them as transient.

3 COMMISSIONER GUNTER: For what other purpose would
4 they be there?

5 MR. SHAFER: I'm agreeing they're there to serve
6 the transient public.

7 COMMISSIONER GUNTER: Would you apply the same
8 logic there that you would to the reservation?

9 MR. SHAFER: All I'm saying is I perceive a
10 difference between there being a reservation phone for
11 me to use when I'm traveling as opposed to a phone
12 that's in the bookstore that I don't use but the
13 proprietor of the bookstore uses.

14 COMMISSIONER GUNTER: You've never used one of the
15 telephones when you were traveling other than the pay
16 phone?

17 MR. SHAFER: I personally haven't.

18 COMMISSIONER GUNTER: Well, maybe I've got more
19 gall than you do. I don't have any objection at all to
20 using the telephone to call reservations or what have
21 you.

22 MR. SHAFER: Well, I've used a reservation
23 service. But again I'm making the distinction between
24 the shoe shine man's phone and the reservation phone.

25 COMMISSIONER HERNDON: Well, we had a lengthy

1 discussion this morning, as a matter of fact, about the
2 Greater Orlando Aviation Authority and the airport and
3 the distinctions that you would draw between using its
4 phones for the air side terminals and so on and so
5 forth, and then stopping at the commercial interface
6 where there were commercial facilities. Is that what
7 you're suggesting here?

8 MR. SHAFER: If I'm understanding what you're
9 saying, yes. I don't know that it's a -- necessarily a
10 clear or important distinction, but I think from the
11 viewpoint of the Staff when we were writing the
12 recommendation, there was a distinction between what's
13 there to serve me if I'm traveling versus what's there
14 for the purpose of the bookstore to call their
15 suppliers and to do their business and so forth.

16 And that phone is not there for me to walk in off
17 the terminal and say, "Hey, can I use your phone?"
18 That's not there to serve the traveling public but it's
19 there to serve someone who is serving the traveling
20 public.

21 COMMISSIONER HERNDON: Assuming for a moment that
22 that distinction is a valid one -- I think it is --
23 what distinction does it make in this --

24 MR. SHAFER: Well, it means in my mind that you're
25 not coming in for the airport as a whole under the

1 transient exception for extending service to commercial
2 businesses.

3 CHAIRMAN NICHOLS: Flip that though. Do you ever
4 go to the airport to eat dinner?

5 COMMISSIONER MARKS: There are a number of
6 airports where you do that.

7 MR. SHAFER: I think there's another point, too,
8 that's a reasonable point. When you bring up other
9 airports, there is the point that other airports don't
10 operate this way and yet they operate successfully.

11 CHAIRMAN NICHOLS: See, I don't have any problem
12 with the tenants of the airport that are on the
13 concourses and all that stuff. I have a problem when
14 you get to the hotel that's connected to the airport.

15 COMMISSIONER WILSON: Shopping mall.

16 MR. SHAFER: We're drawing lines again and that's
17 always a lot of fun.

18 COMMISSIONER WILSON: I'm not sure it's a
19 sufficient distinction, but some of the use of vendors,
20 I suppose, along the concourse is really incidental to
21 the service that's offered to the convenience of the
22 traveling public.

23 I think you cross that line when you end up with a
24 hotel that's attached to the airport or a shopping mall
25 that's attached to the airport or if you've stuck an

1 industrial park out there in a field next to the
2 airport. That's clearly crossing the line than the
3 otherwise --

4 MR. SHAFER: I wouldn't disagree that there are
5 some examples that you could say are clearly crossing
6 the line. I would guess that there are probably some
7 that aren't quite so clear.

8 MR. VANDIVER: And our problem is to draw that
9 bright line.

10 COMMISSIONER WILSON: Well, if you draw the line
11 from the airport and the airport administration,
12 security officers, the airlines themselves and the
13 gates and the ticket -- all of those things that
14 directly serve the traveling public for the purpose
15 that the airport exists, would you consider that
16 exemptable?

17 MR. SHAFER: I would think so. But then I think I
18 need to defer to the counsel.

19 COMMISSIONER WILSON: When you add in the shoe
20 shine shop and the duty-free liquor store and the
21 bookstore --

22 MR. SHAFER: That begins to cause me some
23 problems under their so-called transient --

24 COMMISSIONER MARKS: They're not essential to the
25 traveling public.

1 MR. SHAFER: I'm more inclined to agree that an
2 airport is a separate and unique animal in its totality
3 and make an exception for it that way than I am to try
4 to cram it into a transient exception.

5 COMMISSIONER MARKS: I've heard some suggestions
6 on the bench here that the bar at any airport is
7 essential if you're flying Eastern Airlines.

8 COMMISSIONER GUNTER: Well, you know they said
9 they didn't want to hotel in there. But I've been
10 ticketed with the world's largest non-scheduled
11 airline. And trying to get the last flight out of
12 Atlanta, the hotel is sometimes a great accommodation
13 to spend the night.

14 COMMISSIONER WILSON: Commissioners, I think one
15 thing that we also ought to keep in mind here is that
16 we're examining this exemption, but we're also looking
17 at recommendations to be made to the Legislature, the
18 legislation in order to deal with this. If we don't
19 have adequate statutory language to deal with this
20 problem, it may be that we want to seek such authority.

21 COMMISSIONER GUNTER: I agree.

22 COMMISSIONER MARKS: All right.

23 COMMISSIONER WILSON: I agree that there's a -- if
24 you look at the airport, serving arrangements for the
25 airlines that serve the traveling public and the

1 functions that are essentially connected with the
2 purpose that the airport exists, I don't have any
3 problem with that. I think that's a unique situation.
4 It's when you do start traveling across that line to
5 commercial establishments that are very incidental --

6 COMMISSIONER MARKS: The hotdog stand. If I
7 understand, that's what the Staff is suggesting in
8 their recommendation, is to draw that distinction at
9 that point in time.

10 MR. VANDIVER: Yes, it is. And we're saying that
11 as long as GOAA is just dealing with the traveling
12 public, the airlines, the baggage handlers, et cetera,
13 et cetera, that's fine, and they don't have any
14 problems. But once they get into the bookstore, the
15 specialty store, the Walt Disney store, they have
16 crossed the line and they then become an STS provider.

17 COMMISSIONER GUNTER: Let me ask a question -- and
18 I've asked this one before -- but then, even the
19 governmental activities, everybody's activities, fall
20 under that; is that correct?

21 MR. VANDIVER: No.

22 COMMISSIONER GUNTER: Fall in as being STS
23 customers?

24 MR. MCAULEY: That was the problem that we faced
25 this morning when we talked about --

1 COMMISSIONER GUNTER: I understand. I just asked
2 a simple question.

3 MR. MCAULEY: Yes, sir.

4 COMMISSIONER WILSON: So you could have a PBX and
5 you could share with airlines and all those attendant
6 functions?

7 COMMISSIONER GUNTER: Oh, no, it's all or nothing.

8 COMMISSIONER WILSON: That's what I'm asking. Is
9 it all or nothing, and then you would treat those
10 commercial customers in their relation with the airport
11 authority as an STS arrangement? Are you saying that
12 once it's tainted by these commercial services, the
13 whole thing is STS?

14 MR. MCAULEY: Page 208 -- yes, the answer is yes.
15 On page 208 of the recommendation we addressed that.

16 COMMISSIONER HERNDON: How can it be an STS
17 operation when it's a governmental entity?

18 MR. MCAULEY: Well, that brings us back to --

19 CHAIRMAN NICHOLS: Providing service to various
20 commercial tenants within the airport.

21 COMMISSIONER HERNDON: Those activities that are
22 commercial I would agree, that it is an STS provider.
23 For those activities that are governmental, it seems to
24 me it's exempt from the application of the statute.

25 MR. MCAULEY: That's what we were suggesting

1 earlier today. But as Commissioner Gunter pointed out,
2 there may be some circumstances where you would be
3 certificating prisons, as the example came up this
4 morning.

5 I don't know whether that's so or not because of
6 the facts of the prisons I don't know about. But that
7 would apply using that logic. You would end up
8 certificating people, government, when they served
9 commercial tenants.

10 COMMISSIONER GUNTER: Assume this building --
11 assume that we had a PBX in this building -- and we
12 have a private contract to provide the food services.
13 And if they have a telephone down there, this would be
14 an STS building.

15 MR. MCAULEY: If they did not receive their
16 telephone service separately but run it off of our PBX.

17 COMMISSIONER GUNTER: I understand. If they ran
18 it off of the PBX, then that would say that we're STS
19 providers.

20 MR. MCAULEY: There is an alternative position
21 that we can take, and that would be that under the
22 definition of a telephone company, no government is a
23 telephone company and that no duplication or
24 competition exists, and therefore, all government
25 services in every case and every instance would not be

1 under our jurisdiction.

2 COMMISSIONER WILSON: Then you might get into a
3 situation where an airport authority or someone else
4 has the airport and these small commercial shops in
5 there and they have a hotel out there and they have an
6 industrial park and they build a shopping mall and they
7 build a research center and all the sudden they're
8 bigger than half the telephone companies we regulate in
9 the state.

10 Simply because they're a governmental entity,
11 they're no longer pursuing governmental functions that
12 were the basis of the exemption in the first place and
13 all the sudden they're in business.

14 MR. MCAULEY: As a matter of fact, I was thinking
15 of the confrontation that came up during the hearing
16 between basically Centel and the Board of Regents, as
17 the concern with one day in the future -- I shouldn't
18 single out Centel since there were other LECs that had
19 the same concern in their service areas -- but at one
20 point in time, the Board of Regents would be providing
21 telephone service to the research park that's off of
22 the campus to the married student housing that's off of
23 the campus to --

24 CHAIRMAN NICHOLS: Hospital.

25 MR. MCAULEY: -- hospital in Tampa. And a lot of

1 those things came in mind. And in thinking this
2 through, I said, "Well, what about JOAA?" Obviously we
3 wanted to keep all the governments without our
4 jurisdiction, outside of our jurisdiction. But to the
5 extent that the airport is kind of a unique situation
6 because the way they're providing service to commercial
7 tenants, that's how we drew the distinction that we
8 ended up with this morning.

9 COMMISSIONER WILSON: Is there any way to -- it
10 would involve clearly drawing lines at some point --
11 but any way to work with the definition that would say
12 the airport, attendant functions and incidental usage?

13 MR. MCAULEY: I didn't hear you, Commissioner.

14 COMMISSIONER WILSON: The airport, it's service to
15 the transient public, attendant functions and
16 incidental usage. And my contemplation was that that
17 would not include a hotel; it would not include a
18 shopping mall. It would include those places along the
19 concourse that sell cigars and cigarettes, newspapers
20 and books.

21 CHAIRMAN NICHOLS: I hate to be the devil's
22 advocate, but let me just give you an example. Tampa
23 Airport was just renovated so that the center core of
24 the airport is now a shopping mall, with the gates
25 going off all the way around it. And then there's a

1 corridor of shops, banks and so forth leading to the
2 hotel building. At which point would you draw the
3 line? Do you carve out the center, the very core of
4 the airport and the corridor leading to the hotel?

5 COMMISSIONER WILSON: Well, that's a real good
6 question.

7 COMMISSIONER NICHOLS: They are promoting their
8 shopping mall, literally.

9 COMMISSIONER WILSON: That puts them in a business
10 other than being an airport. It's nice that they want
11 to do that and --

12 COMMISSIONER MARKS: I say under those
13 circumstances they need a certificate.

14 MR. VANDIVER: That's our recommendation.

15 MR. McAULEY: That was our original recommendation
16 this morning.

17 COMMISSIONER MARKS: I'm sorry.

18 COMMISSIONER HERNDON: Maybe the best bet is to go
19 ahead and make a motion that -- well, I want to restate
20 it to a degree because I'm not completely comfortable
21 with the phraseology of the Staff recommendation -- to
22 say that airports are governmental entities and as
23 such are exempt from certification as STS providers
24 except in those instances where they provide commercial
25 services that are not materially necessary to the

1 function of that airport.

2 MR. VANDIVER: And then what do they become?

3 COMMISSIONER HERNDON: They become STS providers
4 and must seek a certificate and must file their local
5 rates.

6 MR. MCAULEY: I would agree with that, except the
7 extent that you do that, using -- applying the same
8 consistent logic you could say -- as Commissioner
9 Gunter pointed out to me this morning -- that you may
10 end up certificating other circumstances like prisons.

11 COMMISSIONER HERNDON: We talked about that and
12 we also talked about the fact that pride is in this
13 instance a non-profit, quasi-governmental entity. I
14 think there are ways to deal with that. And I think if
15 the airports want to get creative, they may find ways
16 to deal with it, too.

17 COMMISSIONER GUNTER: The way they can deal with
18 it is partition the switch here out and they've got no
19 problems. They just partition the switch, keep all the
20 government stuff, all the food services for the
21 aircraft, all those necessary things for the function
22 of the airport on the non-petition side and all the
23 rest of them on a petition side. Then they can have
24 all the security and all the stuff they want to. That
25 would be a minimal investment.

1 COMMISSIONER MARKS: Nothing in the Staff
2 recommendation would preclude that as I understand it.

3 MS. PATTON: I would point out, however, that
4 there are constraints currently at the Orlando airport
5 to doing that in that the switch can only be
6 partitioned to a few more partitions -- just so you're
7 aware.

8 CHAIRMAN NICHOLS: Do we have the legal authority
9 to exempt if we were very specific in our definition of
10 whom we exempted from certification?

11 MR. MCAULEY: Not under this statute.

12 CHAIRMAN NICHOLS: We could seek it from the
13 Legislature.

14 MR. MCAULEY: Yes, we could. I would point out
15 what you suggested about partitioning, what Mr. O'Pry
16 was just telling me, that you could require -- if you
17 wanted to get out from certification, you could
18 partition the commercial tenants, and thereby you
19 wouldn't be -- by doing that you wouldn't be falling
20 within the duplicative --

21 CHAIRMAN NICHOLS: You'd have to partition each
22 individual tenant?

23 COMMISSIONER GUNTER: Let me ask a question. In
24 the partitioning process -- do we have an engineer who
25 can tell me if you do go through the partitioning

1 process, can you still maintain the communication
2 requirements for security and all the rest of those
3 kinds of things?

4 MR. COUCH: If you're partitioning on the station
5 side, such as we had talked about in the other shared
6 tenant deals, no, you could not. You would have to
7 dial the complete number to go into the central office.

8 COMMISSIONER GUNTER: That's what I was concerned
9 about. That's one of the things that I do want to
10 maintain.

11 CHAIRMAN NICHOLS: Commissioners, I think the only
12 avenue -- if I sense what the Commission wants to do is
13 essentially they want to be able to let the airport
14 share in -- without any question for the needs of the
15 traveling public that are directly related to travel?

16 COMMISSIONER MARKS: Right.

17 CHAIRMAN NICHOLS: The incidental usage we would
18 like to have some way of allowing them to continue to
19 share, if possible, for the security consideration and
20 probably try to seek some kind of exemption from
21 certification for this unique entity?

22 COMMISSIONER MARKS: I'm not too sure if I
23 understand that.

24 COMMISSIONER WILSON: Exempt with conditions.

25 CHAIRMAN NICHOLS: Try to narrow to define what we

1 would consider to be incidental usage that doesn't get
2 into a whole shopping mall or an industrial park or
3 hotel, but doesn't make them have to go through the
4 whole certification process because they've got a
5 newsstand and a coffee shop.

6 COMMISSIONER HERNDON: What are the burdens that
7 are imposed on the airport if they're an STS provider,
8 other than the trunk limitation that we talked about
9 earlier? What are the burdens that are imposed?
10 You've got to pay a regulatory assessment fee for that
11 element of the airport that is not governmental,
12 however that's figured out. You've got to file your
13 rates.

14 MR. VANDIVER: And all those other requirements
15 that you all voted on earlier.

16 COMMISSIONER WILSON: Which is that you advise --

17 COMMISSIONER HERNDON: Supply your customers with
18 access and so on and so forth.

19 MR. VANDIVER: Some other things I'm not quite
20 sure of.

21 COMMISSIONER WILSON: You can't bypass.

22 MR. VANDIVER: You can't bypass.

23 COMMISSIONER HERNDON: My concern -- I can see
24 where the trunk limitation may be a problem
25 specifically -- particularly in Orlando's case because

1 we already know they're going 240 -- but these proposed
2 tariffs are not going to be effective till January 1 of
3 '88 according to the schedule that's in here. That
4 gives us the legislative session that will intervene.

5 If we were to hold today that they be treated as
6 STS providers for the commercial side, governmental
7 entities and therefore exempt for the non-commercial
8 side, operate on that basis and go to the Legislature
9 for the intervening period for some clarification --

10 COMMISSIONER GUNTER: If I can -- and I understand
11 what you said -- but it's my impression -- I'm asking
12 counsel and I'm going to ask one more time -- that
13 there's not any separation of governmental and
14 commercial unless you partition the switch.

15 COMMISSIONER HERNDON: I don't understand why that
16 would be the case.

17 MR. MCAULEY: I'm not following your question.

18 COMMISSIONER GUNTER: Is it all or nothing?

19 COMMISSIONER HERNDON: Why does it have to be all
20 or nothing as far as --

21 COMMISSIONER GUNTER: I've asked you the question
22 previously and you answered in the affirmative.

23 If you have -- listen carefully, read my lips --
24 if you have the -- a governmental body who has
25 commercial interest in there -- if you have a

1 governmental body, first they're exempt. If you have a
2 governmental body that has any commercial interest in
3 there then they're not exempt and they're STS
4 providers; is that correct?

5 MR. MCAULEY: Yes.

6 COMMISSIONER GUNTER: They're all STS customers,
7 all the telecommunication users behind that switch, all
8 of them, not a piece of them; isn't that correct?

9 MR. MCAULEY: All of the customer behind the
10 switch are STS customers?

11 COMMISSIONER GUNTER: Yes.

12 MR. MCAULEY: The government serving itself
13 wouldn't be an STS customer.

14 COMMISSIONER MARKS: Let an engineer answer that
15 question because that's an engineering question.

16 MR. COUCH: Let me clarify one thing on that.
17 They could partition the trunks, have the government
18 entity have their own trunk, have the commercial
19 entities have their own trunk. They could have it
20 unpartitioned on the station side for the security
21 things we referred to a few minutes ago. But they
22 could partition the trunks and operate that way.

23 COMMISSIONER GUNTER: If they partition the
24 trunks --

25 CHAIRMAN NICHOLS: They don't have the security.

1 MR. COUCH: You would still have the security
2 because the station side would not be partitioned. And
3 that's what they need is a rapid intercom, which is
4 strictly on the station side. They could do that.

5 CHAIRMAN NICHOLS: But is that physically possible
6 at the Orlando airport?

7 MR. COUCH: I believe it would be. On most PBXs,
8 unless they have an older generation PBX, that is
9 possible. I'm not familiar with the exact PBX they
10 have down there. I don't know. If it's a dimension
11 two thousand it would be difficult. That is an older
12 generation PBX.

13 CHAIRMAN NICHOLS: All right.

14 COMMISSIONER HERNDON: Let's come back to Mr.
15 McAuley, because I don't see this as an engineering
16 issue, I see this as a legal issue. If the greater
17 Orlando airport serves commercial customers, does that
18 make every entity and every activity of that airport
19 STS in nature or only those commercial elements?

20 MR. MCAULEY: No. I'm looking at this from the
21 point of view whether or not that provider of service
22 -- in this case it would be a governmental entity -- is
23 or is not an STS provider, period. They are if they
24 are providing it to commercial tenants to that extent.
25 That's my answer.

1 Now, the question was also posed, well, what about
2 the government entities that are serving behind that
3 switch? I don't care about them. They're already an
4 STS provider, period. They get a certificate; that's
5 it. And whatever requirements they would have, they
6 would have no less or more requirements by the fact
7 that they had -- were serving another government entity
8 or themselves as well as commercial users.

9 COMMISSIONER GUNTER: Let me ask you a question.
10 How would you classify -- because I'm trying to think
11 through this process very carefully to make sure we
12 don't make a -- what I consider to thunder down the
13 road to a grievous error -- how about the fuel folks
14 that provide fuel to the aircrafts? That's not
15 governmental but that's certainly necessary for the
16 provision of the flight service. How about the food
17 service people?

18 MR. MCAULEY: Commissioner, I wouldn't begin to
19 speculate as to every particular item --

20 COMMISSIONER MARKS: I could speculate on that. I
21 would speculate that that's part of the airport
22 service just as much a part of going to the counter --

23 COMMISSIONER GUNTER: The closer you get the
24 fuzzier it's going to get. If you get -- you know,
25 somebody talked about a floral shop. How do you handle

1 the freight handlers, the private freight handlers?

2 MR. MCAULEY: You have to draw a line and what's
3 incidental to the traveling public and what isn't.
4 And there's no --

5 COMMISSIONER GUNTER: Well, one of them is
6 incidental to the traveling public, and the other one
7 is in the freight transportation business, is the point
8 I'm trying to make. You've got freight forwarders and
9 what have you working at the -- see, the problem, I
10 hope that ladies and gentlemen we're really thinking
11 about this because it is much more complex than we're
12 talking about. You have several, several industries
13 involved here that we certainly need to think through.
14 And if part of them are and part of them aren't, who's
15 going to sit down and go down the list?

16 Let me tell you what, government has the
17 responsibility to be as unfuzzy as we can. But right
18 now it's looking like one of them big fuzzy balls to
19 me.

20 MR. SHAFER: I think there was a question on the
21 floor a moment ago regarding just because we classify
22 something as an STS provider and we require them to be
23 certified, can you separate that traffic, that is the
24 entity's traffic, versus that traffic that is the
25 commercial entities going on about their business

1 within that PBX or that configuration and does the rate
2 structure have to be the same for both? And I think
3 the answer is it's not bound to be that way legally or
4 by the rules or anything else.

