

P R O C E E D I N G S

1
2 **CHAIRMAN CARTER:** And with that,
3 Commissioners, and staff, we are now on Item 3.

4 Staff, you're recognized.

5 **MR. BELLAK:** Thank you. Good morning,
6 Commissioners. Richard Bellak for staff.

7 Item 3 concerns a rulemaking docket which
8 was initiated sometime ago by BellSouth, and the
9 purpose of it was they were seeking a raise in the
10 rate caps that then applied to operator services.
11 And the staff brought earlier this year a
12 recommendation for a raise in the rate caps, but not
13 as high as the companies were seeking, and the
14 Commission sent us back to do more market research
15 on those recommended rate caps.

16 In the interim, while that was going on,
17 the Legislature acted and amended Section 364.3376
18 of the Florida Statutes, and removed the rate caps
19 on operator services in Florida. Thereafter, the
20 staff was formulating a recommendation to change our
21 rules to eliminate those rate caps based on the
22 legislative action. And we started getting comments
23 from a subgroup of operator services called inmate
24 telephone service providers, and at least one of
25 those providers made the argument that they should

1 be excluded from the deregulation of the rates that
2 the Legislature had achieved, and they made a number
3 of arguments for that result. And we got comments
4 from the other ITS providers saying that, no, ITS
5 service was operator service just like any other
6 operator service, and it was the intent of the
7 Legislature to remove those capped rates. And so
8 the majority of those providers of that service
9 argued that there was no jurisdiction remaining in
10 the Commission to impose any kind of rate regulation
11 on that service.

12 And the staff considered very carefully
13 that issue and looked at what some other states had
14 done, and we came to the conclusion that at least in
15 Florida, ITS providers were encompassed by the very
16 broad definition of operator services because the
17 service that they provide was included in the
18 definition of operator services. And we could not
19 read into the intent of the Legislature any other
20 intent other than to deregulate the rates of
21 operator services in Florida, and so we came to the
22 conclusion that even though some of the arguments on
23 behalf of continued regulation by that provider of
24 ITS and one of the advocacy groups were good
25 arguments. It's not that they didn't have good

1 arguments. They had some good arguments, but that
2 those arguments at this point had to be addressed to
3 the Legislature because the Legislature did not
4 include in their deregulatory activity any kind of a
5 saving provision or any hint that the Legislature
6 thought that there was a subgroup within operator
7 services that should be continued to be regulated by
8 the Commission.

9 And, therefore, we came to the conclusion
10 that they were encompassed by the legislative
11 deregulatory activity, and that we had to make a
12 recommendation that, yes, they too were now subject
13 to the Legislature's actions.

14 **CHAIRMAN CARTER:** Okay. Commissioners,
15 let's hear from the company and then we'll start our
16 questions and debate and discussion.

17 Good morning, Mr. Hatch, you're
18 recognized.

19 **MR. HATCH:** Good morning, Commissioners.
20 Tracy Hatch with AT&T Florida. We support the
21 staff's recommendation. We think they have come to
22 the correct conclusion.

23 **CHAIRMAN CARTER:** Okay.

24 **MS. MASTERTON:** Good morning,
25 Commissioners. Susan Masterton with Embarq Florida,

1 Inc., soon to be known as CenturyLink. Embarq
2 believes that this is purely a legal issue because
3 the Legislature did not make any exceptions when it
4 repealed the authority for the Commission to impose
5 rate caps on operator services. The Commission no
6 longer has the authority to make an exception for
7 inmate services. To the extent that it's in the
8 public interest to separate inmate services and
9 regulate them, then the appropriate remedy is
10 through the Legislature. Therefore, Embarq supports
11 staff's recommendation and the rule changes
12 recommended by staff.

13 Thank you.

14 **CHAIRMAN CARTER:** Thank you.

15 Commissioner Skop, you're recognized.

16 **COMMISSIONER SKOP:** Thank you, Mr.

17 Chairman.

18 Just a quick question to staff with
19 respect to the definition of operator services on
20 Page 4 of the staff recommendation. With respect to
21 the calls that inmates place, are all of those calls
22 operated assisted by necessity or is there an
23 ability for somebody to, you know, put change in a
24 payphone under the traditional manner, and would
25 that make a difference if they were able to direct

1 dial?

2 **MR. KENNEDY:** They are operated assisted
3 by necessity. They can't put coins in the box.
4 They can't direct dial.

5 **COMMISSIONER SKOP:** Okay. So it directly
6 falls within the scope of the definition of operator
7 services as staff has articulated?

8 **MR. KENNEDY:** Yes, sir.

9 **COMMISSIONER SKOP:** Okay. I guess just in
10 summary, then, by virtue of the enactment of Senate
11 Bill 2626, which amended Section 364.3376, Florida
12 Statutes, I guess that's interpreted by staff to
13 mean that inmate -- or calls made by inmates in
14 correctional facilities are no longer subject to
15 rate caps, is that correct?

16 **MR. BELLAK:** Yes, Commissioner.

17 **COMMISSIONER SKOP:** Okay. Thank you.

18 **CHAIRMAN CARTER:** Commissioners.

19 **COMMISSIONER EDGAR:** No questions.

20 **CHAIRMAN CARTER:** Okay. No questions.

21 The Chair is now ready for disposition of the case.

22 **COMMISSIONER EDGAR:** Mr. Chairman, if
23 there are no further questions, I move adoption of
24 the staff recommendation on both issues.

25 **COMMISSIONER SKOP:** Second.

1 **CHAIRMAN CARTER:** Thank you.

2 Commissioners, it has been moved and properly
3 seconded. Any discussion? Any debate? Hearing
4 none, all in favor, let it be known by the sign of
5 aye.

6 (Simultaneous aye.)

7 **CHAIRMAN CARTER:** All those opposed, like
8 sign. Show it done. Thank you, staff.

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

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

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

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

14 DATED THIS 19th day of October, 2009.

15 

16 JANE FAUROT, RPR

17 Official FPSC Hearings Reporter
18 (850) 413-6732

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