5 We, the Staff, has pretty much approached it from
6 that perspective because of the difficulty in again
7 tracking the different traffic, what's to be considered
8 administrative traffic and how do you determine that
9 outgoing -- especially outgoing because even if you're
10 -- well, I'm getting into another area.

11 Regardless, you've got a difficulty in tracking
12 the traffic and saying this belongs to this particular
13 business and this traffic belongs to that particular
14 business, and this traffic was all administrative. And
15 that becomes very difficult. So it's just easier to
16 treat everybody the same, and if they're designated as
17 STS, to apply the STS rate structure uniformly.

18 We encountered the same problem when we were
19 trying to establish the leaky PBX criteria. We had a
20 lot of discussion about partitioning there.

21 COMMISSIONER MARKS: I agree.

22 COMMISSIONER HERNDON: Madam Chairman, let me
23 renew my motion again -- it's still on the table as far
24 as I know -- and that is that airports are in fact STS
25 providers for those activities of its existence that do

1 not -- that are not materially necessary to the
2 function of that airport and its primary line of
3 business, and basically that that's it.

4 What I'm trying to understand is what are the dire
5 consequences that we think are going to happen to the
6 airport if they're an STS provider? So what.

7 COMMISSIONER MARKS: What difference does it make?

8 COMMISSIONER HERNDON: I don't understand it.
9 We're not going to apply -- we're going to ask Orlando
10 to pay some portion of a fee to cover the floral shop.
11 I frankly don't have a problem with that. You're not
12 going to ask it for the governmental portion. And
13 we're going to say file your rates with us. I don't
14 have a problem with that. Give them access to 911. I
15 don't have a problem with that. I don't understand.

16 MS. PATTON: One concern is that you voted in the
17 earlier STS issues that there may not be intercomming
18 within a building. And some type of situation needs to
19 be rectified for the airport.

20 COMMISSIONER HERNDON: We said for those
21 activities that were not commercial; that those that
22 are related --

23 CHAIRMAN NICHOLS: Oh, no. When we voted on the
24 intercommunication behind the switch, it was solely in
25 the commercial context. Now, we're saying that --

1 COMMISSIONER MARKS: Grant an exception.

2 CHAIRMAN NICHOLS: Yes. Either you have to grant
3 an exception to the airport or you've got to declare
4 the airport is STS but is a unique form of STS.

5 COMMISSIONER HERNDON: Fine.

6 MR. VANDIVER: Chairman Nichols, I think that's
7 a better approach in that one could argue that Delta
8 Airlines is, in fact, a commercial venture. And it
9 would be cleaner just from the order standpoint --

10 CHAIRMAN NICHOLS: All right. We have a motion
11 before us which essentially says -- and I believe it's
12 been seconded --

13 COMMISSIONER WILSON: Second.

14 CHAIRMAN NICHOLS: -- that airport situations in
15 so far as they provide service to commercial entities
16 that are not material --

17 COMMISSIONER HERNDON: Materially necessary.

18 CHAIRMAN NICHOLS: -- Necessary to the provision
19 of service to the traveling public are STS providers.

20 COMMISSIONER HERNDON: Do you want to go on and
21 say --

22 CHAIRMAN NICHOLS: At some point we need, in my
23 judgment, to add either to that motion or take it up
24 perhaps under one of the subsequent airport issues,
25 that there are certain unique characteristics to an

1 airport and they need to be exempt from perhaps some
2 prohibitions that we have placed on other commercial
3 STS providers.

4 COMMISSIONER HERNDON: I think we ought to go
5 ahead and address it right now so the
6 intercommunication behind the switch is permitted in
7 the case of an airport.

8 MR. McAULEY: I would also reiterate that if you
9 -- I understand your vote -- but if you do not wish to
10 certificate in anyway any government entity, you can
11 also do that by simply saying they're not a telephone
12 company and they are not providing telephone service
13 that duplicates and competes with local exchange
14 service.

15 COMMISSIONER GUNTER: There is also the
16 alternative this Commission could find that through the
17 uniqueness of an airport operation that we would find
18 that perhaps it would be inappropriate to classify them
19 as shared tenant providers and request through
20 legislation that they be declared as such.

21 Again, I'm sitting here thinking about -- you
22 know, we're talking about one respect and response -- I
23 said, "What about the fuel?" Well, we could start
24 talking about the fuel providers. In most airports,
25 that's a -- this airport that's an exclusive franchise.

1 And they're a filling station. You fly in there,
2 regardless of what aircraft you're flying -- whether
3 you use JP-1 or one hundred octane, whatever, 145 --
4 they're going to come out and fill you up. So that to
5 me -- that's not hauling people, that's general
6 aviation.

7 CHAIRMAN NICHOLS: Commissioners, I think we have
8 two issues in front of us right now. One is the issue
9 of whether or not an airport is an STS operation; and
10 the second is whether or not we want to proceed with
11 legislation to seek some kind of an exemption for
12 perhaps a unique provider. And the airport may not be
13 alone in that exemption category.

14 MR. VANDIVER: Madam Chairman, the last issue
15 before you today -- not surprisingly is Issue 1 --
16 but that is should the Commission propose legislation.
17 And so perhaps we can address that then.

18 CHAIRMAN NICHOLS: Okay. I'm going to call the
19 question on Issue 25.

20 COMMISSIONER HERNDON: Do you want to include as
21 part of that motion the exemption from the prohibition
22 on intercommunication behind the switch?

23 CHAIRMAN NICHOLS: Yes.

24 COMMISSIONER HERNDON: I think that's appropriate.

25 CHAIRMAN NICHOLS: Is there a second?

1 COMMISSIONER MARKS: Yes, I'll second it.

2 CHAIRMAN NICHOLS: All those in favor say aye.

3 Those opposed?

4 COMMISSIONER WILSON: No.

5 COMMISSIONER GUNTER: No.

6 COMMISSIONER MARKS: That was Issue 25?

7 CHAIRMAN NICHOLS: Yes. Now we're at Issue 26,
8 which is another one we don't have to vote on.

9 MR. VANDIVER: 27 is a replay of 25 so mercifully
10 we don't have to discuss that one either.

11 CHAIRMAN NICHOLS: 27?

12 COMMISSIONER MARKS: That's what he just said. We
13 don't have to vote on that one.

14 MR. VANDIVER: You voted on that by voting on 25.

15 CHAIRMAN NICHOLS: 28?

16 MS. PATTON: 28 asks if the tariff provision is
17 in the public interest. Staff's recommendation would
18 be that yes, it is.

19 COMMISSIONER MARKS: With the same tariff
20 provisions? What are the tariff provisions?

21 MS. PATTON: This is still dealing with the
22 airport arrangements.

23 COMMISSIONER MARKS: What are the tariff
24 provisions?

25 MS. PATTON: Well, I wasn't very clear on that.

1 Actually it's not a tariff; it is an arrangement made
2 among -- made between the airport authority and
3 Southern Bell. It was never filed as a tariff.

4 COMMISSIONER HERNDON: What we're saying -- to
5 what extent does this issue still exist? If we pursue
6 the finding that the airport is an STS provider and
7 adopt a schedule, aren't they going to have to file
8 their new tariffs and so forth just as the schedule
9 outlines in Issue 32?

10 MS. PATTON: Yes.

11 COMMISSIONER HERNDON: So is this issue really
12 relevant any longer?

13 MS. PATTON: If you determine that you wish to
14 consider it as a viable operation and continue it --
15 which it appears in your earlier decisions you do --
16 then it seems as though you've already decided this
17 issue.

18 COMMISSIONER WILSON: Let's move on then.

19 MR. VANDIVER: I might add that the dire
20 consequence that you've talked about is really the rate
21 structure that goes along with STS, no more, no less.
22 That's basically what you're affirming here.

23 CHAIRMAN NICHOLS: That's Issue 28. Staff
24 recommendation?

25 COMMISSIONER MARKS: Yes.

1 CHAIRMAN NICHOLS: Issue 30?

2 MS. PATTON: Issue 30 deals with should any kind
3 of a clarification be made as far as a tariff is
4 concerned? And the Staff recommendation was that it
5 should be placed under the STS tariff.

6 CHAIRMAN NICHOLS: And the single building
7 limitation does not apply? This is where it ought to
8 say that the intercommunicating behind the switch
9 exemption does not apply.

10 MS. PATTON: All right.

11 COMMISSIONER WILSON: You're saying also put the
12 airport governmental functions under the STS tariff?
13 Is that the recommendation? Not only the commercial
14 side --

15 MS. PATTON: Yes. The recommendation would be if
16 they chose to operate as an STS serving commercial end
17 users, that all of their trunks at the switch location
18 would be under the STS tariff.

19 CHAIRMAN NICHOLS: The only way they could avoid
20 that is if they could partition?

21 MS. PATTON: Yes, ma'am.

22 CHAIRMAN NICHOLS: And if they could partition the
23 switch -- let me ask you a question. If they could
24 partition the PBX so that they had all of their
25 governmental functions on one side and they had all

1 their commercial lumped together on the other side,
2 they'd only have to get a certificate for the side
3 that's got the commercial entity?

4 COMMISSIONER GUNTER: But that would have to be on
5 the trunk side, as Mr. Couch said, it couldn't be on
6 the line side. If it were on the line side, they'd
7 lose the capability, which they testified to that they
8 require.

9 COMMISSIONER WILSON: And they would only be under
10 the STS tariff for that portion of the trunk or the
11 trunks that were petitioned to serve the commercial
12 customers?

13 CHAIRMAN NICHOLS: That's right.

14 COMMISSIONER MARKS: Right.

15 COMMISSIONER WILSON: And the remaining service to
16 the airport, the governmental functions, they would
17 remain under the tariff under which they currently are
18 served?

19 MS. PATTON: No. The recommendation would be that
20 if they chose to serve commercial end users, all trunks
21 at that switch location would be considered under the
22 STS tariff and all trunks would be message rated.

23 CHAIRMAN NICHOLS: Okay. If you partition the
24 trunks, the PBX as I suggested, so you've got all your
25 governmental use off, I mean it's all partitioned, it's

1 all together, and then you have all your commercial on
2 the other side of that partition -- and they would have
3 to apply, I realize, for a certificate for that portion
4 of the traffic the commercial is using, that piece
5 that's been partitioned off together, and pay the
6 message rate -- what would the governmental side be
7 paying?

8 MR. SHAFER: Our recommendation is that the
9 governmental side would also pay message. But as I was
10 trying to clarify a few minutes ago, that's not
11 necessarily required by the law or anything. That's
12 our recommendation, and that is a policy that's
13 consistent with an existing policy that we have for
14 leaky PBX where there was a lot of discussion about if
15 we can partition and separate out that traffic that
16 leaks from that traffic that doesn't, do we have to pay
17 the message rate? And there was a considerable amount
18 of debate about that.

19 We came down on the side -- and the Commission
20 came down on the side that I'm sorry, if you're a leaky
21 PBX, you pay the freight. Our recommendation here is
22 if you're STS you pay the freight.

23 COMMISSIONER WILSON: Is the leaky PBX tariff
24 structure the same as the one we decided on here?

25 MR. SHAFER: It's usage/message sensitive, where

1 usage sensitive isn't applied.

2 MS. PATTON: Three cents a minute or 12 cents.

3 MR. SHAFER: A message. So it's pretty close.

4 MS. PATTON: With a hundred percent of the PBX
5 rate, not 60 percent of the PBX rate.

6 COMMISSIONER WILSON: So what are you recommending
7 here, that they pay 100 percent of the PBX?

8 MS. NORTON: No. Here it's 60 percent --

9 MR. SHAFER: This would be the STS rate structure.

10 MS. NORTON: Plus DID, which is interval to this,
11 all the things associated with direct in dial.

12 MS. PATTON: I did want to point out, though,
13 there are some tariff situations where there may be
14 situations existing like hotels and motels where some
15 of the administrative trunks are rated on flat rates
16 and they are allowed to partition the other trunks
17 going to the rooms for a message rate so that you are
18 aware that that does exist in a few cases.

19 MR. SHAFER: It doesn't change our recommendation,
20 but I don't know that -- I'm not sure what the
21 rationale was. I'm not sure that there's too many
22 people around here that would be familiar with it.

23 COMMISSIONER WILSON: What's the rationale for
24 that?

25 MS. NORTON: Commissioner, your question was what

1 was the rationale behind assessing STS rates and rate
2 structure to the entire body?

3 MS. PATTON: Back when those tariffs were approved
4 why were they allowed to have flat rate on
5 administrative and message on the other? I don't know
6 that answer.

7 MR. SHAFER: The best we can tell, it's been that
8 way a long time. Nobody can really recall why it was
9 done that way.

10 COMMISSIONER HERNDON: It's always been that way.

11 MR. SHAFER: The rationale has long since
12 departed.

13 MS. PATTON: As Greg mentioned in the leaky PBX
14 policy --

15 CHAIRMAN NICHOLS: Okay.

16 COMMISSIONER MARKS: That's Issue 28.

17 CHAIRMAN NICHOLS: No, that was Issue 30.

18 COMMISSIONER WILSON: Do we know what the effect
19 on this customer is going to be moving from what
20 they're paying now, which I guess is a flat-rate PBX,
21 to this new rate?

22 MS. PATTON: No. However, what we are
23 recommending in the next issue, 32, implementation, is
24 the period of duplicate billings prior to the rate
25 becoming effective in order to give the customer a good

1 few months of duplicate bills to assess what the impact
2 will be to himself.

3 COMMISSIONER WILSON: There's nothing they can do
4 about it, right? I mean they see what the impact is,
5 but --

6 MS. PATTON: They chose not to --

7 COMMISSIONER HERNDON: What you want to do is
8 preserve that intercommunication capability, which is
9 the most essential ingredient that they have. They
10 can't do anything about it anyway. They're captive for
11 that activity. They can't intercommunicate by going
12 out to Southern Bell and coming back in. So they're
13 stuck. What value is it to them?

14 The fact of the matter, as we talked about this
15 morning, STS providers will make more money under a
16 message rate than they will under a flat rate.

17 COMMISSIONER WILSON: For telephone companies.

18 COMMISSIONER HERNDON: Whatever; STS providers.
19 So the Greater Orlando Aviation Authority will make
20 more money, essentially.

21 MR. SHAFER: Yet another way of looking at it is
22 that if the Greater Orlando Aviation Authority, as its
23 functions relate directly to serving people traveling
24 in planes rather than bookstores and so forth, still
25 has that capability, but they're still going to pay.

1 If they become STS, they're still going to pay the
2 usage so it's going to cost them more, too.

3 COMMISSIONER WILSON: If the Orlando airport
4 authority decided well, we don't want to be STS and
5 we're going to require all those commercial customers
6 in our airport to obtain their own service, what would
7 be the tariff that they would take service under then?

8 MS. NORTON: They take it under 1-FPs. They could
9 get single line or key, depending on what their
10 requirements were.

11 COMMISSIONER WILSON: But they would not be under
12 the STS rate structure?

13 MS. NORTON: Not an individual book shop, that
14 kind of thing.

15 COMMISSIONER WILSON: What about the rest of the
16 airport, the remaining part of the airport?

17 MS. NORTON: The governmental entity?

18 COMMISSIONER WILSON: The governmental entity part
19 of the airport?

20 MR. VANDIVER: No, they would --

21 COMMISSIONER HERNDON: Airlines for the most part.
22 Administrative offices is a fairly small percentage of
23 the staff in that airport and the occupants. It's the
24 Deltas and the Pan Ams of the world who are bringing in
25 tourists. They're not generally bringing in residents.

1 MS. PATTON: I will also point out that there are
2 other operations in airports throughout the State of
3 Florida. This is not the only alternative for them to
4 have intercommunication under.

5 In the introduction issue, three other
6 arrangements were discussed that appear to be operating
7 successfully.

8 CHAIRMAN NICHOLS: I'm concerned about -- I really
9 don't like this whole scene we've done with the Orlando
10 airport. If the rationale for message rate is to be
11 revenue neutral, the Orlando airport, which has been in
12 existence for some time, is only going to be revenue
13 neutral if we don't change the rates.

14 MS. NORTON: Commissioner, be careful on that one.
15 That revenue neutrality argument went to the pure STS.
16 It is not being applied to other shared arrangements.

17 CHAIRMAN NICHOLS: I've got problems with applying
18 it to airports, some of the ones we're about to take up
19 right now. What type of tariff is the Orlando airport
20 serving under right now?

21 MS. PATTON: I guess the closest you could say as
22 far as a tariff is concerned would be the joint user
23 tariff. It's actually under --

24 MS. NORTON: It's a special assembly right now.

25 CHAIRMAN NICHOLS: Is it usage sensitive?

1 MS. PATTON: No.

2 CHAIRMAN NICHOLS: It's a flat --

3 MS. PATTON: No, it's like the joint user tariff
4 where you pay -- the first trunk is like a hundred
5 percent and then each additional trunk would be, I
6 think, 50 percent of the PBX trunk rate, and then
7 there's a five percent administration charge applied on
8 top of that. But it is not usage sensitive in any way.

9 COMMISSIONER WILSON: If they got rid of all their
10 commercial customers they could stay under a flat rate
11 tariff?

12 MS. PATTON: Yes.

13 COMMISSIONER WILSON: But if they seek a
14 certificate for only those commercial customers that
15 they would serve which they will partition with a trunk
16 on a partition trunk, by doing that, then it subjects
17 all of their usage to the STS tariff, which is the flat
18 60 percent of the PBX rate and 12 cents a message?

19 MS. PATTON: That's correct.

20 MR. SHAFER: That's the recommendation, right.
21 We're in a box. I mean the statute -- what would be
22 ideal, I think, would be to determine that an airport
23 situation, regardless of the configuration that they
24 have in place, is a unique set of circumstance, and
25 therefore it ought to be allowed to proceed somehow on

1 a going-forward basis much in the same way that it does
2 today.

3 Unfortunately, the statute doesn't allow us that
4 much flexibility. You have to make a determination
5 about duplicative or competitive. And that pretty well
6 forces your hand into something other than what's there
7 today if you recognize that it is duplicative or
8 competitive. It's a very sticky situation.

9 CHAIRMAN NICHOLS: All right. Let me make a --
10 let's make a suggestion, Commissioners, and see if
11 you're agreeable. Let's defer or TP at this point any
12 decision about what tariff these shared -- the airport
13 and the ones as we go through, we're going to put them
14 under at this moment. We may want to seek some
15 legislative remedy that gives us more flexibility or
16 whatever. But let's put that aside for a moment and
17 just proceed on through the other issues, do what we
18 can as quickly as possible, and then come back and
19 discuss --

20 COMMISSIONER WILSON: Yes.

21 MR. O'PRY: Madam Chairman, with great fear, I
22 would ask if we could go back a second to Issue 19. I
23 think it might help move things along. Pages 171, 172
24 and 173 lay out all of the sharing arrangements we will
25 be addressing. I think it might be helpful to have

1 that before you as each of the arrangements is
2 discussed.

3 And I would point out -- I know we're going to
4 pass 30 on the tariffs -- but where it refers to STS,
5 if PBX under column V at the heading, Members of
6 Clubs, that means the STS rate structure not that
7 these people would be certificated. And that is also
8 true under column J, column E, column K, column C, D
9 and Q. That tends to mean the STS rate structure.

10 COMMISSIONER WILSON: I understand.

11 MR. O'PRY: Thank you.

12 CHAIRMAN NICHOLS: All right. Proceeding through
13 the vote sheet, we're back on Issue 20 for joint user.

14 MR. COPPIN: All right. Commissioners, the
15 following issues that we are about to discuss refer
16 specifically to joint user, which incidentally that
17 particular type offering is obsolete. Most of the
18 issues are strictly for informational purpose. We
19 would require a vote starting with Issue 25. And I
20 think Mr. McAuley will do that.

21 CHAIRMAN NICHOLS: All right. Issues 20, 21,
22 22(a), 22(b) and 24 are informational only. Issue 25
23 is --

24 MR. VANDIVER: The duplicative and competitive
25 argument again.

1 COMMISSIONER WILSON: What is the -- I may have
2 missed it going through here -- but what is the General
3 Telephone restriction relating to joint user?

4 MR. COPPIN: Yes. It's not really a technical
5 restriction, it's a restriction where if particular
6 joint user qualifies or if a potential joint user
7 qualifies for a joint user service, General would not
8 serve that purpose individually.

9 Take, for example, if that person shares an office
10 space with a primary user and wants to apply directly
11 to General Telephone Company for service, General would
12 not share that -- provide that service to that person.
13 He would have to --

14 MR. SHAFER: You couldn't have single line service
15 and joint user service at the same time is what it's
16 saying.

17 COMMISSIONER WILSON: You can't have both at the
18 same time?

19 MR. COPPIN: No, not really. As long as you
20 qualify, as long as you're within that qualification.
21 In General's territory they're compelling you to --

22 COMMISSIONER WILSON: I see.

23 CHAIRMAN NICHOLS: All right. Move Staff
24 recommendation on Issue 25?

25 COMMISSIONER WILSON: Yes.

1 CHAIRMAN NICHOLS: Any objection?

2 COMMISSIONER MARKS: No.

3 CHAIRMAN NICHOLS: Staff on 25. 26 and 27 are
4 informational only. 28 --

5 MR. COPPIN: This is a really crucial issue. It
6 summarizes all of the previous --

7 COMMISSIONER GUNTER: Let me, if I can -- Madam
8 Chairman, can I beg your indulgence for just a second?

9 CHAIRMAN NICHOLS: Yes.

10 COMMISSIONER GUNTER: When I was thinking about
11 joint use in the applications, I have spent some while
12 trying to think of the horrors that we might be
13 creating in this, and I just want to make sure that
14 these are not horrors.

15 Say you have a situation like in Tallahassee where
16 you have some young folks coming from Bainbridge,
17 Georgia to go to work in Tallahassee. They get out of
18 high school and they come down here. Say three of them
19 get an apartment together and they get one telephone,
20 and each one of them pays for an additional listing.
21 That's a sharing of that telephone. Or under this
22 scenario would we require each one of them to get --

23 CHAIRMAN NICHOLS: No. Those are members of the
24 same household, domestic establishments, no problem.

25 COMMISSIONER GUNTER: In other words, if it was a

1 lady and a gentleman cohabitating and what have you
2 they're still in the same household?

3 MR. COPPIN: Right. There's no problem with that.

4 COMMISSIONER GUNTER: So those kinds, we're really
5 only talking about business relationships?

6 MR. COPPIN: Yes, sir.

7 COMMISSIONER GUNTER: Fine.

8 CHAIRMAN NICHOLS: Issue 28 essentially would
9 discontinue joint user tariffs?

10 MR. COPPING: That's right, ma'am.

11 COMMISSIONER WILSON: Move it.

12 CHAIRMAN NICHOLS: Move it. Staff on Issue 28.
13 That moots Issue 30. Issue 32 is transitioning anybody
14 from joint user service to individual service?

15 MR. COPPIN: Issue 32, yes, that's right, ma'am.
16 And we have a handout, summary of implementation plan.

17 CHAIRMAN NICHOLS: But it's slightly different
18 just because we're already beyond 1-5-87? It was on
19 the desk when we sat down this morning, Commissioners.
20 Is there a motion to move Staff on Issue 32?

21 COMMISSIONER GUNTER: Move it as amended.

22 CHAIRMAN NICHOLS: As amended. All right. Now
23 we're into unaffiliated government.

24 COMMISSIONER GUNTER: Move Staff.

25 CHAIRMAN NICHOLS: Move Staff, that doesn't exist.

1 MR. COPPIN: Yes, that's right.

2 COMMISSIONER MARKS: Go ahead.

3 CHAIRMAN NICHOLS: Now we're into clubs, yacht
4 basins and time shares. Issues 20, 21, 22, 22(a),
5 22(b) and 24 do not require a vote. Issue 25.

6 MR. VANDIVER: We found that these folks do not
7 duplicate or compete, they're transient, in the absence
8 of these folks they wouldn't get service in their own
9 names and the LECs don't want to serve them.

10 COMMISSIONER GUNTER: Move it.

11 CHAIRMAN NICHOLS: Move it. Issues 26 and 27 do
12 not require a vote. 28?

13 MS. NORTON: We found that it does not harm the
14 public interest to allow this type of sharing to
15 continue.

16 COMMISSIONER GUNTER: Move it.

17 CHAIRMAN NICHOLS: Issue 30.

18 MS. NORTON: Issue 30 is the rates.

19 COMMISSIONER GUNTER: We've already --

20 MR. VANDIVER: We're going to come back to that.

21 CHAIRMAN NICHOLS: TP. Issue 32 is the
22 implementation dates. As amended?

23 COMMISSIONER GUNTER: As amended.

24 COMMISSIONER WILSON: Yes.

25 CHAIRMAN NICHOLS: We're now up to schools,

1 dormitories, colleges and universities. Issues 20,
2 21, 22, 22(a), 22(b) and 24 do not require a vote.
3 We're at Issue 25.

4 COMMISSIONER MARKS: I hate to do this with all
5 those folks that came in this morning wanting to hear
6 this.

7 COMMISSIONER HERNDON: Their representatives are
8 still here.

9 COMMISSIONER GUNTER: I move Staff on Item 25.

10 COMMISSIONER HERNDON: All right, let's do.

11 COMMISSIONER MARKS: We're on Issue 25?

12 COMMISSIONER GUNTER: I move Staff recommendation
13 on Item 25.

14 MR. VANDIVER: This says that a service to
15 students in their dormitory rooms does not duplicate or
16 compete with local exchange service.

17 COMMISSIONER GUNTER: That's correct.

18 CHAIRMAN NICHOLS: Staff?

19 COMMISSIONER MARKS: No objection.

20 CHAIRMAN NICHOLS: Issues 26 and 27 are
21 informational only. Issue 28?

22 MS. NORTON: It's in the public interest.

23 COMMISSIONER MARKS: Move it.

24 CHAIRMAN NICHOLS: Staff?

25 COMMISSIONER GUNTER: Second.

1 CHAIRMAN NICHOLS: Issue 30, tariff, and we're
2 going to TP it. Issue 32.

3 COMMISSIONER GUNTER: Well, there's not really
4 a --

5 COMMISSIONER MARKS: That's a stipulation. I
6 don't know if I've seen that stipulation.

7 COMMISSIONER HERNDON: Well, the stipulation is
8 not signed.

9 MR. VANDIVER: There is some confusion about that.
10 Staff has different copies as to who signed what.

11 COMMISSIONER HERNDON: The copy that I have dated
12 October 29, 1986 has a big blank above Mr. Greg
13 Gleason's, attorney for the Board of Regents, name.

14 MR. VANDIVER: That's the copy I have as well,
15 Commissioner.

16 COMMISSIONER HERNDON: It's representative by the
17 Board that they did not sign the stipulation.

18 COMMISSIONER MARKS: TP it.

19 CHAIRMAN NICHOLS: Okay. Let's TP the tariff
20 consideration.

21 COMMISSIONER GUNTER: This is a different -- if
22 you read 30 carefully, that's a different one than
23 we've been talking about. That's a different issue.
24 It's not just a tariff. It's one of those if kind of
25 things.

1 CHAIRMAN NICHOLS: It would put them on the
2 message rate.

3 COMMISSIONER GUNTER: I've got to understand my
4 vote then previously. Service provided to the schools
5 is not duplicative or competitive. Okay.

6 MR. VANDIVER: Commissioner, if I may, that issue
7 is irrespective of whether or not they're put on usage
8 sensitive rates.

9 COMMISSIONER GUNTER: Well, that's part of the
10 test, is it not?

11 MR. VANDIVER: No, sir.

12 COMMISSIONER GUNTER: Oh, yes it is. Read the
13 current law. Read the current law. We went through
14 this awhile ago about -- if we made a finding that it
15 was not duplicative or not competitive, that portion of
16 the statute Mr. McAuley just read. I can spend a
17 little while and look at it.

18 CHAIRMAN NICHOLS: I don't think they're -- well,
19 Staff is saying that they've not been found to be
20 duplicative or competitive, but for other reasons,
21 Staff is recommending that they be placed on a message
22 rate.

23 MR. VANDIVER: Yes.

24 MS. NORTON: There are two issues; one is should
25 they be allowed to continue, and if the answer is yes,

1 then Staff has raised the issue, well, if so, under
2 what tariffs.

3 COMMISSIONER GUNTER: And if we made the decision
4 under the present tariff situation, then that puts that
5 to bed, is that correct?

6 MS. NORTON: If we say do not change the tariff
7 rates, that's your decision. Staff's recommendation is
8 that where PBXs are --

9 COMMISSIONER GUNTER: I move on Issue 30 that we
10 don't change the tariff rate.

11 COMMISSIONER HERNDON: Would you deny Staff
12 recommendation?

13 COMMISSIONER GUNTER: I would deny Staff
14 recommendation.

15 COMMISSIONER HERNDON: I second that motion.

16 COMMISSIONER GUNTER: Now that puts Issue 30 to
17 bed.

18 MR. VANDIVER: Just to clarify --

19 COMMISSIONER GUNTER: Because we have found and
20 adopted Staff's recommendation that service provided
21 was not duplicative and not in competition with the
22 local exchange company.

23 MR. VANDIVER: I just want to have an
24 understanding that you all deferred consideration of
25 the other sharing arrangements until we got to the end

1 to discuss their tariff arrangements. But in this
2 particular case, you're continuing?

3 COMMISSIONER GUNTER: That's right.

4 CHAIRMAN NICHOLS: Issue 30 we have denied Staff.
5 They will continue under the present tariff
6 arrangement and that makes Issue 32 moot.

7 COMMISSIONER MARKS: I guess the students ought to
8 know that they got what they wanted.

9 MR. COUCH: May I ask a point to clarify this?
10 Whether they did or not, are they allowed station side
11 interconnectivity then on the PBX at the dormitories?

12 COMMISSIONER GUNTER: Do what now?

13 MR. COUCH: Are they allowed station side
14 interconnectivity in dormitories?

15 COMMISSIONER GUNTER: The same as they are.
16 That's what we're saying, the same as they are.

17 MS. NORTON: No change in the tariff rates or the
18 application?

19 CHAIRMAN NICHOLS: That's correct. We're now up t
20 subleasing residences. Again, Issues 20, 21, 22,
21 22(a), 22(b) and 24 are informational only. We're at
22 25.

23 COMMISSIONER MARKS: Did we move the Staff on all
24 those issues associated with sublease residences?

25 CHAIRMAN NICHOLS: They're for information only.

1 They don't require a vote.

2 COMMISSIONER WILSON: Let me go back and ask --
3 and I'm sorry I was out of the room for a second -- but
4 on schools, dormitories, colleges and universities,
5 we're talking about division of telephone service to
6 students in dorms?

7 MR. MCAULEY: That's correct. And to the extent
8 you're doing something else, that's a different story.

9 CHAIRMAN NICHOLS: Right.

10 COMMISSIONER WILSON: We're not doing anything
11 else. That is all we're doing?

12 MR. MCAULEY: The answer is yes.

13 MR. SHAFER: If I may clarify a linkage or two
14 among the issues that may be causing some uncertainty
15 -- the duplicative or competitive finding, I think,
16 relates to if we find that it is duplicative or
17 competitive, it either has to be terminated or it has
18 to be considered STS and it has to be subject to the
19 STS rate structure.

20 Now the rate structure issues that follow in these
21 various arrangements, if you find that it's not STS,
22 then those rate structure issues are independent but
23 they result -- the recommendation in many cases that
24 Staff has made -- is the same as it would be had it
25 been determined STS.

1 COMMISSIONER GUNTER: I understand. But we
2 already voted on it.

3 MS. NORTON: Commissioners, I just might point out
4 the extent that you have ruled on the colleges and
5 dorms that there will be no changes to the tariff, I
6 just want to note that in at least some of the current
7 tariffs, there are no restrictions placed on where
8 service may be provided by the university. To the
9 extent you wish to place restrictions on the degree of
10 expansion that a university may encompass, i.e. to
11 married housing or research facilities, the tariff may
12 require some modification.

13 COMMISSIONER WILSON: I would expect you all to
14 bring that back to us. The only thing as I understand
15 it that we are approving and saying is not duplicative
16 or competitive is provisions of service to students in
17 dormitories.

18 COMMISSIONER GUNTER: I would not exclude the
19 possibility of university-owned married housing. If
20 they would allow them in dorms, I think the
21 students --

22 CHAIRMAN NICHOLS: I don't think one's marital
23 status should dictate what --

24 COMMISSIONER GUNTER: I don't think one's marital
25 status should enter into it.

1 MR. SHAFER: The issue is not so much marital
2 status as the fact that in the case of FSU, for
3 instance, your married housing is separate from the
4 main body of the university. And I think that's more
5 the issue.

6 CHAIRMAN NICHOLS: If the housing is provided by
7 the university and you pay your rent to the university,
8 I don't have any problem with it. The only place that
9 I run into a serious problem is when we get into
10 industrial parks, for instance in Tampa where the
11 university may have a hospital, the hospital may have
12 doctors' offices. That in my judgment is going beyond
13 the provision of service for the primary purpose of
14 educating the students.

15 COMMISSIONER WILSON: With a college and
16 university, there's an old theory in loco parentis,
17 which indicates that a college or university serves as
18 the local parent of students while they're in school
19 there. And they assume a number of the
20 responsibilities and particular relations that are
21 peculiar to family, and as such are different entities
22 than some of the others we deal with.

23 As long as we're talking about the university and
24 college acting in that capacity, I think that's the
25 basis, in addition to the transient exception, of our

1 treating them in a separate fashion than we do other
2 entities. And I agree that when we start moving
3 outside of that -- and it may include moving outside
4 into consideration of married student housing off
5 campus. I'm not sure -- I don't know if that's really
6 before us right now.

7 CHAIRMAN NICHOLS: It was brought up --

8 COMMISSIONER WILSON: I know it was brought up,
9 but it has not been made an issue.

10 CHAIRMAN NICHOLS: Essentially, I can think of
11 four specific issues that were brought up at the
12 hearing; the bookstore, cafeteria, the married student
13 housing and the doctors' offices that may be associated
14 with a hospital, the industrial park. That's five.

15 I personally, Commissioners, have no problems with
16 the bookstore and the cafeteria, which are there
17 primarily to serve the students, although I know as a
18 private non-student, I can walk in the bookstore and
19 buy a book. But their primary purpose is there for the
20 education of the students.

21 Where I start having real problems -- and I don't
22 any problems with married student housing as long as
23 it's housing that's operated and provided by the
24 university. Where I have real problems is the
25 industrial park, the doctors' offices that may or may

1 not be associated with the university hospital -- what
2 was the other one -- the research facilities, that kind
3 of thing, that are independent of the university. They
4 way provide some support for the university, but they
5 are not owned and operated by the Board of Regents,
6 that kind of thing.

7 COMMISSIONER MARKS: If IBM were over -- if they
8 were -- over in the industrial park, innovation park,
9 and they're leasing space and there's a relationship
10 with the university, but under those circumstances IBM
11 should not be --

12 MR. COPPIN: Madam Chairman, I agree with you, but
13 I think there are situations that exist that bookstores
14 and the cafeteria might not be run by the university.

15 CHAIRMAN NICHOLS: I said my position was I don't
16 care. They're only there because the students are
17 there. Barnes and Nobles probably wouldn't be located
18 in that particular place except for the fact of --

19 MR. MCAULEY: Commissioners, I would reiterate
20 what you said. I agree wholeheartedly that was our
21 intention, or at least my view of what this vote was
22 intended here.

23 And Commissioner Wilson's concept of the
24 university acting in substitution of a parent or
25 household in any function that is related to that that

1 is on the campus, including administrative functions,
2 all would fall within that category. But nothing like
3 the IBM in an office park off the campus, which
4 certainly would be completely ancillary to the idea --

5 CHAIRMAN NICHOLS: You may have doctors' offices
6 attached to the hospital that are technically on
7 campus. But they are there not -- in my judgment
8 they're there for the convenience and for the services
9 a doctor provides to his patients.

10 COMMISSIONER GUNTER: Is that a teaching hospital
11 or just a hospital?

12 CHAIRMAN NICHOLS: A teaching hospital.

13 COMMISSIONER GUNTER: They're a member of the
14 faculty, I would include them.

15 CHAIRMAN NICHOLS: Include their personal offices
16 for their private practices?

17 COMMISSIONER GUNTER: If they're members of the
18 faculty.

19 MR. MCAULEY: We have a separate issue for
20 hospitals.

21 COMMISSIONER WILSON: But that's a little
22 different than what we're talking about.

23 COMMISSIONER GUNTER: But if they're members of
24 the faculty -- I would be hard-pressed to say that you
25 can have one group of faculty members which you would
allow and one group of faculty members, because of the

1 profession, that you would not allow.

2 CHAIRMAN NICHOLS: Well, the difference is like if
3 you found an English professor the university provides
4 in an office, and that is used solely for his work with
5 his students. If you have a doctor's office that is
6 used for his private practice --

7 COMMISSIONER GUNTER: Go check at the teaching
8 hospital at the University of Florida and you'll find
9 that the private practices there, those physicians are
10 on salary.

11 Monies that they make go into a fund -- outside of
12 that like walking across the street to the veterans'
13 hospital -- goes into a fund which is used by all the
14 doctors for professional training. Now it just so
15 happens some of that professional training takes place
16 is Copenhagen and various places around the world, but
17 that's the process under which that works. They are
18 faculty members, they're involved --

19 COMMISSIONER MARKS: Are you talking about their
20 faculty offices or are you talking about their
21 private --

22 COMMISSIONER WILSON: I think what Commissioner
23 Nichols is talking about is -- I don't see a difference
24 between that and an economist who works out here at FSU
25 on his own salary and teaches classes and also

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1 Economist's Consulting, Inc., Corporation which he does
2 some of his business out of there. But he ought not be
3 using the university's phone and switchboard to conduct
4 his private business. He needs to have a private
5 phone.

6 COMMISSIONER GUNTER: If they have a private
7 practice. I think you'll find that at most teaching
8 hospitals there's not a private practice.

9 COMMISSIONER MARKS: That's fine.

10 COMMISSIONER WILSON: If they don't have a private
11 practice that's no problem.

12 COMMISSIONER MARKS: No problem.

13 CHAIRMAN NICHOLS: I thought we were talking about
14 offices for the doctor's private practice?

15 COMMISSIONER GUNTER: I think you'll find at
16 teaching hospitals they don't have a private practice.
17 They're employees of the State.

18 CHAIRMAN NICHOLS: Then I don't have a problem
19 with that.

20 COMMISSIONER GUNTER: We have an attorney
21 upstairs -- if you all care to go talk to her -- whose
22 father is the head of osteopedic surgery up there. And
23 she'll probably explain to you about the relationship
24 of the physicians and the university system.

25 COMMISSIONER MARKS: I thought there may be a

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1 situation down at the University of South Florida where
2 a physician -- I don't know if this is true, somebody
3 help me -- where a physician on the faculty could also
4 have a private practice and could also have an office
5 in a building that's located on the campus that's also
6 attached to the hospital. That's the situation.

7 MR. VANDIVER: One of the parties to this docket
8 had that situation, Baptist Hospital in Pensacola.
9 Although not affiliated with the university that was
10 precisely the situation.

11 COMMISSIONER GUNTER: I'm talking about a
12 university type situation, particularly Shands in
13 Gainesville -- which I have had substantial
14 relationship.

15 CHAIRMAN NICHOLS: Basically what you're saying
16 is if the university -- if the doctor is an employee
17 of the state, then his office ought to be included
18 in the university system. I have no problem with
19 that.

20 If he maintains another office or if he is not an
21 employee of the state, in my judgment he ought to be
22 paying for phone service himself and not putting it
23 through the university system.

24 COMMISSIONER GUNTER: We agree with you. But we
25 were thundering down the road that all doctors' offices

1 would be excluded.

2 COMMISSIONER WILSON: No, we were not.

3 CHAIRMAN NICHOLS: No, no, I never mentioned
4 anything to exclude the ones that were state.

5 COMMISSIONER GUNTER: That's fine.

6 COMMISSIONER MARKS: We were talking about private
7 practices of doctors with offices located on public
8 property.

9 CHAIRMAN NICHOLS: Have we reached a decision on
10 married student housing?

11 COMMISSIONER GUNTER: I think they should be --

12 COMMISSIONER WILSON: Does that situation in fact
13 exist or was that brought up as an example of something
14 that might happen.

15 COMMISSIONER MARKS: Which?

16 COMMISSIONER WILSON: The married student housing
17 that Centel was concerned about out here.

18 MS. NORTON: Centel's concern that FSU is planning
19 to run -- right now Centel serves Alumni, but they
20 testified that FSU had plans to extend --

21 COMMISSIONER WILSON: That's what concerns me is
22 we're dealing with something that right now is
23 speculative, we haven't really -- it was mentioned, not
24 in passing, but as an example of something that might
25 happen. And I'm a little concerned about ruling on it

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1
2 now without having the facts in front of us.

3 COMMISSIONER HERNDON: Florida is served by the
4 university. I don't think they're served separately by
5 Southern Bell.

6 MR. COUCH: Centel was the only LEC that had any
7 protest on that.

8 MS. NORTON: It was Central Telephone Company's --
9 it was a larger concern for them. And I believe the
10 reason is it's a larger proportion of their revenues.
11 And I think what their deposition was was that they
12 wanted any type of sharing to be constrictive and
13 confined if it was allowed, if the Commission voted to
14 allow it to continue. And I think it might just be
15 good for the Commission to be heard on that.

16 COMMISSIONER GUNTER: Well, we need to hear more
17 about it because there's merely speculation in the
18 record about that.

19 MR. MCAULEY: You would be voting then to leave
20 the tariff is exist for dormitories and colleges.

21 COMMISSIONER WILSON: Leave it as it is so long as
22 it's consistent with what we just voted on. I mean, if
23 it allows something that -- if you have a tariff out
24 there that allows industrial parks to be served, then
25 clearly we can leave the tariff the way it is.

If the tariff relates to serving students in

1 moot. Reservation service. All right. Issues 20, 21,
2 22, 22(a), 22(b) and 24 are for information only. Issue
3 25.

4 MS. NORTON: Okay. I need to explain this one,
5 too, because it may not be what it appears.

6 CHAIRMAN NICHOLS: Isn't this that board in the
7 airport that has all those hotels on it and you pick up
8 the phone and you push a button?

9 MS. NORTON: This is true, but that's not where
10 it's sharing. We need to look at this on two levels.
11 The first one, members of the transient public, the way
12 this issue start out, it appeared that the duplication
13 or competition might be with coined telephones. Okay?
14 I would submit that the Commission can consider it but
15 that may not be where the real sharing is.

16 Those who would want to know, these are special
17 telephones set up in airports that have little panels
18 on them that somebody can come up and push, an Avis
19 rent a car, a hotel, a restaurant or anything. And
20 it's a direct line. Currently, it's provided over a 1-
21 FB. The subscriber to that service can be the Avis
22 rent a car or the Hilton Hotel directly, and there
23 would only be one button on that telephone. In that
24 case, the Hilton would be the only subscriber and there
25 would be no sharing. But what happens sometimes is

1 that either the airport authority or possibly an
2 independent reservation service provider --

3 COMMISSION MARKS: Will do that.

4 MS. NORTON: Will do that and get one line from
5 the telephone company and there will be an auto dialer
6 over it. So you push the panel button and in that
7 sense the line is shared.

8 CHAIRMAN NICHOLS: Is there a motion to move
9 Staff? Issue 28, move it.

10 COMMISSIONER GUNTER: Move it.

11 CHAIRMAN NICHOLS: Issue 30, deny it.

12 COMMISSIONER GUNTER: Deny.

13 CHAIRMAN NICHOLS: No change.

14 COMMISSIONER GUNTER: Keep it the way it is.
15 Everybody's tariff stays the way it is.

16 COMMISSIONER WILSON: Is everybody charged a usage
17 rate on this now?

18 MS. NORTON: No.

19 COMMISSIONER WILSON: General does.

20 MS. NORTON: Yes. Currently General charges their
21 70 percent of the 1-FB plus 25 cents a call. The rest
22 are flat rated. And some companies don't have it.

23 COMMISSIONER HERNDON: Leave it the way it is.

24 COMMISSIONER WILSON: We can leave it the way it
25 is and if some of the other companies wanted to file a

1 tariff to do something different --

2 MS. NORTON: Yes, it's a revenue source in a rate
3 case.

4 COMMISSIONER WILSON: -- they could file a tariff.

5 CHAIRMAN NICHOLS: Okay. Issue 32 is moot. Now
6 we are up to exhibitors.

7 COMMISSIONER HERNDON: Is the cast the same, the
8 vote?

9 COMMISSIONER WILSON: Yes.

10 COMMISSIONER HERNDON: The exhibitors cast the
11 reservation service?

12 MS. NORTON: I kind of hear a flavor of "If it
13 ain't broke, don't fix it."

14 CHAIRMAN NICHOLS: Move Staff in Issues 25, 28 and
15 Issue 30 is denied. They will continue under the same
16 tariff, and Issue 32 is moot.

17 We are now up to nursing homes. Issue 25,
18 duplicative nursing homes.

19 COMMISSION GUNTER: Move Staff.

20 CHAIRMAN NICHOLS: Any objection to Staff? Issue
21 28.

22 COMMISSIONER GUNTER: Move Staff.

23 CHAIRMAN NICHOLS: Without objection. Issue 30?

24 COMMISSIONER HERNDON: Leave it as is.

25 COMMISSIONER GUNTER: Leave it as is.

1 CHAIRMAN NICHOLS: Deny Staff and no change to the
2 present tariff.

3 COMMISSIONER GUNTER: That's correct.

4 MR. MCAULEY: Commissioners, a point of
5 clarification on no change to the current tariff; they
6 will be able to communicate behind a PBX.

7 CHAIRMAN NICHOLS: That is correct.

8 COMMISSIONER GUNTER: I understand.

9 CHAIRMAN NICHOLS: For emergencies.

10 COMMISSIONER GUNTER: I understand. A unique
11 nature of medical care required there. One of these
12 days we hope we're all going to live long enough to get
13 in one of them.

14 CHAIRMAN NICHOLS: And be strong enough to dial a
15 telephone. Issue 32 is moot. We're going to take 8
16 minutes.

17 (recess)

18 We're on the section marked hospital sharing
19 arrangements. And again, we have the usual issues that
20 don't require a vote.

21 MR. O'PRY: Madam Chairman, I would like to skip
22 ACLFs, but I believe that's where we stopped.

23 COMMISSIONER WILSON: We stopped at hospital
24 sharing.

25 CHAIRMAN NICHOLS: We did nursing homes, which

1 I --

2 MS. NORTON: ACLFs are next.

3 COMMISSIONER MARKS: We're on page 39 of the vote
4 sheet.

5 CHAIRMAN NICHOLS: Well, turn to page 40 which is
6 Issue 25, which is the first issue that requires a
7 vote. Is there a motion?

8 COMMISSIONER HERNDON: Well, I would move Staff
9 recommendation with the observation that I think in the
10 case of airports, universities and now hospitals, I
11 think we're really talking about the same concept
12 throughout, and that is that in those instances where
13 they're all governmental services, where the activity
14 is materially necessary to the function of that
15 mission, they are exempt from our regulation. But in
16 those instances where they move over into commercial
17 activities that are unrelated or not materially
18 necessary to the day-to-day function of that agency,
19 they're STS providers.

20 MR. VANDIVER: And you would include the doctors'
21 offices?

22 COMMISSIONER HERNDON: And I would include
23 essentially doctors' offices whose purpose is private
24 practice unrelated to -- a lot of hospitals provide
25 offices for doctors in their facilities for them to use

1 while they're on the grounds. That's fine. But if
2 he's going to have a private practice on the grounds of
3 that hospital that may or may not include the patients
4 that he sees there, that's a different story as far as
5 I'm concerned.

6 COMMISSIONER MARKS: With one other minor
7 exception. A lot of hospitals are not governmental
8 agencies.

9 MR. VANDIVER: Including Baptist Hospital.

10 COMMISSIONER HERNDON: Yes, the university
11 hospital we were talking about earlier.

12 CHAIRMAN NICHOLS: So you're moving Staff on Issue
13 25?

14 COMMISSIONER MARKS: I agree with that.

15 CHAIRMAN NICHOLS: Without objection. Issue 28?

16 COMMISSIONER MARKS: The same thing. It's really
17 the same concept, and I would move Staff. It's the
18 same idea. Issue 30, we're going to TP that?

19 COMMISSIONER HERNDON: I'd leave it the way it is.

20 CHAIRMAN NICHOLS: Issue 30, there's a motion to
21 leave it as it is.

22 COMMISSIONER WILSON: Deny Staff.

23 CHAIRMAN NICHOLS: Deny Staff?

24 COMMISSIONER MARKS: Fine.

25 CHAIRMAN NICHOLS: No change?

1 COMMISSIONER MARKS: Well, see you've got the
2 doctor's portion of that on the --

3 COMMISSIONER WILSON: I was just looking at that
4 last sentence there, present service being provided to
5 other than hospital staff should be terminated on or
6 before July 1, '87.

7 CHAIRMAN NICHOLS: Yes.

8 COMMISSIONER WILSON: Unless the trunk is on a
9 petition basis for a hospital. That portion --

10 CHAIRMAN NICHOLS: That portion would remain in so
11 that the --

12 COMMISSIONER MARKS: We'll have to vote on that
13 with the other tariff issues, the other rate structure
14 issues that we've passed, as I understand it. Is that
15 right?

16 CHAIRMAN NICHOLS: We can take this up right now.

17 COMMISSIONER WILSON: It would retain the existing
18 rate structure.

19 CHAIRMAN NICHOLS: Existing rate structure for the
20 hospital patients in the administration of the hospital
21 and so forth. However, those doctors' offices that we
22 have said are not appropriate to be --

23 MR. VANDIVER: And the pharmacy, et cetera, et
24 cetera.

25 COMMISSIONER MARKS: What are you going to do with

1 those?

2 CHAIRMAN NICHOLS: Those would be the ones that
3 would be terminated on or before July 1 or partitioned.

4 COMMISSIONER HERNDON: Do you want to consider
5 grandfathering the existing ones?

6 COMMISSIONER MARKS: No.

7 CHAIRMAN NICHOLS: I don't think we can.

8 COMMISSIONER WILSON: Did you say pharmacies,
9 hospital pharmacy.

10 MR. VANDIVER: Yes, I believe there's a pharmacy
11 in the physician's office.

12 COMMISSIONER MARKS: What if -- see if I'm saying
13 this right -- what if a hospital wanted to get involved
14 in a sharing?

15 MR. VANDIVER: They could become an STS provider.

16 CHAIRMAN NICHOLS: They have that option to
17 become an STS provider and follow all the provisions of
18 the STS tariff. And for that portion of the doctors
19 that have got to go off by July 1st, the pharmacy or
20 whatever, Issue 32 would apply as modified by the
21 handout this morning.

22 COMMISSIONER WILSON: Right.

23 COMMISSIONER MARKS: So what we're saying is TMH,
24 if they wanted to offer those doctors'
25 telecommunication services through their PBX, they

1 could do that but they have to become an STS provider?

2 CHAIRMAN NICHOLS: That's correct. Okay. ACLFs,
3 continuing care facilities and retirement homes, Issue
4 25. Is there a motion?

5 COMMISSIONER WILSON: Let me step back. They
6 could do that if they're in a single building?

7 MR. VANDIVER: I have one other little thing to
8 bring up about hospitals.

9 COMMISSIONER MARKS: Wait a minute.

10 COMMISSIONER WILSON: Wouldn't that be correct?
11 TMH, they have the hospital there and they've got the
12 professional office building right next to it, eight
13 floors of doctors and pharmacies and things like that.
14 If TMH chose to be an STS -- I mean they can't choose
15 to be an STS, can they, because it's not a single
16 building?

17 MR. COPPIN: They can if that is certified. Each
18 building --

19 COMMISSIONER WILSON: If that building were
20 certified as an STS?

21 MR. COPPIN: Right.

22 CHAIRMAN NICHOLS: They would have to partition
23 their trunks --

24 MR. COPPIN: Partition their PBX trunk.

25 CHAIRMAN NICHOLS: That serve the hospital

1 building and those trunks that serve the professional
2 building.

3 COMMISSIONER WILSON: So they could provide
4 service to the doctors and pharmacies is that
5 professional office building.

6 MR. COPPIN: Right.

7 CHAIRMAN NICHOLS: With a certificate.

8 COMMISSIONER WILSON: Who would they be able to
9 call?

10 MR. VANDIVER: That was my next question.

11 COMMISSIONER WILSON: I mean they can't call the
12 hospital because that would be traffic in between two
13 separate locations.

14 MR. COPPIN: They could call the hospital if they
15 go out to the local exchange company and come in back.
16 But no intercomming behind the PBX or across STS
17 buildings.

18 COMMISSIONER NICHOLS: They could intercom inside
19 the professional building if they were a certificated
20 STS.

21 MR. COPPIN: No.

22 COMMISSIONER WILSON: Unless we granted them an
23 exception.

24 CHAIRMAN NICHOLS: Unless we grant an exception.

25 COMMISSIONER WILSON: I don't see any reason for

1 that.

2 COMMISSIONER MARKS: I don't see any reason to do
3 that. They could do it.

4 COMMISSIONER HERNDON: What's the difference
5 between two doctors on two different streets?

6 CHAIRMAN NICHOLS: Right.

7 MR. VANDIVER: How about within the hospital
8 itself? Would you continue to allow intercomming
9 there?

10 CHAIRMAN NICHOLS: Yes.

11 COMMISSIONER WILSON: Yes, that's part of the
12 medical care or whatever.

13 CHAIRMAN NICHOLS: Yes. And they do certainly
14 need to be able to call quickly. Issue 25; is there a
15 motion?

16 COMMISSIONER HERNDON: Move staff.

17 CHAIRMAN NICHOLS: On page 45 of the vote sheet.
18 Staff motion?

19 COMMISSIONER MARKS: Yes.

20 CHAIRMAN NICHOLS: Moved and seconded, any
21 objections?

22 COMMISSIONER WILSON: Do we have a definition of a
23 retirement community?

24 CHAIRMAN NICHOLS: Yes. Somewhere in here as is
25 the statute 400, Florida Statutes? I thought it was a

1 good one.

2 MR. O'PRY: Issue 30, page 433 is the recommended
3 definition for these classes of facilities.

4 COMMISSIONER NICHOLS: Okay. There are four
5 points to the definition on page 433, and you're
6 recommending that we adopt that as the definition of
7 ACLFs, nursing home, community facility, whatever?

8 COMMISSIONER HERNDON: It says it has to have one
9 or more of the following four elements.

10 CHAIRMAN NICHOLS: Not all four, one or more.

11 MR. VANDIVER: I don't know that we're
12 recommending that that be adopted as the definition,
13 but that's the one we used in the analysis.

14 CHAIRMAN NICHOLS: I think we need to adopt some
15 kind of definition because when you start talking about
16 retirement homes, I get a little nervous about a high-
17 rise condominium on Miami Beach that everybody in it
18 just happens to be retired.

19 MR. O'PRY: Madam Chairman, United in that brief
20 expressed concern and Staff agrees that they could just
21 -- a group of retirees form a non-profit club and
22 qualify as the retirement.

23 CHAIRMAN NICHOLS: I would urge, Commissioners,
24 that we move to adopt as the definition for this
25 category of service the suggested definition on page

1 433 of the Staff recommendation, that they would be
2 required to have one or more of the following licensed
3 or certificated components.

4 COMMISSIONER HERNDON: Second.

5 COMMISSIONER MARKS: No problem.

6 MR. VANDIVER: The statute is mis-cited in
7 Subsection B, but we'll fix it. It should be 404
8 rather than 44, I believe.

9 COMMISSIONER MARKS: Well, whatever, write an
10 order.

11 CHAIRMAN NICHOLS: All right. Issue 28?

12 COMMISSIONER MARKS: Move it.

13 CHAIRMAN NICHOLS: Staff recommendation on Issue
14 28. Issue 30? Staff is recommending that they
15 continue under their present tariff.

16 MR. O'PRY: No, not really. With the concept of
17 measured rates from the beginning, it has now been
18 changed to a message rate basis for STS, is what the
19 recommendation would call for.

20 COMMISSIONER HERNDON: Strike the last sentence of
21 the Staff recommendation, which would contemplate a
22 change in their status.

23 COMMISSIONER MARKS: Let them stay like they are.

24 CHAIRMAN NICHOLS: Stay like they are.

25 COMMISSIONER MARKS; Strike the last sentence?

1 32 as amended.

2 CHAIRMAN NICHOLS: As amended, Issue 30. Issue 32
3 is then moot.

4 COMMISSIONER MARKS: Okay. Composite data
5 service?

6 MR. O'PRY: Madam Chairman, we can probably
7 take composite data and overseas data. Neither of
8 those sharing arrangements involve sharing, and
9 therefore, the Issues 20 through 30, 32 are moot.

10 COMMISSIONER MARKS: Move Staff on all of those.

11 CHAIRMAN NICHOLS: Staff?

12 COMMISSIONER MARKS: On both of them.

13 CHAIRMAN NICHOLS: On both of them. We're now to
14 apartment houses, co-ops and apartment hotels.

15 COMMISSIONER HERNDON: I vote to deny Staff
16 recommendation on Issue 25.

17 COMMISSIONER WILSON: Second.

18 CHAIRMAN NICHOLS: Issue 25? There is a motion to
19 deny staff on Issue 25. Discussion?

20 COMMISSIONER HERNDON: On the basis that they're
21 not transient by nature, but they do in fact duplicate
22 local service.

23 CHAIRMAN NICHOLS: Where is this in the -- I've
24 lost my pages.

25 COMMISSIONER HERNDON: Page 498.

1 CHAIRMAN NICHOLS: Thank you.

2 COMMISSIONER MARKS: Explain what these are.

3 CHAIRMAN NICHOLS: Yes. I guess the problem I had
4 was when I read the recommendation, I thought this is
5 ridiculous because tentative apartment houses and
6 certainly co-ops are not transient in my view. Maybe
7 apartment hotels, if that refers to the kind of
8 little old hotel in downtown St. Pete where you rent
9 a room and you share a bath and you share the living
10 room.

11 MR. O'PRY: It's somewhat like that. The
12 rationale for the tariff, as Staff understands it, was
13 an extension of the hotels to guest provisions in that
14 many of these tenants are, in fact, a transient.

15 CHAIRMAN NICHOLS: You have guest houses where you
16 stay like a week. That I can see as being transient.
17 But when you start talking about apartment houses --

18 COMMISSIONER WILSON: Is there a definition of --
19 as far as I recall, a co-op -- the difference between a
20 co-op and a condominium is not terribly great. And it
21 would be very easy for a condominium to become a co-op.

22 MR. VANDIVER: There was virtually no testimony on
23 this in the record. None of the LECs supported
24 abolition of this. From this, I'm lead to believe that
25 these are not permanent type residents because the LECs

1 would have been screaming. I suspect that this comes
2 -- I don't know, it's not in the record --

3 COMMISSIONER MARKS: How did you all define
4 transients as far as hotels and motels are concerned?
5 How did you define that?

6 COMMISSIONER HERNDON: Well, one of the
7 definitions that's used throughout is less than nine
8 months.

9 COMMISSIONER MARKS: And I think that's -- if you
10 stay in a place less than nine months you become
11 transient?

12 COMMISSIONER WILSON: What are these people --
13 what are these things licensed by?

14 MR. VANDIVER: I suspect it comes from the DBR
15 licensure and the LECs wanting to cover themselves in
16 terms of apartment house. Chapter 509 regulates these
17 folks and there's 70 zillion different kinds of little
18 things that DBR regulates. And I don't know, but I
19 suspect that's where it comes from. And I said there's
20 no testimony on the record except for all the LECs
21 saying, "Let these folks keep on keeping on it."

22 CHAIRMAN NICHOLS: Well, I would have no problem
23 if we added the caveat that in so far as the nature of
24 the tenant is transient.

25 MR. VANDIVER: And does not exceed nine months.

1 COMMISSIONER MARKS: Right.

2 CHAIRMAN NICHOLS: Not to exceed nine months.

3 COMMISSIONER HERNDON: As a general practice, you
4 may have one tenant that comes in there and leaves six
5 months later. But the purpose of an apartment house is
6 not to turn them over every nine months, obviously.

7 COMMISSIONER WILSON: I've always thought of a
8 co-op as being something you have an ownership interest
9 in, it's not a rental place. Someone may own it and
10 obviously rent a building like that, but a co-op is
11 generally equivalent to a condominium.

12 COMMISSIONER MARKS: With that understanding what
13 have we done?

14 COMMISSIONER HERNDON: With that caveat, you
15 would --

16 COMMISSIONER MARKS: Go along with Staff?

17 COMMISSIONER NICHOLS: Amend Staff just to add --

18 MR. VANDIVER: The nine-month limitation.

19 CHAIRMAN NICHOLS: Not to exceed nine months.

20 COMMISSIONER MARKS: I agree with that. So what
21 it ends up being is the same thing as what you've got
22 for hotels, motels and other people.

23 CHAIRMAN NICHOLS: That's fine.

24 MR. SHAFER: I think Robin just noted a really
25 good point and that is it would only constitute sharing

1 if you were talking about pretty much a short-term
2 arrangement. If anybody's going to be in a location
3 for nine months, just to pick a number, chances are
4 they're going to get their own service if that's --

5 COMMISSIONER MARKS: All I'm saying is what we end
6 up with here is something that falls in the same
7 category as hotels, motels and other facilities, like
8 facilities. That's my point.

9 MR. SHAPER: There are a number of intermediate
10 type situations where people stay for two weeks or a
11 month on weekly rates or something like that that would
12 constitute transient in my mind anyway.

13 COMMISSIONER MARKS: All right.

14 CHAIRMAN NICHOLS: All right. Issue 28?

15 COMMISSIONER MARKS: 28? What is that?

16 CHAIRMAN NICHOLS: Does somebody want to move
17 Staff?

18 COMMISSIONER MARKS: I'll do it.

19 CHAIRMAN NICHOLS: Issue 30?

20 COMMISSIONER WILSON: Deny Staff.

21 COMMISSIONER MARKS: I'll deny Staff on 29.

22 CHAIRMAN NICHOLS: No change, present tariff.
23 Okay. We are now -- that moots Issue 32. And we are
24 now to Issue 16.

25 MS. NORTON: Commissioner, that's all the sharing

1 issues.

2 CHAIRMAN NICHOLS: Do you want to go back,
3 Commissioners, and discuss the Orlando Aviation
4 Authority's tariff?

5 COMMISSIONER MARKS: And all the others, too.

6 CHAIRMAN NICHOLS: That's not actually optional.
7 We will go back and discuss the Orlando Aviation
8 Authority's tariff.

9 COMMISSIONER MARKS: And all the others as well.

10 CHAIRMAN NICHOLS: What page in the vote sheet is
11 that on?

12 MR. O'PRY: Issue 30, page 9.

13 COMMISSIONER MARKS: What we have decided already,
14 as I understand it, is essentially the Staff's
15 recommendation with the modification of the usage
16 portion on -- and have a message rate -- then we have a
17 message rate of 12 cents a message, that is for STS
18 services; is that correct?

19 MS. NORTON: I'm sorry.

20 COMMISSIONER MARKS: For STS services, we approve
21 the Staff's recommendation with the message rate of 12
22 cents per message?

23 MS. NORTON: Yes.

24 COMMISSIONER MARKS: For commercial installation.

25 MS. NORTON: Pure STS.

1 COMMISSIONER MARKS: Now what's the problem with
2 doing the same thing or something similar with the
3 airports?

4 CHAIRMAN NICHOLS: Doing what?

5 COMMISSIONER MARKS: Something like that.

6 CHAIRMAN NICHOLS: Just leaving them on the tariff
7 they're on right now?

8 COMMISSIONER GUNTER: Just obsolete the tariff.
9 That's the way to cure all those things. Just obsolete
10 the tariff. Deny Staff and obsolete the tariff.

11 CHAIRMAN NICHOLS: So that the -- you're
12 essentially grandfathering in the Greater Orlando
13 Aviation Authority, and I presume it would be any other
14 airport that may be on a similar airport tariff?

15 MR. VANDIVER: West Palm.

16 CHAIRMAN NICHOLS: West Palm, Tampa, Jacksonville,
17 Ft. Myers?

18 MS. PATTON: What would happen if an airport chose
19 to come in and operate similarly to Orlando?

20 COMMISSIONER HERNDON: After the effective date of
21 the tariff?

22 COMMISSIONER MARKS: They become STS.

23 COMMISSIONER HERNDON: They become an STS
24 provider.

25 MS. PATTON: So they would be coming in at the STS

1 rates?

2 COMMISSIONER GUNTER: I amend my motion to deny
3 Staff and just no change.

4 COMMISSIONER HERNDON: Invalid for ever more.

5 CHAIRMAN NICHOLS: Is there a second?

6 MS. PATTON: I'm not clear on the vote.

7 CHAIRMAN NICHOLS: We haven't voted yet.

8 COMMISSIONER MARKS: I'll second Staff's
9 recommendation at this point in time just for purposes
10 of discussion so we can make sure we understand
11 exactly -- Gunter's motion.

12 CHAIRMAN NICHOLS: Gunter's motion is to deny
13 Staff and leave the Greater Orlando Aviation Authority
14 on the tariff they're on right now.

15 COMMISSIONER HERNDON: West Palm Beach as well.

16 CHAIRMAN NICHOLS: Any airport arrangement.

17 COMMISSIONER HERNDON: Can I ask another question?
18 I would assume you would intend that that -- that the
19 current tariff arrangement in place at these airports
20 be extended to future airports that come into being
21 with similar arrangements, is that --

22 COMMISSIONER GUNTER: That's correct.

23 MS. PATTON: And since it's not specified out as a
24 tariff at this point, would you like them to come in
25 and make the tariff as it is currently offered?

1 CHAIRMAN NICHOLS: I think they ought to file a
2 tariff, yes.

3 MR. VANDIVER: Commissioners, you need to reverse
4 your earlier finding that it's duplicative or
5 competitive. As we said before, it can't be
6 duplicative and competitive unless you amend Bell's
7 certificate. That's in the statute. You can make --
8 say that an airport's a unique animal and it doesn't
9 duplicate or complete, period, it seems to me, and we
10 can defend that.

11 COMMISSIONER GUNTER: I'll run that one up.

12 CHAIRMAN NICHOLS: You can't, you voted on the
13 losing side.

14 COMMISSIONER GUNTER: You opened the question back
15 up.

16 COMMISSIONER MARKS: I'm just getting out of -- I
17 understand where we are.

18 COMMISSIONER GUNTER: I move, Madam Chairman,
19 that we find that due to the uniqueness of the airport
20 as a general classification, excluding industrial
21 parks, those other shopping centers and hotels, that
22 with those three exclusions, that they be -- it be
23 found that due to the uniqueness of their operation and
24 the special communication requirements that exist for
25 the traveling public's safety, that we find them not to

1 be duplicative of existing LEC facilities.

2 COMMISSIONER HERNDON: Commissioner, would you
3 consider a possible friendly amendment that's a
4 serious possible friendly amendment not that would add
5 a fourth category that would say "and other commercial
6 activities that are unrelated to the mission of an
7 airport"?

8 COMMISSIONER GUNTER: Well, let me tell you where
9 I would have a problem with that, is that in some
10 people's minds that might exclude restaurants.

11 COMMISSIONER HERNDON: I understand. But it seems
12 to me that that decision comes back to us.

13 COMMISSIONER GUNTER: Fine.

14 CHAIRMAN NICHOLS: Wouldn't you say that --

15 COMMISSIONER WILSON: What was your language now?

16 COMMISSIONER HERNDON: And other commercial
17 activities that are unrelated to the mission of an
18 airport.

19 COMMISSIONER WILSON: Unrelated and not --

20 CHAIRMAN NICHOLS: Could you say not serving the
21 traveling public?

22 COMMISSIONER HERNDON: I hate to get into the
23 traveling public kind of thing because I think the
24 Commissioner brought up a good point earlier today
25 about freight handling and so forth, and that to me is

1 a very relevant purpose to an airport. And that's why
2 I'm just trying to talk about the mission of an airport
3 in its broadest sense.

4 COMMISSIONER WILSON: You said not related to --

5 COMMISSIONER HERNDON: That's right. And in my
6 mind, a shopping mall clearly fits that category.
7 There may be others that we haven't thought of yet.
8 One, for example, is the Sebring Raceway that's down
9 there on the airport. I don't know how that fits
10 in, but it's not related to its mission, obviously.

11 MR. VANDIVER: How about the security perimeter?

12 CHAIRMAN NICHOLS: Not included within the
13 security --

14 MR. VANDIVER: That's where you walk in and you
15 get in the metal detectors and all that good stuff and
16 you're actually within the airport. That doesn't mean
17 the hotel.

18 CHAIRMAN NICHOLS: No, because in Tampa you don't
19 go through security until you get all the way out the
20 gate. You wouldn't even have the reservation ticket
21 counter, baggage claim.

22 COMMISSIONER HERNDON: That's absolutely related
23 to --

24 COMMISSIONER MARKS: Will somebody just now, as
25 Commissioner Cresse used to say, explain what this

1 motion is in walking around language?

2 COMMISSIONER GUNTER: Let me tell you what my
3 interpretation is. My interpretation is that the
4 airport, if you just picture a chain link fence around
5 nothing but the airport and you didn't have any
6 warehouses, you didn't have an industrial park and you
7 didn't have a hotel sticking up there -- everything
8 in there that can be construed in a reasonably
9 common-sense approach as being necessary for the
10 operation of the airport.

11 COMMISSIONER NICHOLS: And that would include --

12 COMMISSIONER GUNTER: And that would include the
13 traveling public and those aviation services that are
14 available at the airport.

15 COMMISSIONER MARKS: Let me ask a question then.
16 Does the bar that's on the concourse in the Tallahassee
17 municipal airport as you go past the metal detector on
18 the right, the little cubby hole looking bar, does that
19 include that that would be a part of that service?

20 CHAIRMAN NICHOLS: Yes.

21 COMMISSIONER GUNTER: I would think yes.

22 COMMISSIONER WILSON: Nobody drives out to the
23 Tallahassee airport to go to that bar.

24 COMMISSIONER MARKS: Well, that would include that
25 and that would be a part of the airport services in

1 exempt.

2 CHAIRMAN NICHOLS: The newsstand would be included.

3 COMMISSIONER GUNTER: How about a newsstand? Even
4 an old railroad terminal. I used to ride the railroad
5 and they had a magazine rack in the railroad terminal
6 in Jacksonville.

7 COMMISSIONER MARKS: Let me ask another question
8 now. Does this, what you're doing, exclude hotels?

9 CHAIRMAN NICHOLS: Yes.

10 COMMISSIONER MARKS: All and any hotel?

11 CHAIRMAN NICHOLS: We specifically excluded
12 hotels, industrial parks and shopping centers.

13 COMMISSIONER MARKS: Let me ask a question on
14 that. See, I find that the hotel in the Miami
15 international airport in Miami, Florida is probably
16 much more incidental to the traveling public than that
17 bar in the Tallahassee municipal airport simply because
18 if I get stranded -- I guess the Atlanta analogy
19 probably fits a little bit better -- whatever airport
20 is near the Atlanta airport is probably a good one when
21 you're flying our friendly airline -- but I find that
22 hotel in the Miami international airport that's smack
23 dab in the middle of the terminal much more incidental
24 to the flying public than I do the bar.

25 CHAIRMAN NICHOLS: You can include the hotel in

1 the Tampa airport. It's on the airport property.

2 COMMISSIONER MARKS: That's why I'm having
3 problems carving out this exception.

4 COMMISSIONER GUNTER: It fits the transient
5 exception we've discussed otherwise.

6 COMMISSIONER MARKS: Well, I know that. Okay.
7 But then that hotel could not share that PBX. I'm
8 trying to get the hotel -- I'm not trying to get it --
9 but what I'm trying to figure out is whether or not
10 that hotel can share the PBX that the airport has. And
11 I realize that the hotel can get its own PBX and have a
12 transient exception. But can that hotel at the Miami
13 international airport share in the PBX that the airport
14 has?

15 CHAIRMAN NICHOLS: If they're both exempt from
16 services, why couldn't they share? I mean as a
17 practical matter why couldn't they share?

18 COMMISSIONER WILSON: If you did that, you could
19 have a series of five hotels that link themselves
20 together because each of them were exempt. But they
21 could intercommunicate because each was exempt. If
22 you've got an exempt hotel in an exempt airport, that
23 doesn't mean they ought to be able to share the same
24 thing. I don't see a reason why somebody who's staying
25 in a room at a hotel at an airport ought to be able to

1 call the newsstand in the concourse, which is
2 essentially what you're talking about.

3 I could see why you might want to have a phone off
4 that airport PBX in the lobby or the desk of the hotel
5 for security reasons, in the event there's a terrorist
6 or a plane crash.

7 COMMISSIONER GUNTER: I'm back to my point. I
8 think Commissioner Marks has some good logic. I don't
9 know of many people that go to the airport in Tampa or
10 Miami -- unless they've got a Superbowl game or
11 something and all the rooms are taken. But as a
12 general course, I would find -- I think I would find
13 very few people -- you find people that have to go and
14 don't want to go to the airport in Atlanta. And you
15 certainly don't find people that go out just to stay in
16 the hotel or go out there to eat in a restaurant.

17 You go to Jacksonville and they've got a hotel on
18 the airport property out at the Airport Hotel that's on
19 the property. I don't think you'd find anyone in
20 Jacksonville that goes out there and stays at that
21 hotel just for --

22 MR. MCAULEY: Commissioners, I don't --

23 COMMISSIONER WILSON: I understand the legal
24 principle here, it's the but-for doctrine -- but for
25 that airport there wouldn't be a hotel.

1 COMMISSIONER GUNTER: And that's dictum. See,
2 that's like you order ham and eggs and I put on the
3 grits and don't charge you for them.

4 MR. MCAULEY: That's a matter of policy for you
5 all, whether the hotels are in or out and you want to
6 make an exception.

7 COMMISSIONER MARKS: I guess --

8 COMMISSIONER GUNTER: Was that the friendly
9 amendment?

10 COMMISSIONER MARKS: No. I have problems in
11 carving out this exception for airports. I don't want
12 to amend hotels back in. Frankly, my position is, to
13 be very honest with you, what we voted originally. I
14 think that's probably the appropriate way. I'm just
15 having a very serious problem with exempting those
16 airports because I think what we're going to run into
17 is -- Mr. Renard's back there licking his chops -- some
18 of his clients doing the very same thing. Bevertheless,
19 I make that reference will all candor.

20 I just don't think that those shops in the hotel
21 -- I mean on the concourse of the airports, the Miami
22 international airport, are critical to the traveling
23 public to the extent that they should enjoy the
24 exemptions that some other shop located in a hotel
25 concourse could not enjoy. That's what you're saying

1 under these circumstances.

2 If you go down to the Hilton Hotel or any large
3 hotel, they have a lot of shops down at the bottom that
4 under the -- the way we're currently doing it, as I
5 understand it, is they could not share in the PBX of
6 that hotel, it would have to be partitioned; the flower
7 shop, the restaurant downstairs and all of that. And I
8 don't find --

9 MR. COPPIN: That's true unless their hotel is an
10 STS provider.

11 COMMISSIONER MARKS: If it's an STS provider
12 they're fine. What I'm just saying is I just don't
13 find that much -- if the airport becomes an STS
14 provider --

15 MR. COPPIN: I think the Commissioners were really
16 using a different rationale in granting certain
17 exemptions to the airport because of its unique nature.
18 But I don't think the hotel qualifies by using the same
19 argument for their -- the airport using the same
20 argument for the hotel.

21 COMMISSIONER GUNTER: It's not a necessity to have
22 a hotel at an airport.

23 CHAIRMAN NICHOLS: It's not a necessity to have a
24 newsstand or a dress shop either. It's just the
25 practicality of the situation for security and other

1 reasons in an airport, I just think we ought to temper
2 this regulation with just a little good common sense.
3 I agree with you.

4 I just don't think anybody goes to an airport to
5 shop for that sole purpose and leaves. I think they're
6 all kind of tied in together, and it just strikes me as
7 being a lot more efficient if we just allowed them in
8 and didn't worry about it a whole lot. I think we're
9 basically --

10 COMMISSIONER GUNTER: Excluding the hotel.

11 CHAIRMAN NICHOLS: Excluding the hotel. I think
12 we're talking about a minimal amount of service.

13 COMMISSIONER GUNTER: That's my motion.

14 COMMISSIONER HERNDON: Well, I do want to make my
15 motion to add a fourth category. I don't know whether
16 there's a second or not. Commissioner, it is intended
17 to be a friendly one.

18 CHAIRMAN NICHOLS: I thought it was added, and not
19 related --

20 COMMISSIONER HERNDON: Not materially related to
21 the mission of the airport as a fourth category of
22 exemption. That's just to give us the option of
23 bringing something back here for questioning more than
24 anything else. I don't really have anything in mind at
25 this point. I hate to say everything is in except

1 these three things. Then we've deprived ourselves of
2 the flexibility to visit something in the future.

3 CHAIRMAN NICHOLS: As I understand the motion now,
4 everything is included in the airport as being a unique
5 entity, and therefore exempt from the STS requirement
6 except for industrial parks, shopping malls, hotels, or
7 any other entity not materially related to the mission
8 of the airport.

9 COMMISSIONER MARKS: Well, see, I'll vote for
10 that because I think that would exclude then the flower
11 shop on the concourse; I think it would exclude then
12 the restaurant and all of that.

13 COMMISSIONER HERNDON: I think you have to go
14 though to the question about the mission of the
15 airport. The mission of the airport is to provide an
16 environment where travelers -- leaving aside the
17 freight for a moment -- where travelers can move in an
18 efficient, safe manner; they have the necessary kind of
19 amenities to make their travel productive. If their
20 clothes are ruined they can replace them. They can get
21 food, buy a trinket for relatives. I think those are a
22 part of the mission of the airport. I don't know about
23 flower shops.

24 COMMISSIONER WILSON: I would second the amended
25 motion.

1 CHAIRMAN NICHOLS: All right. All those in favor
2 of the motion say aye. All opposed?

3 COMMISSIONER MARKS: I oppose the motion.

4 CHAIRMAN NICHOLS: Okay. Four to one.

5 COMMISSIONER MARKS: Let me make a clarification
6 why I oppose it. I would do it -- I would require
7 airports to become STS providers if they got into that
8 business, as we voted initially. By the way, we may
9 need to have a motion to reconsider.

10 CHAIRMAN NICHOLS: We did. Gunter tried to do it
11 but he was on the losing side, so I did it. All
12 right.

13 Issue 30 is the tariff under which the airports
14 are going to be served. Did we vote on that that there
15 would be no change to the present tariff and it would
16 be available for future airports? There will be a
17 requirement that the tariffs be filed under which the
18 airports are serving if there's not a tariff on file
19 right now.

20 MS. PATTON: If that's by Southern Bell -- since
21 those are the airports in Southern Bell's territory,
22 you want every company to file these tariffs?

23 CHAIRMAN NICHOLS: If you have an airport -- if
24 they're serving an airport and there's no tariff on
25 file, there should be.

1 MS. PATTON: I may be getting into more of a
2 detail than necessary, but I need to understand so I
3 can do the tariff right.

4 CHAIRMAN NICHOLS: Walter, there's not that many
5 airports in the State of Florida.

6 MS. PATTON: The problem is that I know other
7 airports want to come in under this tariff. Right now
8 the only -- to my knowledge in the record -- company,
9 LEC, that has these kinds of airport arrangements is
10 Southern Bell.

11 My question is do you want Southern Bell to file
12 this tariff or would you like all telephone companies
13 to file this tariffs?

14 CHAIRMAN NICHOLS: What is General serving the
15 Tampa airport under?

16 MS. PATTON: General is serving under --

17 MR. COUCH: They have their own switch out there.

18 CHAIRMAN NICHOLS: That's not going to -- what's
19 Ft. Myers serving under?

20 MS. PATTON: I think they have individual B-1.

21 COMMISSIONER WILSON: And right now Southern Bell
22 is serving under what arrangement?

23 MR. VANDIVER: They serve different airports
24 different ways.

25 MR. COUCH: With Orlando it's a special

1 arrangement with them on their PBA.

2 MS. PATTON: They have a couple of different
3 systems. In Miami they have an intercom system.

4 COMMISSIONER WILSON: And that's a filed tariff?

5 MS. PATTON: Yes, it is.

6 COMMISSIONER WILSON: And in Orlando they're
7 serving under some special arrangement?

8 MS. PATTON: Right. It is not a tariff, it's a
9 special arrangement.

10 COMMISSIONER WILSON: Is that filed with us?

11 MS. PATTON: No, it's not. My point was number
12 one, do you want Southern Bell to come in and file that
13 as a tariff; and then number two, would you like the
14 other companies, LECs to come in and file a similar
15 type tariff so it's available for other airports to
16 come in or do you just not want to go into that at this
17 point?

18 COMMISSIONER WILSON: I would suggest that what we
19 do is allow the companies to continue it under special
20 arrangements. Not only are airports unique class,
21 probably each airport may be unique. Do we have to
22 approve those special arrangements like they had at
23 Orlando before they can offer that service?

24 MR. SHAFER: I don't believe so, no.

25 MS. PATTON: We would prefer not to force the LECs

1 to come in and file the tariffs.

2 CHAIRMAN NICHOLS: Motion that there's no change
3 to the present tariff or special arrangement, period.

4 MR. SHAFER: The situation that we have out there
5 now has just sort of evolved. There wasn't much
6 direction or uniformity or anything. If the belief is
7 that we sort of allow it to go along as it is
8 currently, then I think you're getting into dangerous
9 waters if we try to force a uniform tariff offering or
10 something like that.

11 CHAIRMAN NICHOLS: All those in favor of the
12 motion?

13 COMMISSIONER MARKS: I would make them file
14 tariffs consistent with the STS arrangement that they
15 would be getting into with that.

16 CHAIRMAN NICHOLS: Issue 30 is that there would be
17 no change to the present tariff for special
18 arrangement, period. So Issue 32 now becomes moot
19 under airport tariffs.

20 MS. NORTON: Except that they do need to file some
21 tariffs. Do you want to make a decision on when -- you
22 need to get the current serving arrangement in under a
23 tariff. Do you want to set a time for that?

24 CHAIRMAN NICHOLS: We just said we weren't going
25 to require that.

1 MS. NORTON: Oh, I thought we were. I'm sorry.

2 CHAIRMAN NICHOLS: Move it. Back to Issue --

3 MR. VANDIVER: Commissioner, one last little
4 thing. I think you all skipped over the clubs, yacht
5 basins and time share on intercomming. Do you want to
6 let them to that, too?

7 COMMISSIONER MARKS: Behind the PBX?

8 MR. VANDIVER: Yes.

9 CHAIRMAN NICHOLS: No.

10 MR. VANDIVER: No?

11 COMMISSIONER WILSON: Is there any reason to?

12 CHAIRMAN NICHOLS: Is there any reason for them
13 to?

14 MR. VANDIVER: No. But starting with the next one
15 up, schools --

16 CHAIRMAN NICHOLS: What page is that on?

17 MR. VANDIVER: That's on 17. Starting on the
18 colleges and dormitories, you waive the Hollywell (sp)
19 decision for everyone thereafter. And I just wanted to
20 be clear that you didn't want to do it or did or what
21 you wanted to do for these folks in terms of --

22 COMMISSIONER WILSON: School and colleges and
23 medically related --

24 CHAIRMAN NICHOLS: Yes.

25 MR. VANDIVER: Yes.

1 CHAIRMAN NICHOLS: And we did not take up the
2 tariff for clubs, yacht basins and time sharing, we
3 TP'd it. Issue 30, Commissioners, on page 19 of the
4 vote sheet.

5 COMMISSIONER MARKS: What was our prior vote on
6 that?

7 CHAIRMAN NICHOLS: To TP it.

8 COMMISSIONER MARKS: I mean what was the prior
9 votes on 28 and 25; what did we do?

10 CHAIRMAN NICHOLS: Staff on 28 and 25.

11 COMMISSIONER MARKS: It's not duplicative. Why
12 don't we let it stay like it is?

13 MS. NORTON: It would be consistent with what
14 you've done with the others.

15 CHAIRMAN NICHOLS: Your motion is to deny Staff
16 and no change to the present tariff?

17 COMMISSIONER MARKS: Right.

18 CHAIRMAN NICHOLS: All in favor of that?
19 (unanimous) Those opposed? Issue 30. That makes
20 Issue 32 on page 20 moot. I think we did all the
21 others, didn't we?

22 COMMISSIONER HERNDON: We have to go to 16.

23 MS. NORTON: Now I think we've actually finished
24 other shared arrangements.

25 COMMISSIONER MARKS: What page is that?

GOMIA AND ASSOCIATES

1 MS. NORTON: Excuse me?

2 MR. TRIBBLE: Commissioners, I don't show a
3 decision on Issue 30 under joint user. What did we do?

4 CHAIRMAN NICHOLS: What page is that on the vote
5 sheet?

6 MR. TRIBBLE: Fourteen.

7 COMMISSIONER MARKS: We went along with Staff. I
8 think we agreed with Staff.

9 CHAIRMAN NICHOLS: Joint users -- we abolished the
10 whole service therefore Issue 32 --

11 COMMISSIONER WILSON: I rendered it moot.

12 CHAIRMAN NICHOLS: No, Issue 30 was moot. Issue
13 32 was amended. If we're going to cut off joint user
14 tariffs, Issue 32 is the transition calendar and it's
15 amended to follow the sheet that was on the desk this
16 morning with the new date for the transmission period.
17 Okay?

18 Issue 16?

19 MS. NORTON: Issue 16 has been -- Staff's
20 recommendation does not match that which the Commission
21 has voted. It's being decimated.

22 MR. SHAFER: At best.

23 MS. NORTON: I don't know what to do any more.
24 Basically this issue requires a vote as to whether the
25 rates charged additions of service is applied to shared

1 tenant and other forms of sharing should be the same.

2 CHAIRMAN NICHOLS: No. The answer would be that
3 certain other shared telecommunications arrangements
4 are so unique as to require special consideration.

5 COMMISSIONER WILSON: Some of those. And also
6 that it is not appropriate at this time to revise the
7 tariff charging method to a usage basis at this time.

8 CHAIRMAN NICHOLS: Is that your motion?

9 COMMISSIONER WILSON: Yes.

10 CHAIRMAN NICHOLS: Second?

11 COMMISSIONER GUNTER: Second.

12 COMMISSIONER WILSON: I think that's what we've
13 already done.

14 COMMISSIONER GUNTER: Commissioner, let me address
15 one other thing. I'm reluctant to go back to the
16 airport, but let me ask one question about what we've
17 done as far as -- and the Miami international airport
18 keeps popping up in my mind and the hotel that sits
19 right smack in the middle of that airport unlike most
20 of the other airports -- I don't know the form of the
21 service that that hotel is getting now. Is it -- and
22 it may not be a problem here -- but is it sharing a PBX
23 with the other airport facilities? Because if it is,
24 we're going to have to tell them to get off of it
25 according to that vote. I'm seeing some shaking of

1 heads.

2 CHAIRMAN NICHOLS: No, it's --

3 MS. PATTON: My understanding is that Miami is
4 under an intercom tariff.

5 COMMISSIONER MARKS: So that is not a problem. We
6 don't have to tell them to get off as a result? Now,
7 are there any airports that may be in that situation
8 that I'm talking about where they're sharing a PBX,
9 where the hotel is sharing a PBX with the airport. And
10 we've just excluded airports from being able to share
11 in that PBX as I understand the vote. And we would
12 either have to grandfather them in or tell them to get
13 off.

14 MR. COUCH: Or partition.

15 COMMISSIONER MARKS: Or partition, right.

16 MR. SHAFER: I don't think we have that
17 information at this time.

18 COMMISSIONER MARKS: We don't have that
19 information or we don't know it?

20 MS. PATTON: I know that Miami has its own PBX for
21 the hotel. At this point, I don't remember whether
22 Orlando has the hotel. And their attorney informs me
23 they do not.

24 COMMISSIONER MARKS: They don't have a hotel in
25 Orlando.

1 MS. PATTON: They don't have the hotel under PBX.

2 COMMISSIONER MARKS: Right. They don't have a
3 hotel at the Orlando airport as far as I know.

4 MS. PATTON: They do not have a hotel. Excuse me.

5 COMMISSIONER MARKS: I'm thinking about the very
6 unique situation at the Miami international airport
7 where that hotel sits right in the --

8 CHAIRMAN NICHOLS: Tampa is the same way. As I
9 understand the motion on Issue 16, certain other shared
10 telecommunications arrangements are so unique as to
11 require special tariff consideration. Issue 17?

12 MS. NORTON: That issue -- 16 was STS versus other
13 sharers. Issue 17 is the rates and charges between
14 individual PBX rates versus STS and other sharers.
15 And Staff's recommendation is no, the same rates for
16 individual PBXs should not necessarily apply to STS
17 or other sharers; essential impact is different, and
18 the Commission should not, in our opinion, be bound by
19 something like that.

20 CHAIRMAN NICHOLS: Staff recommendation on Issue
21 17?

22 MR. MCAULEY: Let me clarify that. I may be
23 misunderstanding this, but they -- Staff did want to
24 impose measured rates, nonetheless just different
25 measured rates on --

1 MS. NORTON: The issue goes just to whether the
2 rates should be the same.

3 CHAIRMAN NICHOLS: Issue 18 is the following list
4 of definitions. Issue 18(a), subscriber of record.

5 COMMISSIONER GUNTER: Staff.

6 CHAIRMAN NICHOLS: Issue 18(b), (b)(i) and
7 (b)(ii) and (b)(iii). Move Staff.

8 COMMISSIONER WILSON: Okay.

9 CHAIRMAN NICHOLS: 18(c)? Staff.

10 COMMISSIONER GUNTER: Yeah.

11 CHAIRMAN NICHOLS: 18(d)?

12 COMMISSIONER GUNTER: Staff.

13 COMMISSIONER MARKS: Wait, we changed that. We
14 made a specific reference to what transient would be.
15 We made that nine-month reference.

16 CHAIRMAN NICHOLS: But we said not more than nine
17 months. I'd leave it to just temporary. A transient
18 could also be a one-day person.

19 COMMISSIONER MARKS: What is temporary though?
20 That's it. What is temporary?

21 MR. MCAULEY: Commissioners, I think in the detail
22 of this discussion -- I have to get the page in the
23 recommendation -- but we said for this 18(d) that that
24 would be nine months.

25 COMMISSIONER MARKS: I think you have to define

1 what's temporary. Not more than --

2 CHAIRMAN NICHOLS: It says, "In no case should
3 transient status be considered an appropriate
4 designation for a person, group or firm occupying a
5 premise for a period extending beyond nine months for
6 economic and practical consideration would not prevent
7 direct service from the local exchange companies."

8 COMMISSIONER MARKS: I think you have to put that
9 in the definition.

10 MR. MCAULEY: You wrote -- okay.

11 CHAIRMAN NICHOLS: Add the nine months language.
12 Issue 31?

13 MS. PATTON: Issue 31 deals with under what
14 condition is the provision of service via an additional
15 listing appropriate.

16 Staff had raised this issue because it was
17 concerned that maybe a subscriber of record could be
18 providing STS or joint use service simply by asking for
19 additional listings. We don't believe this is much of
20 a concern since it appears that the telephone companies
21 have procedures in place to assure that directory
22 listings further define the primary subscriber. So
23 therefore the recommendation is --

24 CHAIRMAN NICHOLS: Staff recommendation? And we
25 are now to Issue 1.

1 COMMISSIONER MARKS: Didn't we vote on that?

2 MS. PATTON: Issue 1 deals with whether it's in
3 the public interest to change the definition of shared
4 tenant services as shown in the current statute, and if
5 so, how should it be changed. The Staff recommendation
6 is basically that we think there are some important
7 elements, however, we don't really propose any specific
8 language at this time, and we would be willing to draft
9 language according to how you have voted at this
10 agenda.

11 But we do have some draft language, if you'd like
12 to look at it, that was just passed out to you.

13 CHAIRMAN NICHOLS: All right. In Issue 1 on page
14 55 of the vote sheet, we need to change C to 250; is
15 that correct, Commissioner Wilson?

16 COMMISSIONER WILSON: Yes.

17 CHAIRMAN NICHOLS: And I believe we could then
18 move Staff as amended on Issue 1.

19 MR. TUDOR: Commissioners, what we've done with
20 this that we passed out just now, it's --

21 COMMISSIONER WILSON: What's been handed out is
22 inconsistent with --

23 MR. TUDOR: It's not laid down.

24 MR. VANDIVER: Chairman Marks asked the Staff to
25 prepare a bill to be presented to the Commission for

1 your consideration at this agenda.

2 COMMISSIONER MARKS: I did do that when I was
3 Chairman, you're right.

4 MR. VANDIVER: And this is pursuant to those
5 instructions. We can bring it back to Internal Affairs
6 or whatever is your pleasure.

7 COMMISSIONER GUNTER: I need some time to look at
8 it and consider it the best I can. To pass it out
9 today -- I expect to take some action on it. To be
10 perfectly honest, my mind is clouded enough as it is.
11 If you sit and try to think through and come up with
12 something meaningful, I've reached that curve.

13 CHAIRMAN NICHOLS: I'd like to see Staff re-
14 evaluate this in light of the vote we took today. What
15 do we have scheduled for Tuesday? Do we have Internal
16 Affairs or Agenda? We have the annual planning
17 hearing.

18 COMMISSIONER MARKS: We've got to do this by the
19 15th.

20 CHAIRMAN NICHOLS: I'm going to suggest,
21 Commissioners, that we meet early next week.

22 COMMISSIONER MARKS: Why don't we take an hour out
23 of the annual planning hearing and do it at internal
24 affairs.

25 CHAIRMAN NICHOLS: Let's start Internal Affairs at

1 9 a.m. Tuesday. And I'm going to ask Staff to
2 circulate a new draft of this by Monday afternoon.

3 MR. TUDOR: Commissioners, this language in here,
4 I don't think it needs to be revised in light of what
5 was done today because this language gives the
6 Commission fairly broad authority in terms of sharing.
7 I think this is the language we proposed.

8 COMMISSIONER MARKS: That was the idea,
9 Commissioner. I told them -- I said, "I don't think
10 this language ought to be changed or should change no
11 matter what we vote on it."

12 MR. MCAULEY: One more point of clarification
13 which was asked that we ask you -- this is in regards
14 to airports -- can we intercom all airport operations,
15 whether governmental, commercial or otherwise, and even
16 if we elect to become an STS provider, to recover -- to
17 reach our commercial tenants.

18 CHAIRMAN NICHOLS: Yes.

19 MR. MCAULEY: You can?

20 COMMISSIONER HERNDON: They're STS providers?
21 Is that what you said?

22 CHAIRMAN NICHOLS: No.

23 COMMISSIONER MARKS: No, they can do it anyway.

24 MR. MCAULEY: Right, they're not an STS provider.
25 But if they chose to become an STS provider under

1 certain circumstances -- I wouldn't see why they would.

2 COMMISSIONER MARKS: Why would they want to become
3 an STS provider? You just exempted them from
4 everything.

5 MR. MCAULEY: I agree.

6 COMMISSIONER WILSON: Let me ask one question that
7 I have a concern about. Is it correct that we had
8 testimony from some of the STS people that they would
9 not allow their tenants to hook up CPE, their own CPE?

10 MS. PATTON: We had some testimony from Ameri-
11 Systems which generally when someone subscribed to the
12 services, they used the CPE there at Ameri-Systems
13 because it was seen as a package of goods and that they
14 would be expected not to use their own CPE.

15 MR. MCAULEY: CPE is deregulated as of 1-1-87.

16 COMMISSIONER WILSON: I'll tell you what my
17 concern is -- I'll be real brief. I came real close to
18 voting against Issue 3, which is whether the division
19 of STS is in the public interest, because it's so close
20 to being a toss up. I asked myself what public purpose
21 it served by allowing STS or what public purposes are
22 frustrated by allowing STS.

23 And it seems to me, for instance, in that case
24 that the FCC has gone a long ways towards assuring
25 everybody the opportunity of buying their own CPE and

1 hooking it up to the telephones. And by allowing STS
2 in this form, what we're doing is locking somebody into
3 the CPE that's being provided by the STS provider and
4 not allowing them the free market to pick up whatever
5 CPE and features they want and hook it up to the
6 telephone systems.

7 I know that theoretically they're bargaining for
8 this and contracting for it, but to a degree it does
9 frustrate another public purpose. I think that the
10 limitations we put on it here satisfy me to a degree,
11 but I have some real reservations about whether STS
12 is in the public interest. I hope it is.

13 CHAIRMAN NICHOLS: Staff, thank you very much for
14 the recommendation. It was well done. A little
15 lengthy but well done.

16 • * *

17 (WHEREUPON, the proceedings were adjourned.)
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19
20
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24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, Lori Dezell, Court Reporter and Notary
Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing proceedings
were taken before me at the time and place therein
designated; that my shorthand notes were thereafter reduced
to typewriting under my supervision; and the foregoing
pages, numbered 1 through 197, are a true and correct record
of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel to any of the parties, nor
relative or employee of such attorney or counsel, or
financially interested in the foregoing action.

WITNESS MY HAND AND SEAL this, the 16th day of
December, A.D., 1986, IN THE CITY OF TALLAHASSEE, COUNTY OF
LEON, STATE OF FLORIDA.

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My Commission Expires:

September 30, 1989

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My Commission Expires:

June 19, 1990

(Publication page references are not available for this document.)

In Re: Investigation into Appropriate Rates and
Conditions of Service for
Shared Local Exchange Telephone Service.
Docket No. 860455-TL
Order No 17111
Florida Public Service Commission
January 15, 1987

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Before Katie Nichols, Chairman, Gerald L. Gunter, John T. Herndon, John R. Marks, III and Michael Mck Wilson, Commissioners

ORDER

BY THE COMMISSION

1. BACKGROUND AND INTRODUCTION

Subsection 364.335(4), Florida Statutes, reads in relevant part. "The commission shall not grant a certificate for a proposed telephone company, or for the extension of an existing telephone company, which will be in competition with or duplicate the local exchange services provided by any other telephone company, unless it first determines that the existing facilities are inadequate to meet the reasonable needs of the public and it first amends the certificate of such other telephone company to remove the basis for competition or duplication of services" [Emphasis supplied]. The Commission has consistently interpreted this provision as a prohibition upon any duplication of or competition with local exchange service. Accordingly, any situation implicating any suggestion of sharing or resale of local service has been subject to Commission scrutiny.

Sharing and resale of local telephone service is not a new issue for this Commission. At the outset it should be emphasized that in this docket we deal only with local service, as opposed to long distance service. In Order No. 11206, issued September 29, 1982, we addressed the issue of resale of long distance service.

This Commission has specifically spoken to resale of local service in Dockets Nos 820161-TP, 820315-TP and 840429-TL, which are more fully discussed below. These decisions were made upon the law as it existed at that time. Time, technology and the law have changed since our decisions were made. Accordingly, we now revisit our previous pronouncements in light of new legislation and technological advances.

In Order No. 11375, issued December 3, 1982, the Commission disposed of a complaint filed by Southern Bell Telephone and Telegraph Company (the Holywell decision). In that Order, the Commission disallowed intercommunications among lessees without accessing the central office of the certificated carrier. In other words, tenants behind the switch could not enjoy the intercom feature of the Private Branch Exchange (PBX) in calling among themselves with an abbreviated number. The Commission found that any private benefit was outweighed by detrimental public considerations. The

Commission found that intercommunications between and among tenants constituted local exchange service, requiring a certificate of Public Convenience and Necessity from this Commission

In Order No. 13367, issued June 1, 1984, the Commission denied a Petition for Rulemaking filed by Mr Donald Pevsner. The petition sought Commission regulation of telephone service provided by hotels and motels for the following purposes

1. To limit the charges for local service to "no more than charges for a pay telephone at the same location for a like telephone call."

2. To prohibit charges associated with telephone service "when said telephone is not used by said guest."

The Commission, in denying the petition, relied upon the "transient" exception created by Order No 11206. In this Order, we made the decision to approve resale of Wide Area Telephone Service (WATS) and Message Toll Service (MTS). The elements of this exception were as follows

1 "Transient" resellers offer and provide service only to in-house customers, not the general public at large,

2 Offering of resale service is ancillary to the primary business of these entities,

3 The sheer number of these entities exceeds our capacity to regulate in any meaningful fashion;

4. Evidence of record indicates that, at least for the hospitality industry, provision of resold telephone service is not a profit-making venture;

5 These entities are already subject to regulation on an industry-wide basis, making the opportunity for price gouging or fraud even more minimal than under natural marketplace checks and balances (Order No. 13367 at page 2, Order No. 11206 at page 12).

The Commission also contacted the Department of Business Regulation (DBR), which is responsible for regulation of hotels and motels. As a result of the Commission's efforts, DBR adopted a rule making it an unethical business practice to fail to give guests adequate notice of telephone charges. As a result of the foregoing factors, the Commission declined to exercise jurisdiction over resold telephone service by hotels and motels.

Docket No 840429-TL was initiated upon the filing of a Petition to Initiate Rulemaking by Southern Bell

Telephone and Telegraph Company (Southern Bell) on November 29, 1984. The Commission denied Southern Bell's petition on April 9, 1985, but directed Staff to draft a proposed rule regarding sharing and resale of local exchange service. Hearings on the proposed rule were held August 7, 8, and 9, 1985, in Tallahassee, Florida.

At the Agenda Conference on November 4, 1985, the Commission voted to adopt Rule 25-4.041, Florida Administrative Code, which became effective December 22, 1985 (the Rule). The full text of the Rule reads as follows

25-4.041 Provision of Shared Service for Hire

(1) The provision for hire of shared telephone service within a local calling area by other than the certificated local exchange company is prohibited except in those cases in which the Commission determines that no duplicative or competitive local exchange service is being provided.

(2) The provision for hire of shared WATS Service shall be permitted only when the provider has been granted a certificate of public convenience and necessity by this Commission to do so.

(3) The foregoing notwithstanding, until October 1, 1986, any person who is providing shared telephone service, is sharing telephone service or who has placed orders for shared telephone service on or before November 4, 1985 may continue to receive that service. Persons affected by this rule shall be notified by the local exchange companies of the content of the rule within 30 days from the effective date of this rule.

Southern Bell's original petition and the Rule were designed to deal with a new technological phenomenon Shared Tenant Services (STS). STS involved the provision of telecommunications services (particularly local service) to a group of individuals or entities through a common switching or billing arrangement. Typically STS arrangements involved the sharing of local exchange company (LEC) central office trunks via a PBX. STS arrangements also provided the opportunity for individuals to intercommunicate "behind the switch" without accessing the LEC central office. STS thus raised two principal concerns: sharing of local trunks resulting in an erosion of LEC revenues; and intercommunication among tenants without using LEC facilities in violation of the Holywell decision.

The Rule was read to require partitioning on both sides of the PBX. This meant that each individual "behind" the PBX had to have his/her own separate trunks coming into

the PBX. This was referred to as "trunk side partitioning" and prohibited unaffiliated individuals from sharing LEC central office trunks. The PBX was also required to be partitioned on the "station" side, thus prohibiting tenants behind the switch from intercommunicating with each other without accessing the LEC central office.

The Commission recognized that immediate adoption of the Rule could cause hardship for those tenants of STS operations then existing. Accordingly, subsection (3) of the Rule allowed operations in existence on November 4, 1985, until October 1, 1986, to come into compliance with the Rule by partitioning both sides of their PBX.

The testimony in Docket No. 840429-TL brought the Commission's attention to many examples of sharing of local exchange service. STS providers claimed that other entities such as hotels, hospitals, nursing homes, dormitories and airports engaged in the resale of local service much like an STS provider. The existence of these various arrangements prompted Order No. 15564, issued January 20, 1986, which initiated an investigation into joint use and sharing of local exchange telephone service in the State of Florida in Docket No. 851005-TP. The purpose of this docket was to determine which, if any, of the sharing arrangements competed with or duplicated local exchange service in violation of Section 364.335, Florida Statutes. Hearings were scheduled for August of 1986.

The 1986 Legislature enacted Chapter 86-270, Laws of Florida, which was codified as Section 364.339, Florida Statutes, and is attached hereto as Appendix "A". Section 364.339 grants this Commission exclusive jurisdiction over duplicative or competitive STS furnished through a common switching or billing arrangement to commercial tenants in a single building. If the Commission finds that such arrangements are in the public interest, the STS arrangements may be authorized on July 1, 1987. We amended Rule 25-4.041 to allow STS in existence on November 4, 1985, to continue until July 1, 1987. This Commission was required to make the public interest findings by January 15, 1987. We opened Docket No. 860455-TL for that purpose.

Dockets Nos. 851005-TP and 860455-TL were consolidated into Docket No. 860455-TL by Order No. 16491, issued August 19, 1986. Hearings were scheduled for October 27, 28 and 29, 1986, in Tallahassee, Florida. Many diverse interests were represented at these hearings including those of the LECs, STS providers, destination resort representatives, representatives of various segments of the health care industry, private colleges and universities, airports, and the Board of Regents of the State of Florida. The diversity of these many parties and

their interests underscores the scope of the decision that was before us.

This order is divided into two major segments: Shared Tenant Services and Other Sharing Arrangements. The portion relating to Shared Tenant Services addresses only STS as defined in Section 364.339, Florida Statutes. "Other Sharing Arrangements" refers to cases such as hospitals, dormitories, nursing homes and airports.

II SHARED TENANT SERVICES

As we alluded to in recounting how we have arrived at the proceedings prior to our decision herein, we noted that the legislature recently enacted Chapter 86-270, Laws of Florida. This legislation defined a particular form of telecommunications as Shared Tenant Service and vested this Commission with exclusive jurisdiction over the provision of STS. The legislation authorized this Commission to approve the offering of such service, if we found it to be in the public interest, notwithstanding the existing provisions of Section 364.335, Florida Statutes (See Subsection 4 of the Statute).

We believe this provision of the legislation is significant because it gives this Commission authority to allow STS notwithstanding the fact that it duplicates or competes with available local exchange service. Absent this authority, Section 364.335, Florida Statutes, would, based upon our prior reading of that Statute, prohibit service in competition with or duplication of the local exchange service provided by the LEC.

A. Shared Tenant Service is in the Public Interest

We find a limited version of Shared Tenant Services, as defined by Chapter 86-270 Laws of Florida, is in the public interest. In reaching this conclusion, we have considered those factors identified in the statute. The details of our findings and conclusions concerning each of these factors are discussed separately below.

B. The Number of Firms Providing the Service

We find that no concrete evidence exists in the record which will allow us to draw a conclusion on exactly how many firms now offer STS in Florida. Generally, the testimony presented suggested that only a few firms are now offering this service. To the extent that this service is offered in Florida, it is available generally in urban areas - particularly in Tampa. *AnteriSystems*, the only participant in this docket which currently provides this service, acknowledged that, so far as they were aware, the number of existing STS operations is quite small. They attributed this fact to existing regulatory restrictions placed upon

firms serving in Florida. Several parties to this docket advanced the belief that the availability of STS would increase if this Commission were to adopt rules authorizing such arrangements. While this suggestion may prove to be an accurate prediction of the future course of events, no data was presented to support such a finding at this time.

C. The Availability of the Service From Other Firms or the Local Exchange Telephone Company

The testimony demonstrates that STS, as defined in the statute, involves the resale of local exchange service. The local exchange aspect of STS service is, by definition, available from the local exchange telephone company. Therefore, we find this aspect of STS is available from alternative sources

The evidence also suggests that shared tenant providers may offer certain ancillary services including resale of long distance, data processing and telecommunication consulting services. Although not all of these services may be directly available from local exchange telephone companies, they are certainly separately available from other firms. For example, we approved the resale of Wide Area Telephone Service (WATS) and Message Toll Service (MTS) on September 29, 1982, in Order No. 11206. Since that time, we have issued numerous certificates authorizing companies to offer resale of long-distance service. We take notice of these certificates in finding that resold long-distance service is available from other firms

Finally, we realize that a customer may purchase its own Private Branch Exchange (PBX) and directly obtain trunk service from the local exchange company - thereby enjoying the ancillary services that may be available through STS. However, the primary issue we are concerned with is whether local exchange service is available. As we noted above, it is available from the LEC. The testimony also suggests Shared Tenant Services - through the sharing of trunks - allows end-users to enjoy certain trunking efficiencies they would not be able to obtain without the use of PBX service. To the extent STS offers small- to medium- size firms this ability, we find this aspect of STS service is not otherwise available

D. Quality of Service Available from Alternative Suppliers

Testimony by the witness for AmeriSystems, Inc., suggested that the quality of local telephone service available to an STS subscriber would be at least as good as if the user obtained service directly from the LEC. In support of its position, AmeriSystems' testimony

suggested that "market" factors would require STS providers to offer high quality service. Although this position has some degree of intuitive appeal, there has been no evidence presented to this Commission - of a technical nature - which would support a finding of exactly what quality of service is available to users of STS.

We have, however, adopted rules providing specific service standard guidelines for the provision of local exchange telephone service (see Rules 25-466, et seq., Florida Administrative Code). To the extent that the service available from an alternative supplier relates to local exchange service, we are confident based upon the regulation standards noted above that service from local exchange companies is of a high quality. We have no evidence in the record to support any finding concerning any other aspect of the services offered through STS.

E. The Effect on Telephone Service Rates Charged to Customers of the Local Telephone Company

The positions of the various parties, and their testimony with respect to this issue, vary as widely as the diversity of their interests. AmeriSystems' witness suggested that STS will have a positive net impact on local exchange rates. The reasons supporting this claim include a reduction in LEC investment, billing and collection cost savings and more efficient utilization of the local network. However, no study data was submitted to support these claims.

In counterpoint, the LECs have argued that STS will result in a reduction of telephone company revenue which support current local service rates. Southern Bell presented a study to support its estimates of "revenue losses". However, these studies were merely forecasts or projections. Furthermore, these studies cannot be relied upon as actual "revenue losses" but must be looked upon as potential changes in future flows of revenues if the market penetration assumed in these studies were to occur.

The LECs have also argued that they will not experience any significant decrease in investment requirements since they must stand ready to serve any tenant who desires direct service. Since we, as a Commission, have not relieved the LEC from its responsibility to provide service should a tenant request it, we find this position persuasive. However, neither the LECs nor AmeriSystems presented evidence concerning network engineering to support data on how the network is constructed or priced. Such information would be necessary to support or refute claims concerning expense savings or stranded investment.

Southern Bell took the position that STS, if properly tariffed, would have limited impact on local telephone rates. They claimed that allowing STS providers to share and resell local exchange service at current flat rate trunk charges would result in an erosion of revenues supporting the existing local rate structure. Implicit in this argument is the idea that STS providers have the ability to attract small- to medium-size customers who would otherwise receive service directly from the LEC.

In an STS environment without "partitioning" of trunks, end users share or "pool" trunks to access the local switched network. There was no dispute of this evidence. Southern Bell and the other LECs contend that this "pooling" concentrates the Shared Tenant Services users' traffic. We find this evidence was also uncontroverted. As a result of this pooling, STS operations are able to reduce overall trunking requirements, while maintaining the capacity to offer resold local exchange service to the customer.

Southern Bell and the other LECs have suggested the pooling of trunks, absent a change in prices, will result in less revenues for the LEC. Further, the loss of revenue, which they suggest will be attributable to a migration of small- and medium-size business users, will represent a loss of revenues from services priced above costs. These revenues, they suggest, produce contributions to help hold down residential rates. While it seems clear that STS will allow a "pooling" of trunks, no clear evidence has been presented to support the LECs' claims that STS will result in lost revenues. We find the evidence presented will not allow us to accurately assess the significance of any potential revenue loss. We are, therefore, convinced that the effect of STS on local exchange rates remains, as yet, unknown. We have, therefore, imposed certain restrictions and conditions of service which we have identified in this Order.

F. The Geographic Extent of the Service to be Provided

As we indicated in our discussion concerning the number of firms providing the service, the record reflects that STS appears to be offered in urban areas of the State, and, at this time, particularly in the Tampa area. The average number of trunks per location is approximately forty (40). However, there appears to be a great deal of variation. The largest STS operation has approximately 221 total trunks at two locations. The statute, by its terms, restricts service to commercial tenants in a single building. It appears this restriction, operating in concert with existing zoning and building restrictions around the State, will result in continued development of STS in the urban areas of the State.

G. Who Benefits From Shared Tenant Services

As we mentioned earlier in our discussion concerning the effect of STS on local telephone rates, in an STS environment where no partitioning of trunks is required, end users are allowed to share or "pool" PBX trunks. The ability to pool demand for telephone service has two significant effects. First, it allows the STS provider to reduce its overall requirement for local exchange lines. Second, it may allow small- to medium-size users to obtain the benefits of PBX service and other ancillary functions.

There are three potential beneficiaries of this arrangement. They are: the shared tenant provider, interexchange carriers (IXCs), and STS end users (subscribers). It is clear that the STS provider is a beneficiary since it is able to resell local exchange service. The STS provider is free, so long as rates are unregulated, to engage in arbitrage for its service. The record also reveals that interexchange carriers, those entities certificated by this Commission to resell long-distance service, may benefit because of the consolidation of long-distance demand. We, however, are not satisfied, by the evidence presented, that the consolidation of long-distance demand will, in fact, ultimately benefit IXCs.

Finally, STS end users may also benefit from cost savings realized by the STS provider through a reduction in trunking requirements. However, we have no evidence to support a finding that this will in fact occur. AmeriSystems suggests that the "intelligent building" is an important concept for businesses considering relocation in Florida. While this suggestion may have some appeal on an intuitive basis, no data or study was presented to support such a finding. Therefore, while we are satisfied that the potential benefits have been clearly outlined, the record is unclear as to whether and to the extent these benefits will inure to the end user.

H. Restrictions and Conditions Under Which Shared Tenant Services May Be Offered

Based upon our preceding discussion, we feel that restrictions on the conditions under which this service may be provided are appropriate. These restrictions are appropriate because this service is new and we desire to begin regulation in this area cautiously to ensure protection of all end-users. Further, to the extent this service duplicates and competes with local exchange service, we recognize the potential to affect present local exchange rates. We have alluded to several restrictions already, however, for sake of organization, we will repeat these and describe additional details not mentioned earlier.

which are essential to a clear expression of our intentions.

Shared Tenant Service, as described in Section 364.339, Florida Statutes (Supp. 1986), and as we are allowing at this time, is limited to service of commercial tenants in a single building. We understand the legislature's use of the term single building to mean one structure under one roof. Separate buildings superficially connected will not be considered as one building. If more than one building is served by a single PBX, the trunks serving each building shall be separately partitioned and require certification.

Shared Tenant Service may be provided to any commercial tenant within the building. STS may be provided without "trunk-side" partitioning. This will enable STS providers to share or "pool" trunks. We recognize that end users can utilize most of the functions of the PBX without allowing pooling of trunks. However, to the extent that we have priced services to STS operations on a message basis and included certain trunk charges (discussed separately below) we feel it is appropriate to allow sharing or pooling of trunks. Although we allow STS providers to offer their customers shared tenant services, it is necessary to place a two-hundred-fifty (250) trunk limit per PBX on the STS provider. Based upon the limited data presented in this case concerning STS demand, we believe this limitation is sufficient. Therefore, no STS provider may offer shared or "pooled" use beyond this limitation.

I. Certification Requirements and Procedures

All STS providers will be required to obtain a certificate from this Commission whether or not they began operations before November 4, 1985 - the date of the "grandfather" provision contained in the current law. Each STS provider must file a tariff with the Commission which separately identifies what it will charge for local service. The amount reported should not include any charge for ancillary services.

Current STS providers must file an application for a certificate together with the requisite tariff pages no later than April 30, 1987. All current STS providers may continue to provide service, using existing network configurations (assuming this configuration satisfies an existing rule concerning STS) until July 1, 1987. Beginning on this date, STS providers who have obtained a certificate from this Commission may undertake to provide service according to the terms of this Order. No new STS services, not provided or ordered before November 4, 1985, shall commence until July 1, 1987. Finally, as we alluded to earlier, we will not at the present time exercise jurisdiction to regulate the price STS providers may charge. However, all STS providers shall

agree to file tariff revisions no later than thirty (30) days before the date the revision will become effective.

Certification of Shared Tenant Services will be on a location-by-location basis. The information to be provided by each applicant will include the following data:

- 1 Business name and address of applicant's principal office;
- 2 Business name and address of applicant's principal Florida office;
- 3 Business name and address of all Florida offices where applicant plans to have offices open for public contact;
4. Telephone number and name of individual at each location in items a, b, and c, who has authority to respond to Commission requests;
- 5 Organizational structure, if a corporation - identify the number of stockholders;
- 6 Name and residential address of each person in firm;
- 7 Officers, directors, and, if incorporated - identify the ten largest stockholders;
- 8 State where organized as a partnership or corporation. Proof from Florida Department of State that applicant has authority to operate in Florida;
9. The services the applicant will provide and, generally, the physical facilities it will use to provide service;
10. Experience and technical ability of applicant;
- 11 Proposed Long Distance Tariff;
- 12 Proposed Local Service Rates
13. A copy of the statement provided to all STS end-users that the Florida Public Service Commission will not set STS rates nor regulate service quality standards;
- 14 A statement that STS providers will insure that the LEC may gain access to any tenant requesting direct service;
15. A statement of how the Commission can be assured of the security of the customers' deposits and advance payments, and

16 A statement that the accuracy of the information contained in the application and how the applicant will comply with all current Commission requirements regarding STS including payment of regulatory assessment fees

J. Disclosure to Subscribers

As part of the certification procedure, we will require each STS provider to agree to advise all customers of its current rates for resold local exchange service and its quality of service standards. Further, the STS provider must inform each customer, in advance of agreement to provide service, that the Florida Public Service Commission will not set rates or regulate the service quality standards

K. Access to Direct Local Exchange Service

Florida Law, Section 364.339, Florida Statutes, expressly provides that the offering of STS shall not interfere with a tenant's right to obtain direct access to the line and services of the LEC or the right of the LEC to serve the tenant directly under the terms and conditions of its (the LEC's) approved tariffs. We believe this access is most important

To assure the requirements of this statute are met, we have identified particular terms and conditions which we feel are important. They are the following:

1. The LEC must provide service to any STS tenant requesting it at current tariffed rates and pursuant to Rule 25-4.066 - availability of service

2. The LEC must be able to gain access to all facilities up to the demarcation point of the building and/or the tenant's premises, and retain responsibility for provision and maintenance of the network up to that point

3. Whether the LEC uses its own facilities or those of the STS provider or of the STS building's owner to gain access to the tenant, the LEC should be required to provide reasonable compensation. Such compensation shall not exceed the amount it would have cost the LEC to serve the tenant through construction of its own facilities. This cost must be calculated on a pro rata basis

4. Provision of direct access by the LEC to the tenant upon the tenant's request will be made a condition of STS certification

5. In those circumstances where the STS provider and landlord of a building are not the same, the STS provider

shall obtain and guarantee the permission of the building owner to allow direct access by the LEC to any tenant upon the tenant's request. This will be a condition of certification

In addition to the conditions of Direct Access noted above, there are service standards, currently outlined in our existing rules, which we will require STS providers to satisfy. They are

1. Each STS provider shall offer unrestricted access to all locally available Interexchange Carriers (IXCs). [FN1]

FN1 Authority for this service was established in our prior Orders. See. FPSC Order No 11206, In re: Resale of Wide Area Telephone Service and Message Toll Service.

2. Access to LEC "zero" operators for emergencies and for LEC toll service.

3. Access to 911 service where available

L. Assessment Fees and Gross Receipts Taxes

Each STS provider, as a certificated reseller of local exchange service, shall be required to satisfy statutory obligations concerning applicable gross receipts taxes and regulatory assessment fees. Each company must maintain adequate records to allow this Commission to determine, through audit procedures, that these assessment fees and gross receipts taxes have been paid

M. Shared Tenant Services Bypass Restrictions

Testimony was presented by a witness for Southern Bell concerning the issue of bypass of LEC facilities. This risk was increased, as we alluded to earlier, because the STS provider aggregates demand by "pooling" or sharing trunks provided by the local exchange carrier. The STS providers' ability to pool or share trunks presents an opportunity and incentive to bypass the local network. We intend to remove the incentive to bypass by imposing these restrictions.

The Commission has, in the past, in Orders Nos 12765 and 13934 recognized the threat bypass represents, especially in terms of maintaining our overall universal service objectives. In our previous orders, we attributed the threat of bypass to large volume users of the network. STS providers, because of their ability to consolidate the demand of many subscribers, also present the same threat of bypass. We are persuaded by the testimony given on behalf of General Telephone Company of Florida and Southern Bell on this matter. They suggest that the STS

provider, through its ability to "pool" trunks, presents an increased risk of bypass of the local exchange network. We would also agree with the Staff witness who suggested that STS operators, like any other business, intend to maximize their profits and would be imprudent not to explore every feasible option to achieve that goal. However, this Commission, unlike the STS operators, must consider all of the subscribers to local exchange service in this State. We are persuaded that STS, absent restriction, presents a bypass threat. To mitigate this threat, we will impose certain bypass restrictions. Each STS applicant will agree to comply with these restrictions as a condition of certification. These restrictions are enumerated immediately below.

1 STS providers are prohibited from establishing dedicated facilities (private line) to an interexchange carrier's point of presence.

2 STS providers may not provide shared Wide Area Telephone Service (WATS) unless the STS provider has been granted in addition to his/her STS certificate, authority for such service (see Orders Nos 15444 and 16726).

3. STS providers are prohibited from constructing private bypass facilities, e.g. microwave towers, for interconnecting other STS locations.

4 STS providers may not allow intercommunication between unaffiliated commercial entities.

The question of whether we should restrict or prohibit communication between unaffiliated commercial tenants has been considered by this Commission before in the form of a complaint brought by Southern Bell against Holywell Corporation concerning Holywell's proposal to offer intra-complex telephonic communication in a multi-building complex. The complex, then in the development phase, was known as the Miami Center. In Holywell, we restricted communication "behind" the PBX saying

The provision of a service at Miami Center by Holywell which would permit unaffiliated lessees of a common PBX to intercommunicate between and among each other without accessing a central office of the duly certificated telephone company (Southern Bell) cannot be offered unless the provider of such service holds a certificate of public convenience and necessity from this Commission. [See Order No 12592, issued 10-7-83]

In the Holywell case, we found that Southern Bell, pursuant to our reading of Section 364.335, Florida Statutes, had an exclusive right to provide local exchange service in the area. We concluded that to permit lessees of

a common PBX to intercommunicate between and among each other without accessing the central office of the LEC constituted local exchange service.

Furthermore, we recognize that Section 364.339, Florida Statutes, is a subsequent legislative action which allows STS service to duplicate and compete with local exchange service. However, this same legislation vests this Commission with jurisdiction to prescribe the conditions under which such service may be provided. In light of this direction and authority, we believe it is appropriate to continue the restriction we first announced in Holywell in order to mitigate the potential for bypass of the local switched network.

N Rates and Rate Structure Applicable to Service to an Shared Tenant Services Certificate Holder

In establishing rates and a rate structure for STS our goal is, based upon the information presented in this case, to establish rates which will prevent cross-subsidization by the general body of ratepayers.

Our survey of the record suggests the testimony concerning rates and rate structure can generally be categorized into three groups. All of the LECs' witnesses suggested that a flat trunk charge should be imposed, usage charges should be assessed, and STS rates should generally be designed to recover costs. Southern Bell proposed that there be a trunk termination charge (\$40), DID numbers charges (\$4 per twenty-number block); usage charges (6¢ for the first minute, 2¢ for each additional minute, with off-peak discounts), a client charge (\$20 per STS customer per month), and various non-recurring charges. Southern Bell's witness also suggested that the rates should be designed to be statewide.

General did not offer a specific rate structure, however, the witness suggested that when LEC service is provided for resale it is essential that rates reflect the LEC's cost of providing service; the most appropriate structure therefore would include a flat charge plus measured usage charges.

The Staff witness testified that if STS is permitted on a non-partitioned trunk basis, the rates should be designed to recover the direct costs of providing the service plus a contribution to joint and common costs. She specified that the flat rate portion should provide the same contribution as the existing PBX trunk rates today. In addition, she proposed that a usage charge in the form of the local switching and local transport access charge rate elements be imposed.

Finally, AmeriSystems' witness, and several others,

asserted that the cost and value of service is the same for STS and individual service, and thus all PBX trunks should be assessed at the same rates as are applied to individual PBX users

Southern Bell, General and Central Telephone, parties to this docket, currently have existing tariffs which contain trunk rates for interconnection to the local network, plus trunk termination charges. The trunk rates are approximately sixty percent of the flat PBX rate. Thus, we believe it is proper to adopt a trunk rate of sixty percent of the flat PBX trunk rate. In addition, a \$40 monthly trunk termination charge, to be assessed per DID trunk, is appropriate.

We are persuaded that usage-sensitive rates are appropriate as a part of the overall STS rate structure for resold services. In fact, we have already adopted a message charge of twelve cents (12¢) per message in Order No. 14132 - our order approving interconnection of private pay telephones (PATS) to the local switched network. Although we considered the concept of billing STS based upon access charges, as proposed by the Staff witness, the testimony suggests some LECs do not have the capability of billing for access charges at this time. Furthermore, as we noted above, we have already adopted a message charge for PATS providers. We believe this rate is appropriate for the STS environment as well.

As we noted above, AmeriSystems suggested resale of local service through the pooling of trunks should be priced the same as an individual PBX service. However, we believe it is appropriate to classify utility customers based upon the nature of the service they receive. For example, distinctions may be drawn based upon the time and manner of use. STS providers' use of trunks, through

sharing, represents a distinct difference from individual service. We have recognized this usage by approving a message rate. This rate is consistent with existing tariffs now in place for resale of local exchange service by PATS providers.

Each LEC shall file all STS rates and conditions of service in a separate section in its tariff. This section should be entitled "Interconnection of Local Exchange Services to Shared Tenant Services." These tariffs shall be filed by March 30, 1987, and shall be written in clear, understandable language.

O Additional Charges

We have approved additional charges for services that are related to STS. These include DID charges and various non-recurring charges. These charges are specifically identified below.

1. DID Charges

Charges for DID numbers provide separate numbers for each tenant behind the STS switch and one directory listing. The only unbundled DID numbers rate that currently is in effect is that charged RCCs. It is \$4 per twenty-number block. We will require this rate to be used in this case and LECs will be required to provide numbers in twenty-number blocks for STS interconnection.

2 Non-Recurring Charges

We also believe certain non-recurring charges are appropriate. These non-recurring charges will only apply to services of existing STS customers. These charges are

Service Establishment Charge	\$300
DID: First trunk group plus twenty numbers	915
Additional blocks of twenty numbers	15
Two-wire Trunk Termination	90

P. LEC Reporting Requirements

For a period of four (4) years, reports shall be filed quarterly by each LEC, specifying the extent of STS

activity, total tariffed services, total tariffed revenues and certain other information. Although we will not specify the exact format of the report, it shall include the following data:

1. Building location - address, city
2. Date STS ordered
3. Date in service
4. New building or retrofit
5. Special assembly services, if applicable - type, charges and revenues
6. Number/type of tariffed services including rates and charges
7. Total tariffed revenues
8. If retrofit, total monthly revenues before STS
9. How many suites/offices in building
10. How many non-STIS subscribers on in-service date.
11. Is intercomming taking place and if so, between and among what parties.

So that we will be able to determine if service problems are arising, each LEC will also be required to report, within ten (10) days of the application, any orders for service to tenants in an STS building that cannot be satisfied within thirty (30) days of the date of application. These reports should be filed with the Division of Communications, Bureau of Service Evaluation.

Q. LEC Customer Notification

So that all existing STS providers in the State will receive notice of our decision in this proceeding, all LECs in this State shall provide notice to all existing PBX customers. Notice shall be provided no later than March 2, 1987. The notice shall inform those PBX customers engaging in STS of their existing rates, new STS rates, and the date (July 1, 1987) the new rates shall become effective. This notice shall be reviewed by our Staff before it is sent to the customers.

III. OTHER SHARING ARRANGEMENTS

Many of the sharing arrangements in this docket involve the provision of service to transient end users. In Order No 15989 Commissioner Wilson, as Prehearing Officer, determined that telephone service to hotel/motel guests in rooms and to hospital patients in rooms would not be at issue in this docket. Because of the transient nature of these individuals, they would not find it economically

practical to obtain service in their own names. Other parties to this docket, such as dormitory residents, are also transient. The difficulty becomes one of definition, how long may one reside in a particular place and remain a "transient"? We believe nine months to be an appropriate time period. Persons residing in places for nine months or less are considered transient and may continue to share local exchange telephone service. Our decision will allow temporary residents to continue to receive telephone service at current rates.

As we discuss the individual sharing situations below, some will clearly fall under the transient exception. Owing to the unique situation of transient individuals, sharing of local exchange service by these individuals does not duplicate or compete with local service provided by the LECs. As previously discussed, the record reflects that many transient individuals might otherwise be without telephone service. All of these factors indicate to us that continuation of sharing of local exchange service by transient end users is in the public interest and not in violation of Florida Law.

A. Joint User Service

As discussed previously, this Commission believes that most of the sharing arrangements at issue in this docket do not compete with nor duplicate local exchange service. The principal exception to the non-duplicative service is the joint user tariff. Joint user service involves a primary user and another person or entity sharing the same line, usually at a rate of 25% or 50% of normal B-1 rates or PBX trunk rates. In the absence of the joint user service, joint users would most likely get service on their own.

The fact that joint users would, in the absence of the tariff offering, most likely obtain service on their own, suggests that this offering competes with and/or duplicates local exchange service. As such, joint user service constitutes a violation of Section 364.335, Florida Statutes, and must be discontinued. LECs shall file tariffs by March 30, 1987, to eliminate this offering effective July 1, 1987. LECs shall provide affected customers written notice of the future elimination of the offering by February 15, 1987. A second written notice should be provided by April 15, 1987. LECs shall provide Commission staff with copies of the notices. In the absence of a response to the written notice, LECs shall also provide affected customers with verbal notice by May 15, 1987. We believe these notice requirements will allow affected customers to smoothly transition themselves to individual service.

B. Airports

Some airports in Florida such as the Greater Orlando facility share trunks coming from the LEC central office. Airports are unique facilities, generally construed as being operated for the convenience of the traveling public. One unique communication need is the ability of airport tenants to quickly communicate with one another for security reasons. It is for this reason that we will permit intercommunications between and among tenants behind the PBX without accessing the LEC central office.

While we recognize the unique needs of airports such as GOAA, the sharing of local exchange service must be related to the purpose of an airport - the safe and efficient transportation of passengers and freight through the airport campus. To the extent that sharing of local trunks is limited to this purpose, there is no competition with nor duplication of local exchange service by the LEC. There was some discussion at the hearing of extending local sharing to facilities such as hotels, shopping malls and industrial parks. To the extent an airport engages in this type of local sharing, it must be certificated as an STS provider. Because of the unique nature of the airport, we consider it to be a single building. As an alternative to becoming certificated as an STS provider, the airport could partition the trunks serving these other entities. With these caveats, airports may continue to provide service under existing conditions.

C Hospitals

The common theme in the record concerning the various forms of shared service, as distinguished from STS, has been the transient nature of the end user. In the case of hospitals, like other forms of shared use, the transient nature of the hospital population leads us to conclude that service, at least with regard to patients, does not duplicate or compete with local exchange service. As a practical matter, these patients should not be required to obtain service from the LEC. Separate and direct LEC service to administrative offices located in the hospital is also impractical because of the critical need for rapid communication of the hospital staff. We view this service as an extension by the hospital of the telephone system shared by patients.

However, to the extent physicians' offices are located in a separate building and these offices receive service through the hospital PBX through a sharing arrangement, this service could be provided directly by the LEC. Doctors in private practice should not be allowed to share local exchange service simply because their offices are located at or near the hospital. We have decided that shared service of this nature duplicates and competes with local exchange service provided the LEC. Sharing arrangements of this nature must be discontinued,

partitioned or comply with the restrictions and regulation applicable to STS. Therefore, shared service, other than to hospital staff should be discontinued on or before July 1, 1987, unless the trunks for such service are partitioned or the service qualifies as an STS provider.

D. Clubs, Yacht Basins, Time Share Facilities

Each of these existing tariff exceptions to the sharing of local exchange service involves transient end-users. No party to this proceeding has suggested that these exceptions compete with or duplicate local exchange service. As discussed previously with reference to transient end-users generally, these individuals would not find it practical to obtain service on their own. We find that continuation of this sharing arrangement and the present rate structure are in the public interest.

E. Dormitory Service

Many institutions of higher learning within Florida provide shared local telephone service to dormitory residents via a PBX. Students are transient in the sense they enter, leave and often change residences several times during the school year. Students often lack the credit needed to obtain telephone service. It would also create logistical problems for the LECs to provide direct service to large numbers of students at one time and then remove the accounts at the end of the school term.

All of these factors suggest that local exchange service provided to dormitory residents does not duplicate with nor compete with local exchange service. Most LEC has advocated abolition of this tariff exception. In the absence of local exchange service provided by colleges and universities, many students would otherwise be without service. We believe that dormitory service provided by colleges and universities to students is in the public interest and should continue under the present rate structure.

F. Nursing Homes, ACLFs, Continuing Care Facilities, Retirement Homes

Many of Florida's elderly population live in some form of group living or community facility, usually licensed by the State of Florida. Examples of this type of facility include nursing homes, adult congregate living facilities (ACLFs) and continuing care facilities. Often these various licensed entities co-exist within one umbrella organization. Patients may move from one licensed entity to another within the same facility during the course of their stay. Staff believes that the overlap of this type of facility precludes any meaningful distinction in terms of provision of local exchange telephone service.

This tariff exception allows elderly residents of these facilities to enjoy services which might not otherwise be available. These include local exchange service itself, three-digit dialing behind the PBX, emergency service such as automatic signal for help when a handset is knocked off the hook, and help in making calls for incapacitated persons. Of all the arrangements utilized by the elderly in a group setting, only one LEC, Southern Bell, advocated discontinuation of any exception, that being the ACLF exception. As discussed earlier, we are unable to draw any meaningful distinction among these entities. This, when coupled with the general lack of interest in providing direct service to residents by the LECs, indicates that no duplicative or competitive service is being provided by these entities. We also believe that continuation of the present rate structure is consistent with Florida Law and in the public interest.

We believe an appropriate definition of entities allowed to fall under this exception to be as follows:

Occupants of all homes, communities or facilities for the aged or retired in which at least 75% of the occupants are over age 62, or totally or permanently disabled, and have one or more of the following licensed or certificated components

a Licensed as a nursing home pursuant to Chapter 400, Florida Statutes, or

b Licensed as an adult congregate living facility pursuant to Chapter 400.404, Florida Statutes, or exempted as an ACLF pursuant to Section 400, Florida Statutes, or

c Certificated as a continuing care facility pursuant to Chapter 651, Florida Statutes, or

d If funded or insured by the United States Department of Housing and Urban Development (HUD) pursuant to the National Housing Act. 12 U.S. Code SS 1701, program designed to aid the elderly.

LECs should file tariffs to reflect this determination by March 30, 1987

G. All Other Sharing Arrangements

Although the record reflects a great deal of diversity in the types of shared service arrangements included in this proceeding, most have, as a common attribute, transient customers. For sake of expediency in our discussion, we will consider reservation service, sub-lease residences, exhibitors, composite data services, apartment houses,

Co-ops, and apartment hotels under the collective title "All Other Sharing Arrangements"

We believe the proper perspective in addressing all of these sharing arrangements is to determine whether the extension of subscriber service is duplicative or competitive to service the end-user would normally obtain directly from the LEC. In a majority of these cases, the end-user is transient, as we have defined this term, and, under these transient conditions, we find it would not be practical or economically feasible to order direct service from the LEC.

For example, an exhibitor's use of a convention hall's service is neither duplicative nor competitive because it is neither practical nor economically feasible, under such conditions, to order service from the LEC. This same reasoning should be applied for considering current tariff offerings for apartment houses, Co-ops, and apartment motels. To the extent that the facts in each case demonstrate the tenants of apartment houses, Co-ops, and apartment motels fit the definition of transient end-users, existing tariff service provisions are not duplicative or competitive with LEC service. We find that this same reasoning should be applied to service under the category of sub-lease residences. Reservation service, because it is available to the traveling public, should also not be considered duplicative or competitive to local service.

IV OTHER ISSUES

Several other issues merit brief discussion. The STS providers claimed that different rate structures for STS providers, individual PBX users and shared PBX users would be discriminatory. We disagree. The rates and conditions of service for STS and other forms of sharing should not necessarily be the same. As discussed in detail above, certain other shared telecommunications arrangements are so unique as to require special consideration. Contrary to our Staff's recommendation, we do not find it appropriate at this time, to require usage-sensitive rates for these other unique sharing arrangements. STS providers differ from individual PBX users in at least two respects: resale and usage characteristics. STS providers resell local service unlike the individual PBX user. STS also concentrates more traffic over fewer trunks, resulting in a different potential impact on the LECs.

The issue of additional directory listings was also raised during the hearings. We find that additional directory listings are appropriate only when the additional listing further defines the primary subscriber or is furnished to the tenant of a certificated STS arrangement.

We also find the following definitions to be appropriate for this proceeding:

A. Subscriber of record/customer of record

We find a subscriber of record/customer of record is any person, firm, partnership, corporation, municipality, or cooperative organization which orders and is responsible for paying the telephone bill.

B. Affiliated Entities

We find affiliated entities are those corporations, partnerships, proprietorships or other groups that hold stock in excess of 50 percent of the stock of the entity which claims to be affiliated. Conversely, whenever one entity controls less than 50 percent of the stock of another entity we shall not consider these groups to be affiliated for the purpose of this Order.

C. Agent or Representative

We find an agent or representative, for purposes of this Order, to mean one authorized to act on behalf of another -- usually pursuant to contract.

D. Transient

We find transient, for purposes of this Order, to mean one temporarily occupying the premises, with occupancy not to exceed nine months.

Therefore, in light of the foregoing, it is

ORDERED by the Florida Public Service Commission that all findings in the body of this Order are hereby expressly adopted both in form and content. It is further

ORDERED that Shared Tenant Service is hereby declared to be in the public interest subject to the conditions of this Order. It is further

ORDERED that all Shared Tenant Service providers shall be required to obtain a certificate from this Commission and file a tariff consistent with the terms of this Order. It is further

ORDERED that no new Shared Tenant Service operations may commence prior to July 1, 1987. It is further

ORDERED that all Shared Tenant Service providers shall provide local exchange companies direct access to tenants upon the conditions of this Order. It is further

ORDERED that Shared Tenant Service providers shall be liable for applicable gross receipts tax and regulatory assessment and shall maintain adequate records for Commission audit of same. It is further

ORDERED that all Local Exchange Companies shall provide notification to PBX customers pursuant to terms and conditions of this Order. It is further

ORDERED that all LECs shall file tariffs no later than March 30, 1987, to eliminate joint use effective July 1, 1987. It is further

ORDERED that all LECs shall provide two separate written notices to subscriber receiving service pursuant to a joint use tariff that service under the tariff shall be discontinued. The initial notice shall be provided by February 15, 1987, and the second notice shall be provided no later than April 15, 1987. It is further

ORDERED that all LECs shall comply with the reporting requirements identified in the body of this Order. It is further

ORDERED that all LECs shall file tariff pages satisfying all terms and conditions identified in the body of this Order applicable to service to a STS certificate holder.

By ORDER of the Florida Public Service Commission, this 15th day of January, 1987.

STEVE TRIBBLE, Director Division of Records and Reporting

(SEAL)

NOTICE OF FURTHER PROCEEDINGS OR
JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), to notify parties of any administrative hearing or judicial review of Commission orders that may be available, as well as the procedures and time limits that apply to such further proceedings. This notice should not be construed as an endorsement by the Florida Public Service Commission of any request for further proceedings or judicial review, nor should it be construed as an indication that such request will be granted.

Any party adversely affected by the Commission's final action in this matter may request 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within 15 days of the issuance of this order in the form prescribed

by Rule 25-22 60, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court by the filing of a notice of appeal with the Director, Division of Records and Reporting and the filing of a copy of the notice and the filing fee with the Supreme Court. This filing must be completed within 30 days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

APPENDIX A

CHAPTER 364

TELEPHONE COMPANIES

364.339 Shared tenant service; regulation by commission, limitation as to designated carriers

[FN1]364.339 Shared tenant service, regulation by commission, limitation as to designated carriers.--

FN1. Note --Expires October 1, 1989, pursuant to s. 2, ch. 86-270, and is scheduled for review pursuant to s. 11.61.

(1) The Florida Public Service Commission shall have exclusive jurisdiction over the provision of any shared tenant service which.

(a) Duplicates or competes with local service provided by an existing local exchange telephone company; and

(b) Is furnished through a common switching or billing arrangement to commercial tenants within a single building by an entity other than an existing local exchange telephone company

(2)(a) Shared tenant services provided to government entities pursuant to this section are exempt from paragraph (1)(b).

(b) As provided in subsection (3), the commission may authorize such service notwithstanding the provisions of s. 364.335. The commission may prescribe the type, extent, and conditions under which such service may be provided and may exempt such service, except appropriate certification, from commission regulation.

(3) In determining whether the actions authorized by subsection (1) are consistent with the public interest, the commission shall consider

(a) The number of firms providing the service,

(b) The availability of the service from other firms or the local exchange telephone company,

(c) The quality of service available from alternative suppliers,

(d) The effect on telephone service rates charged to customers of the local telephone company,

(e) The geographic extent of the service to be provided; and

(f) Any other factors which the commission deems relevant.

(4) Shared tenant service as defined in subsection (1) shall continue to be permitted in any building existing on or before November 4, 1985, and in which building shared tenant services were ordered or provided on or before November 4, 1985. No new building may utilize such service unless and until the commission makes its determinations pursuant to subsection (1).

(5) The commission shall make its findings under subsection (3) no later than January 15, 1987, and shall take expeditious administrative action to implement those findings consistent with subsection (6). Any review of commission action under this section shall be solely pursuant to the provisions of s. 364.381, notwithstanding the provisions of chapter 120.

(6) If the commission finds shared tenant service to be in the public interest; it may authorize such service beginning July 1, 1987. As of July 1, 1987, shared tenant service activity shall immediately cease unless the commission finds such activity to be in the public interest

(7) The offering of shared tenant service shall not interfere with or preclude a commercial tenant's right to obtain direct access to the lines and services of the serving local exchange telephone to serve the commercial tenant directly under the terms and conditions of the commission-approved tariffs

(8) Nothing in this chapter shall be construed to authorize regulation of radio common carriers or cellular radio telephone carriers by the commission.

History --s. 1, 2, ch. 86-270.

END OF DOCUMENT

7 of 7 DOCUMENTS

In Re Investigation into Appropriate Rates and Conditions of Service for Shared Local
Exchange Telephone Service

DOCKET NO 860455-TL, ORDER NO. 17369

Florida Public Service Commission

1987 Fla. PUC LEXIS 1219

87 FPSC 71

April 6, 1987

PANEL: [*1]

The following Commissioners participated in the disposition of this matter. KATIE NICHOLS, Chairman,
GERALD L. GUNTER, JOHN T. HERNDON, MICHAEL McK. WILSON

OPINION: ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER NO 17111 AND CLARIFYING
ORDER NO. 17111

BY THE COMMISSION:

By motion filed January 30, 1987, Baptist Hospital, Inc (Baptist Hospital) sought clarification and/or reconsideration of Order No 17111, issued January 15, 1987. Baptist Hospital also requested oral argument on the petition Southern Bell Telephone and Telegraph Company (Southern Bell) and General Telephone Company of Florida (General) filed responses opposing Baptist Hospital's motions. For reasons more fully discussed below, we deny both motions of Baptist Hospital.

Baptist Hospital requested that this Commission find that physicians with hospital staff privileges located in office buildings adjacent to the hospital be allowed to continue to share local telephone service. We reiterate the findings contained in Order No. 17111: "Doctors in private practice should not be allowed to share local exchange service simply because the offices are located at or near the hospital." See Order No. 17111 at page 19 [*2]. We cannot think of any reason or policy basis to allow some members of a particular profession to have different telephone rates based on geographic happenstance.

Baptist Hospital has also requested that the privately-chartered credit union on the hospital campus be included within the term "administrative offices." We intended the term "administrative offices" to be limited to those offices that are materially necessary to the function of the mission of the organization. Here the hospital's primary role is that of a health care provider. A credit union is not involved in the day-to-day functions of the hospital and therefore should not be allowed to share local exchange service with the hospital.

Baptist Hospital has also requested that we grandfather their operation through the useful life of the switch, which is estimated to be December 31, 1993. As an alternative, Baptist Hospital requested a cut-over date of January 1, 1988 rather than July 1, 1987 to allow for telephone directories to accurately reflect doctors' numbers. We do not believe any form of grandfathering to be appropriate. We do not believe it would be fair to grandfather Baptist Hospital's operations while [*3] requiring other parties to comply with Order No. 17111 by July 1, 1987.

We deny the Request for Oral Argument because we do not believe our consideration of the issues would be enhanced by oral argument.

Final Exhibit
No. 241

The Motion for Reconsideration results in Order No 17111 remaining under our jurisdiction and control. This presents an opportunity for us to correct several misstatements inadvertently contained within Order No 17111.

Several errors appeared in Order No 17111. On page 13, the first sentence reads: "Whether the LEC uses its own facilities or those of the STS provider or those of the STS building's owner to gain access to the tenant, the LEC should be required to provide reasonable compensation." This sentence should be changed to read as follows: "If the LEC uses the facilities of the STS provider or of the STS building's owner to gain access to the tenant, the LEC should be required to provide reasonable compensation." On page 16, under subsection 0 2, Nonrecurring Charges, the following sentence appears: "These nonrecurring charges will apply only to services with existing STS customers." The word "existing" should be changed to "new." On page 19, under E. Dormitory [*4] Service, the following sentence appears: "Most LEC (sic) has advocated abolition of this tariff exception." This sentence is incorrect. It should be deleted and replaced with the following: "With the exception of Centel, all LECs support continuation of this tariff exception."

We also believe that it is appropriate to clarify our intent in Order No 17111. Three primary areas need to be addressed. These areas relate to the two-hundred-fifty (250) trunk limitation, additional directory listings and STS rate structure in areas served by central offices which cannot peg count the number of local calls.

Order No 17111 reads as follows:

Although we allow STS providers to offer their customers shared tenant services, it is necessary to place a two-hundred-fifty (250) trunk limit per PBX on the STS provider. Based upon the limited data presented in this case concerning STS demand, we believe this limitation is sufficient. Therefore, no STS provider may offer shared or 'pooled' use beyond this limitation.

Order No 17111, at pages 10-11. This trunk limitation applies to all kinds of trunks including inward, outward and combination. The two-hundred-fifty trunk limitation [*5] encompasses trunks irrespective of whether they are partitioned. Although one might read the last sentence of the above-quoted language to imply that only shared trunks were subject to the two-hundred-fifty (250) limitation, it was our intent that the limitation apply to all trunks attached to a shared PBX. This policy recognizes that any switch which has any shared trunks on it would have all message rated trunks. Without this limitation, we can foresee a situation wherein a STS Provider provides service to several locations from one switch in partitioned two-hundred-fifty (250) trunk blocks. Such a situation would be contrary to the Commission's intent in adopting the trunk limitations.

Another issue that requires clarification is additional directory listings. Order No 17111 provided that additional listings were appropriate when the additional listing further defined the primary subscriber or is provided to the tenant of an STS provider. Two specific situations warrant further discussion. The first relates to one person operating two businesses from one office and the second relates to persons operating businesses from their homes. If a person is refused an additional [*6] listing, they may be unable to function with one access line. It would make no sense to require these persons to obtain separate access lines. We find that additional listings are appropriate when the additional listings further define a primary subscriber who operates separate businesses or who operates a business out of his/her residence.

In Order 17111, we found that a message rate of twelve cents (\$.12) was the appropriate rate structure for STS providers. The Order did not, however, address pricing for STS providers that are located in areas served by central offices which are incapable of measuring the number of messages. We believe an appropriate rate to be a percentage mark-up over the flat PBX trunk in those cases where calls cannot be measured. This rate will be equal to 175% of the flat PBX trunk rate, (see Exhibit 27) and will be assessed in lieu of the out-dial trunk charge and the message rate charges. All other provisions of the STS Interconnection tariff will be implemented and assessed as stated in Order No. 17111.

We believe this docket should remain open for purposes of evaluating the reports required by Order No. 17111.

Therefore, based on the foregoing, [*7] it is

ORDERED by the Florida Public Service Commission that the Motion for Clarification and/or Reconsideration of Order No. 17111 filed by Baptist Hospital, Inc. is hereby denied. It is further

ORDERED that Order No 17111 be clarified to include all inward, outward and combination trunks attached to a switch location shall not exceed two-hundred-fifty (250) message rated trunks, regardless of whether the trunks are pooled or partitioned. It is further

ORDERED that additional directory listings shall be provided to a primary subscriber who operates two businesses or who operates a business out of his/her home. It is further

ORDERED that those LECs who have central offices incapable of peg counting be required to include in their STS Interconnection tariffs a provision to charge 175% of the regular flat PBX trunk rate in lieu of the charges for the out-dial trunk and message rates (\$.12) It is further

ORDERED that the Motion for Oral Argument filed by Baptist Hospital, Inc. is hereby denied. It is further

ORDERED that this docket remain open.

By ORDER of the Florida Public Service Commission, this 6th day of APRIL, 1987

Commissioner Herndon dissents from the portion [*8] of this Order relating to the two-hundred-fifty (250) trunk limitation.

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), to notify parties of any administrative hearing or judicial review of Commission orders that may be available, as well as the procedures and time limits that apply to such further proceedings. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of [*9] appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure