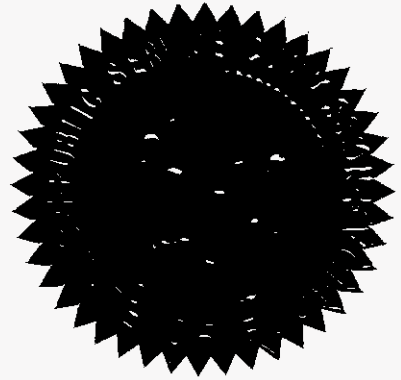


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100021-TP

COMPLAINT AND PETITION FOR RELIEF  
AGAINST LIFECONNEX TELECOM, LLC  
F/K/A SWIFTEL, LLC BY BELLSOUTH  
TELECOMMUNICATIONS, INC. D/B/A  
AT&T FLORIDA.



PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 5A

COMMISSIONERS  
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, July 13, 2010

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

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

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FPSC-COMMISSIONER GLENN

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## P R O C E E D I N G S

1  
2           **CHAIRMAN ARGENZIANO:** Let's move to 5A and  
3 give staff a few minutes.

4           (Pause.)

5           **MR. TEITZMAN:** Adam Teitzman on behalf of  
6 Commission staff.

7           Commissioners, Items 5A addresses  
8 LifeConnex' request for emergency relief seeking an  
9 order from the Commission to prohibit AT&T from  
10 discontinuing service. In reviewing this matter,  
11 staff had three concerns. First and foremost, the  
12 welfare of LifeConnex' 2,500 mostly Lifeline  
13 customers who face imminent termination of service  
14 on July 21st and have yet to be notified.

15           Next, the fact that the interconnection  
16 dispute setting the stage for this emergency matter  
17 is an open matter currently before the Commission  
18 and clearly is within the Commission's jurisdiction  
19 to enforce interconnection agreements and resolve  
20 interconnection disputes. Finally, AT&T's on-going  
21 exposure resulting from LifeConnex' apparent failure  
22 to adhere to the term of the parties'  
23 interconnection agreement by failing to remit  
24 disputed amounts.

25           Accordingly, staff is recommending the

1 Commission grant LifeConnex' requested relief with  
2 the following conditions. One, LifeConnex shall  
3 remit payments including disputed amounts from this  
4 date forward. Two, if LifeConnex fails to make such  
5 payments, AT&T may proceed with discontinuation of  
6 service pursuant to the provisions of the parties'  
7 interconnection agreements. Third, if service is  
8 to be discontinued, LifeConnex should provide notice  
9 to its customers 14 days prior to the date set for  
10 discontinuation of service, and such notice should  
11 be submitted to Commission staff for prior approval.

12 LifeConnex has requested oral argument of  
13 15 minutes per party. Staff recommends granting  
14 oral argument, but that ten minutes per party should  
15 be sufficient. Staff is available to answer your  
16 questions.

17 **CHAIRMAN ARGENZIANO:** Thank you.

18 Commissioner Edgar.

19 **COMMISSIONER EDGAR:** Thank you, Madam  
20 Chairman.

21 I am inclined to go with the staff's  
22 recommendation and have oral argument at ten minutes  
23 a side, with then the hope and understanding that  
24 there would be the opportunity for questions and  
25 discussion after that.

1                   **CHAIRMAN ARGENZIANO:** Commissioner Skop,  
2 any comments?

3                   **COMMISSIONER SKOP:** Thank you, Madam  
4 Chair.

5                   I concur, and I just have one point of  
6 clarification for staff before we move forward on  
7 that.

8                   **CHAIRMAN ARGENZIANO:** Go right ahead.

9                   **COMMISSIONER SKOP:** I think in the staff  
10 recommendation it mentioned 30 days versus -- I  
11 mean, 14 days versus a longer period. Is that going  
12 to be adequate time to inform consumers either way?

13                   **MR. TEITZMAN:** It's at the discretion of  
14 the Commission to set the time. Staff believed that  
15 14 days would be adequate for these customers to  
16 find alternative service.

17                   **COMMISSIONER SKOP:** And then with respect  
18 to the disputed amounts, if I heard the staff  
19 introduction of the issue correctly, it requires  
20 LifeConnex to submit all amounts on a forward-going  
21 basis, including those amounts in dispute to AT&T.  
22 But I didn't hear anything in the staff  
23 recommendation that addresses the disposition of the  
24 disputed payments not already made.

25                   **MR. TEITZMAN:** You're correct,

1 Commissioner. Those would be -- that is the matter  
2 at hand as far as that is what this docket is  
3 addressing, those prior payments retrospectively.  
4 And we believe that would be addressed after a  
5 hearing on the matter, although I would mention that  
6 the docket is currently held in abeyance as a result  
7 of a joint motion by the parties.

8 **COMMISSIONER SKOP:** Very well. Madam  
9 Chair.

10 **CHAIRMAN ARGENZIANO:** Oral arguments will  
11 be limited to ten minutes, and you can proceed.

12 **MR. FEIL:** Thank you, Madam Chair.

13 Matthew Feil with Akerman Senterfitt here  
14 in Tallahassee, appearing on behalf of LifeConnex.

15 At the time we requested oral argument we  
16 were concerned not only about the uniqueness of the  
17 issues and the implication to the customers, the  
18 exigent circumstances, but also the amount of time  
19 that staff and the Commission will have to analyze  
20 the issues. Staff is definitely to be commended on  
21 a very thorough recommendation in the short time  
22 that they had to turn something around, so we  
23 appreciate that.

24 It's kind of an unfortunate situation we  
25 are in here where this issue is sort of dumped into

1 your laps all of a sudden when it has been three  
2 years in the making. For that amount of time the  
3 parties operated under the same set of rules, where  
4 AT&T would bill LifeConnex, there would be a credit  
5 reconciliation process, a dispute process, and  
6 LifeConnex' would pay the net undisputed portion of  
7 the bill every month, same routine for years.

8 AT&T did not seek to have the disputes  
9 resolved by the Commission until January of this  
10 year, and in that original petition, there's no  
11 express mention made about an attempt by AT&T to  
12 change the course of conduct of the parties.

13 The parties have, up until now, been very  
14 good about coordinating scheduling, coordinating the  
15 disposition of the issues. There are similar cases  
16 going on in all the southeastern states involving  
17 more than just LifeConnex, some of the cases involve  
18 other resellers not a party to this proceeding right  
19 now. The parties actually had agreed to an  
20 expedited hearing schedule for some of the other  
21 states: North Carolina, South Carolina, Alabama,  
22 and few others where the dollars amounts were  
23 bigger, the number of customers impacted were  
24 bigger. And in other states, like Florida, the  
25 parties agreed to hold the proceedings in abeyance

1 with the idea being that once the other states  
2 resolved the factual and legal issues there would be  
3 a fallout impact on the proceeding in Florida. But  
4 the bottom line is in Florida with the abeyance, the  
5 accumulated disputes were held in abeyance.

6 We're in crisis mode right now, frankly,  
7 because somebody at AT&T found a gotcha in the  
8 interconnection agreement. And that gotcha is  
9 language in the interconnection agreement that says  
10 that LifeConnex will pay its bills, including  
11 disputed amounts, not excluding disputed amounts. I  
12 can't sit here today and tell you that language is  
13 not in there. It's in there. It's inconsistent  
14 with the parties course of conduct, it's  
15 inconsistent with the abeyance, but the language is  
16 there. And AT&T is now trying to leverage that  
17 gotcha to collect three years worth of disputes in  
18 15 days.

19 And we agree with the staff on the point  
20 that that's just not just, it's not reasonable. The  
21 main thing you'll be hearing from AT&T is the  
22 gotcha. The plain language of the interconnection  
23 agreement. They'll be repeating it like a mantra,  
24 like when somebody found it their eyes must put have  
25 lit up like a kid on Christmas morning. But you

1 can't help but ask yourself, if the language is so  
2 plain, why is it a gotcha, why are we here now? Why  
3 have the years of practice of the parties suddenly  
4 now flipped on its head, and why after the  
5 accumulated disputes have been held in abeyance by  
6 the Commission's order?

7           The main thrust of the staff  
8 recommendation, which we agree with this main part  
9 here is on Page 10 in the paragraph beginning,  
10 "Staff is, however," and in particular the sentence  
11 beginning, "As a condition of providing future  
12 service, AT&T is attempting to insist on payment of  
13 the entire amount in dispute, the underlying amounts  
14 in this docket, which AT&T agreed in the joint  
15 motion to hold in abeyance in order to continue to  
16 provide on-going service." And then it goes on to  
17 say that staff doesn't believe that this is fair,  
18 just, and reasonable, and that is what LifeConnex is  
19 advocating here today is for a fair, just, and  
20 reasonable interpretation of the interconnection  
21 agreement, consideration of the history, course of  
22 conduct of the parties, and, most importantly, the  
23 abeyance of the proceedings.

24           With that said, I wanted to let you know  
25 that the parties are talking, the principals talked



1 last night, apparently not able to resolve the  
2 issue, but they will continue to talk. But in the  
3 meantime we have to ask that the Commission step in  
4 as referee, since the parties could not resolve the  
5 crisis issue before it reached this point. And I'll  
6 answer any questions. Thank you.

7 **CHAIRMAN ARGENZIANO:** Any questions?

8 Mr. Hatch.

9 **MR. HATCH:** Thank you, Madam Chair.

10 Commissioners, my name is Tracy Hatch  
11 appearing on behalf of AT&T Florida.

12 Mr. Feil is correct. We're going to talk  
13 about the interconnection agreement, because that is  
14 essentially why we are here. We have an  
15 interconnection agreement. Nobody disputes that.  
16 We have provisions in the interconnection agreement  
17 that says they shall pay. Even if they have a  
18 dispute, they still have to pay. They don't dispute  
19 that that language is in there. The only thing that  
20 they dispute or essentially that they are arguing  
21 here is that somehow a continued course of  
22 behavior -- and we can all speculate on why that is  
23 and there are some reasons for it, but insisting on  
24 strict adherence to the contract is somehow now  
25 wrong.

1           They signed the contract, the contract is  
2 out there, we have the right to insist on the terms  
3 of the contract. We support wholeheartedly the bulk  
4 of the staff's rationale and analysis. They very  
5 systematically go through the arguments that  
6 LifeConnex has put forward here, and essentially are  
7 absolutely correct in their reasoning that says  
8 there is a contract, there an ICA language that  
9 provides for payment.

10           There is no waiver, no implied waiver,  
11 there is no estoppel based on prior course of  
12 conduct. All of that is resolved within the terms  
13 of the ICA. We have a contract and that is where  
14 you should focus your attention.

15           Now, we part company with the staff's rec  
16 at the point where it says AT&T is right all the way  
17 through the rec until they will get to but we are  
18 troubled. Now, it is not clear to me how the staff  
19 gets to the result it gets in terms of upon what  
20 basis are they making this recommendation.  
21 Essentially, what the staff has done is saying, yes,  
22 you can enforce your interconnection agreement,  
23 which is absolutely correct, but they then proceed  
24 to say but we are not going to let you enforce the  
25 interconnection agreement with past due amounts.

1           Now, bear in mind that past due amount, at  
2           least at this point, is somewhere in the neighbor or  
3           in excess of \$1.4 million. That number continues to  
4           grow every day. LifeConnex in its payment history  
5           has not even, in many occasions, paid the net  
6           amount. And so that's why that balance keeps  
7           growing and growing and growing. And as it gets  
8           bigger, we become more and more nervous as to our  
9           exposure. And the staff correctly points out, we  
10          have substantial exposure here. Not just in  
11          Florida, but in all the regions -- or the other  
12          states in which LifeConnex operates in the  
13          southeast.

14               Essentially what the staff's portion of  
15          the rec says that -- essentially what they have said  
16          is hold or stay enforcement of the ICA with respect  
17          to the 1.4. They don't say how they get there other  
18          than the vague regulatory mantra fair, just, and  
19          reasonable. I would submit to you those words no  
20          longer appear in Chapter 364. The general  
21          regulatory jurisdiction of the Commission to go do  
22          good that used to be in 364 left 364 in 1995 when  
23          the legislature embarked upon a road towards a  
24          competitive marketplace. It restricted the  
25          Commission's ability to go out and just do good

1 under plenary jurisdiction. There is no plenary  
2 jurisdiction in 364 anymore.

3 What the staff has asked you to do is -- I  
4 mean, you can call it anything you want, a  
5 procedural order or whatever, but what they have  
6 asked you to do is grant preliminary injunctive  
7 relief that says, you know, you can't do this until  
8 we get to the end. It is effectively the same thing  
9 as you would go to circuit court and get a  
10 preliminary injunction to preserve the status quo  
11 until the end of the case.

12 The problem with that is, and we  
13 fundamentally disagree with your authority to do  
14 that. Essentially, the Commission itself has on  
15 many occasions stated it has no injunctive  
16 authority. It can't do that. That's what the staff  
17 is asking you to do here. This is not a simple  
18 procedural matter of the processing of the case,  
19 this is a substantive issue. And I will say that we  
20 disagree with the staff's recommendation as to that  
21 piece.

22 Now, if you are going to go down this  
23 path, then what you must also do is complete the  
24 next step in the injunctive process, which is they  
25 must provide some security for that outstanding

1 amount. Because once we get to the end, what  
2 assurance do we have that they are going to pay or  
3 have the money to pay.

4 And just as an example, why we are  
5 becoming more and more nervous, this case isn't  
6 isolated in the southeast. There are numerous other  
7 carriers undergoing the same problem and in the same  
8 scenario as LifeConnex. In South Carolina, for  
9 example, EveryCall was up before the South Carolina  
10 Commission, I guess last week or so. The South  
11 Carolina Commission said, okay, EveryCall, you have  
12 X days to provide payment or security or else they  
13 can cut you off.

14 Now, EveryCall was also one of the  
15 carriers in Florida, and we have been expecting the  
16 same kind of petition here. EveryCall filed  
17 bankruptcy in Louisiana, I guess, yesterday or the  
18 day before. So what we're asking here is some means  
19 by which we can assure ourselves that the 1.4  
20 million is protected.

21 We disagree with the injunctive relief,  
22 but if you're going to go down that path, we need  
23 some assurance. Either escrow the amount that's in  
24 dispute, or provide some sort of a bond that assures  
25 payment.

1                   **CHAIRMAN ARGENZIANO:** I have a question  
2 for staff and then Commissioner Skop. Where is  
3 staff's basis in regards to a signed contract? I  
4 don't know how we have the jurisdiction to do that.  
5 Can you elaborate?

6                   **MR. TEITZMAN:** Certainly. It's clear in  
7 both Chapter 120 and Chapter 364 that the Commission  
8 has ongoing authority regarding interconnection  
9 agreements between carriers.

10                   **CHAIRMAN ARGENZIANO:** But if there is a  
11 signed contract, I thought that, you know, when you  
12 sign a contract you know what you're signing, and  
13 whether it's the right thing or wrong thing, I'm  
14 just trying to figure out, and I'm not an attorney,  
15 but all my life I have understood if you signed a  
16 contract, you better be careful what you're signing  
17 because you have to live by it.

18                   **MR. TEITZMAN:** I think we expressed the  
19 similar thoughts in the recommendation. Staff  
20 completely supports that idea, and doesn't dispute  
21 AT&T's argument that there is a contract and that  
22 LifeConnex is required to pay disputed amounts.

23                   **CHAIRMAN ARGENZIANO:** That's what I'm  
24 having a hard time with. If they signed it, they're  
25 going to pay whether there is a disputed amount or

1 not. We are telling them they will pay, but they  
2 will pay in a different manner than I think the  
3 contract intended. Am I not on the right boat?

4 **MR. TEITZMAN:** You're following this  
5 correctly, Madam Chair. I think what staff was  
6 looking at was -- and I kind of expressed it in my  
7 opening was, one, we have some consumers out there,  
8 roughly 2,500 who are facing imminent termination of  
9 service. And, additionally, AT&T had invoked this  
10 Commission's jurisdiction to resolve this matter.  
11 And as Matt Feil mentioned, there was no reference  
12 at that time to any imminent discontinuance of  
13 service, and the parties filed a motion for  
14 abeyance, and there was no mention at that time that  
15 there was going to be imminent discontinuance of  
16 service.

17 So we were kind of taking a look at that  
18 and, you know, trying to say, you know, support what  
19 was in the contract. Yes, LifeConnex, you have to  
20 pay on a going-forward basis, but with regard to  
21 these past due amounts, we believe that that should  
22 be more properly addressed through the hearing  
23 process.

24 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you, Madam

1 Chair. Just a question or two to Mr. Hatch.

2 Mr. Hatch, to follow up on a question that  
3 Chairman Argenziano posed to staff, does this  
4 Commission have the authority to prevent AT&T from  
5 strictly enforcing the terms of its interconnection  
6 agreement to the extent that it represents a  
7 contract between the parties.

8 **MR. HATCH:** In my opinion, no. I don't  
9 believe they can prevent the enforcement of the  
10 contract. I mean, the only thing that I would add  
11 to that is clearly there is a dispute as to the  
12 amounts that are owed. There is no question about  
13 that. Our point is that they are supposed to pay us  
14 under the contract in the face of the dispute, then  
15 they can bring it to the Commission, which they have  
16 never done, or we can bring it to the Commission,  
17 which we have done in January.

18 As to why there was no mention of this --  
19 we filed in January, but over time this whole issue  
20 has become more and more a concern. And as staff  
21 notes in its recommendation, we expressly reserved  
22 our rights to pursue claims and actions not governed  
23 by the abeyance order. And it's very clear, as  
24 staff points out, that this is not barred by the  
25 abeyance order or the abeyance motion.



1                   **COMMISSIONER SKOP:** And I share your  
2 concern. I think that the Commission has dealt with  
3 getting involved in arbitration regarding adoption  
4 of interconnection agreements and disputes that  
5 arise and how they are going to be applied. But in  
6 terms of stepping in and, basically, enjoining one  
7 of the parties from strictly enforcing a term of its  
8 agreement, that to me seems to raise several  
9 concerns, at least from my perspective here sitting  
10 on the bench.

11                   The outstanding amount, I think, that you  
12 have mentioned is approximately \$1.4 million. I  
13 think you also mentioned, if I heard you correctly,  
14 that there is, perhaps, a bankruptcy petition that  
15 has been filed in another state. Could you  
16 elaborate on that a little bit more?

17                   **MR. HATCH:** Yes. That's is a different  
18 carrier, but I used it to illustrate our concern  
19 about securing the unpaid balance.

20                   **COMMISSIONER SKOP:** Okay. All right.  
21 Thank you for that clarification, because I thought  
22 I had heard that.

23                   **MR. HATCH:** It's not clear to me whether  
24 they are related or affiliated in any way, but it's  
25 just another carrier that's subject to this, for

1 lack of a better word, and I hate the term, a  
2 collaborative approach to the litigation because  
3 there are so many parties with similar claims in  
4 different jurisdictions.

5 **COMMISSIONER SKOP:** Okay.

6 And hypothetically speaking, again noting  
7 that this does not apply to this case, but if a  
8 carrier were to file for bankruptcy, then those 1.4  
9 million in pre-petition amounts, you could not sue  
10 to get those, you would have to file a claim with  
11 the bankruptcy court, is that correct?

12 **MR. HATCH:** It would be a debt in the  
13 bankruptcy court. But, more importantly, we would  
14 be unable to cut them off, so the bleeding would  
15 just continue until we're at the end.

16 **MR. FEIL:** Commissioner, if I may, that's  
17 not entirely --

18 **COMMISSIONER SKOP:** Just hold on one  
19 second. I'll give you full-time to rebut; I'm just  
20 trying to understand the facts before me.

21 Also, too, Mr. Hatch, I believe that staff  
22 is recommending a 14-day cut-off period, at least  
23 from my perspective, in terms of trying to reach out  
24 to the affected consumers. Is 14 days adequate? I  
25 mean, or should the consumers be given a little bit

1 longer time, for instance, 30 days?

2 **MR. HATCH:** In my opinion it's adequate.  
3 I know that there are discussions where we're  
4 involved with discussions with some of the carriers.  
5 I'm not sure if it includes LifeConnex. Maybe Mr.  
6 Feil could help on that issue about using,  
7 essentially, a telephone notification service that  
8 we have available that basically just calls the  
9 customers and informs them. So it's not a matter of  
10 getting crossed in the mail or getting delivery or  
11 things like that. It substantially expedites the  
12 time period. If that's available, then 14 days is  
13 more than sufficient. But even at that, I think 14  
14 days is sufficient.

15 **COMMISSIONER SKOP:** Okay. And just one  
16 final question. I'll give you the full opportunity  
17 to rebut.

18 In the opening statement by LifeConnex  
19 they mentioned, you know, staff's position regarding  
20 wanting to provide future service, and they  
21 reference AT&T wants payment in full as a condition  
22 for moving forward in keeping the agreement.

23 What was not mentioned was that on Page  
24 10 of the staff recommendation that staff concluded  
25 that LifeConnex had been consistent in its conduct

1 of not promptly paying its bills as required by the  
2 interconnection agreement, but rather acted contrary  
3 to those terms and, in fact, benefited from its  
4 conduct to the extent that there is now 1.4 million  
5 in disputed amounts in Florida, and staff  
6 recommended that the LifeConnex arguments regarding  
7 waiver failed. Is there anything that I'm  
8 misunderstanding of that, either from Staff or AT&T?

9 **MR. HATCH:** No, I think you have that  
10 correctly.

11 **COMMISSIONER SKOP:** Okay. And then, Madam  
12 Chair, I think it's fair to give the opportunity for  
13 rebuttal.

14 **MR. FEIL:** If I may, Madam Chair.

15 Just a few things. First, Mr. Hatch  
16 mentioned -- and I'm going in chronological order  
17 here, sorry -- Mr. Hatch mentioned that there were  
18 instances where LifeConnex didn't pay the net amount  
19 even. Part of the problem is the parties don't even  
20 agree on what the net amount is, the disputes are  
21 that replete with problems, and the bills are  
22 replete with problems.

23 I also wanted to mention that every  
24 agreement, interconnection agreement, or any other  
25 kind of contract doesn't apply to obligation of good

1 faith, and that's part of what we're dealing with  
2 here, is good faith of the parties.

3 Mr. Hatch mentioned that this is, in  
4 effect, an injunction, while staff disavows that  
5 this is any kind of equitable relief. What staff is  
6 doing is interpreting the interconnection agreement.  
7 The Commission certainly has authority to interpret  
8 its own order, it's abeyance order and what was  
9 intended by the abeyance order.

10 The South Carolina decision, which I think  
11 Mr. Hatch eventually came to is that that involves  
12 another carrier, not LifeConnex. It's one of the  
13 other resellers. In North Carolina, the Commission  
14 issued an order telling AT&T to hold off until the  
15 parties could submit additional pleadings and the  
16 North Carolina staff could chime in.

17 So to illustrate the point, there are a  
18 lot of different resale carriers involved in other  
19 states. I'm only here representing LifeConnex in  
20 Florida.

21 Mr. Hatch talked about, and also staff  
22 referred to the exposure of AT&T. Well, they saw  
23 that exposure building up over the entire period of  
24 time and could have filed a dispute resolution at  
25 any time. Moreover, with regard to Mr. Hatch's

1 argument relative to if you grant injunctive relief  
2 you have to take that one step further by insisting  
3 on security, there is a mechanism in the  
4 interconnection agreement already for them to ask  
5 for additional security. And whether or not they  
6 have done so or not, I can't say, but if you're  
7 going to look to the interconnection agreement for  
8 one purpose, it seems to me you should be looking to  
9 the interconnection agreement for your rights  
10 relative to asking for additional security.

11 On the bankruptcy issue, I can't speak  
12 whether or not LifeConnex is going to be filing  
13 bankruptcy or not. For all I know they are  
14 completely able to pay their bills and they are  
15 liquid. However, on the security issue relative to  
16 bankruptcy and how claims work there, AT&T would be  
17 within its rights to assert in a bankruptcy  
18 proceeding that it could get assurance of payment as  
19 with any bankruptcy proceeding involving utilities  
20 and could seek additional security for going-forward  
21 payments in the course of the bankruptcy.

22 Commissioner Skop asked whether or not 14  
23 days is adequate. I have not verified this with the  
24 client, but it seems to me, based on my experience,  
25 that 14 days is probably adequate. I'm concerned a

1 little bit about trying to shorten that time frame  
2 by using telephonic means because it seems to me  
3 like if you are having redundant notices, the  
4 customers could get confused. But it would give  
5 them an opportunity to ask questions, presumably, if  
6 it is not a prerecorded voice. And, if anything, I  
7 would hope that LifeConnex would probably be calling  
8 the customers in addition to sending the 14-day  
9 notice.

10 Mr. Hatch made an argument about -- or,  
11 excuse me, Commissioner Skop pointed out about the  
12 LifeConnex benefiting from its conduct over time.  
13 AT&T benefited also to the extent that the  
14 accumulated balances built up so much, right now  
15 would be extremely difficult for anybody to pay it  
16 on 14 days notice.

17 So there is plenty of blame to go around  
18 in this situation and both parties have to share  
19 some portion of that. And the staff recommendation,  
20 I think, does a good job of trying to find the  
21 middle ground.

22 **CHAIRMAN ARGENZIANO:** You're recognized.

23 **COMMISSIONER SKOP:** Thank you, Madam  
24 Chair.

25 And just one follow-up to Mr. Hatch

1 regarding a point that was made in relation to the  
2 issue of additional security. It was, I believe,  
3 referenced that in the interconnection agreement  
4 there is a provision that provides for AT&T  
5 requesting additional security, and can you speak to  
6 whether AT&T has sought to enforce that provision of  
7 the ICA, or is just looking for --

8 **MR. HATCH:** Yes, we have. We have  
9 attempted to negotiate and engage them with respect  
10 to additional security. My understanding is that  
11 their offer of security which they have held firm on  
12 is they would offer security for two months of net  
13 billing, which under their calculation of net  
14 billing is a miniscule amount.

15 **COMMISSIONER SKOP:** Okay. So it would not  
16 be equivalent to the 1.4/1.5 million that is --

17 **MR. HATCH:** That is correct. And that  
18 1.4 million is still out there. Even in bankruptcy,  
19 he's right, I can get security for going forward.  
20 That 1.4 is still a risk in bankruptcy.

21 **COMMISSIONER SKOP:** I understand. I'm  
22 familiar with the bankruptcy law, and that is my  
23 concern with the pre-petition amounts are tied up in  
24 bankruptcy proceedings as soon as it's filed, and  
25 they have the stay, automatic stay that applies and



1 a host of things and get adequate protection on a  
2 forward-going basis. But, you know, again, I think  
3 the point is is how do we deal with the issue in the  
4 context of the disagreement with the parties as well  
5 as the staff recommendation.

6 And I'm not so sure, Madam Chair, that I  
7 fully support the staff recommendation on this one.  
8 I think that there is an outstanding amount of 1.4  
9 or \$1.5 million that is in dispute. It's a large  
10 sum. Staff's own recommendation has stated that  
11 LifeConnex' argument regarding waiver fail, so I  
12 think that looking at this we need to give some  
13 thought on how to adequately protect the significant  
14 account receivable that's due to AT&T while also  
15 protecting the consumers and making sure that if  
16 AT&T does seek to strictly enforce its provisions  
17 under the existing interconnection agreement that  
18 the consumers have some time to make appropriate  
19 changes so their service is not terminated. I will  
20 yield to the bench. Thank you.

21 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

22 **COMMISSIONER EDGAR:** Thank you. I think  
23 14 days is consistent with past practice or past  
24 decisions here at the Commission, is that correct?

25 **MR. TEITZMAN:** The 14 days -- one of the

1 sources of the 14 days, to give a better  
2 explanation, is AT&T has a tariff on file with the  
3 Commission. It is entitled the emergency service  
4 continuity plan, and that actual tariff, it would be  
5 initiated either by a petition by AT&T or on the  
6 Commission's own motion.

7 But within that tariff there is a  
8 discussion of this 14-day transition period, and so  
9 we looked at that tariff, and there is a case where  
10 this tariff was applied and customers were  
11 provided -- it's a little different. Customers were  
12 provided additional service for 14 days from AT&T,  
13 but that 14-day period was the period with which  
14 they could transition to another service provider.

15 **COMMISSIONER EDGAR:** Okay. And I think I  
16 would -- from the information that I have received  
17 to date on this, I would probably agree with the  
18 statement that Mr. Feil made that perhaps there is  
19 some blame to go around. But in most disputes, that  
20 is probably the case.

21 To staff, in your recommendation, the  
22 issue of escrowing or providing additional security  
23 or a bond is not addressed. Is that something that  
24 you considered as part of the recommendation and  
25 rejected, and if so, why? Or is that something that

1 is perhaps -- perhaps maybe even inherent, but yet  
2 not stated?

3 **MR. TEITZMAN:** Our concern with that type  
4 of security was we were trying to avoid this being  
5 an injunction. And that, as Mr. Hatch had  
6 mentioned, is kind of the next line with an  
7 injunction. I don't think we're opposed,  
8 necessarily, to a security or recommend against  
9 that. Our concern in drafting the recommendation  
10 was, though, that we wanted to avoid this being an  
11 injunctive relief.

12 **COMMISSIONER EDGAR:** Okay. And the  
13 statement has been made of no disputed amount  
14 of 1.4 million. Is it more accurate to say  
15 potential disputed amount of up to 1.4?

16 **MR. HATCH:** I think that's fair to say.

17 **COMMISSIONER EDGAR:** Okay. It's not 1.4  
18 or nothing; it's some amount that could range --

19 **MR. HATCH:** I would love to think we're  
20 absolutely correct, but there is always the risk  
21 that the truth lies somewhere in the middle.

22 **COMMISSIONER EDGAR:** Okay. And then to  
23 Mr. Feil, could you speak to this point that has  
24 been raised by AT&T and discussed about the  
25 potential for a bond, or escrow, or some other

1 mechanism to provide some security prior to the  
2 point of a disputed amount being resolved.

3 **MR. FEIL:** I have not talked with the  
4 client about that issue. That is something that I  
5 can do and attempt to do. However, Mr. Hatch's  
6 argument is alive, and for the first I have heard  
7 that today, so I haven't had a chance to talk with  
8 the client about it. So, unfortunately, I cannot  
9 answer your question.

10 **COMMISSIONER EDGAR:** Okay. Because on its  
11 face, again, with just what I have, that seems like  
12 it may be a reasonable request. Or let me put it  
13 this way, why would it not be?

14 **MR. FEIL:** I think that the only thing  
15 that comes to mind is obviously if the parties agree  
16 to it then there is no problem. But I think that  
17 the issue is it is sort of bypassing what is in the  
18 interconnection agreement already, which is there is  
19 a mechanism for them to seek additional security,  
20 and apparently the parties haven't agreed on what  
21 that would be.

22 I don't know how much time the parties  
23 have actually spent trying to hammer down on that  
24 issue, and it's probably not a bad idea that they  
25 spend more time on it, but that would be my only

1 concern is that we already have a mechanism in place  
2 to address security. But if your suggestion is the  
3 parties should go off and have a standstill and go  
4 discuss security and then come back, then it would  
5 be hard for me to argue against that.

6 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you, Madam  
8 Chair. Just a quick question to staff and then a  
9 question to Mr. Hatch. On Page 10 of the staff  
10 recommendation they talk about the amount in  
11 dispute, and I know there has been some discussion,  
12 but in the staff recommendation on Page 10 in the  
13 first full paragraph, it states that the disputed  
14 amount is now over 1.4 million. Is that correct, to  
15 the extent that it's accruing interest, or charges,  
16 or other charges have accrued since the time of the  
17 staff recommendation?

18 **MR. TEITZMAN:** That's correct. I think it  
19 increases every day, I would imagine.

20 **COMMISSIONER SKOP:** Okay. Why that is  
21 important is, you know, if the Commission were to  
22 move forward with requiring additional security, you  
23 know, obviously we need to pick a number that's  
24 representative of the disputed amount. Not one that  
25 is arbitrary and capricious, but one that's in line

1 with the best information we have to adequately  
2 protect the respective companies. So I just wanted  
3 to clarify that.

4 To Mr. Hatch, with respect to the  
5 additional security, does AT&T have a preference  
6 with respect to a bond, or escrow, or a letter of  
7 credit, or, you know, has AT&T given some thought  
8 into what the solution should be contrary to what  
9 staff is recommending?

10 **MR. HATCH:** I don't think we have a  
11 particular preference as long as it is a vehicle  
12 that gives us adequate assurance of payment.

13 **COMMISSIONER SKOP:** Okay. Would  
14 \$1.4 million be appropriate, or should it be  
15 incrementally higher, a number as 1.5 million?

16 **MR. HATCH:** I can tell you that my client  
17 would always want more.

18 **COMMISSIONER SKOP:** I'm trying to do  
19 what's fair, not necessarily --

20 **MR. HATCH:** I can tell you that -- Mr.  
21 Follensbee suggests that with the current billing  
22 rate, it's probably around 1.5. But if we had  
23 assurance for 1.4 I think we would be okay. That  
24 coupled with the fact of going forward would limit  
25 our exposure substantially.

1                   **COMMISSIONER SKOP:** Mr. Feil, a brief  
2 response.

3                   **MR. FEIL:** I was just going to say that as  
4 Mr. Teitzman pointed out, and Mr. Hatch agreed, it  
5 is up to 1.4 to date. LifeConnex -- the 1.4 itself  
6 is in dispute, I guess, is the only way I can say  
7 it. So we don't think that that is an accurate  
8 number. At the end of the day when and if the  
9 Commission does resolve the disputes, whether or not  
10 the correct retroactive number is 1.4 is very  
11 debatable, and the bottom line there is we don't  
12 agree that that is the correct number. I'm not sure  
13 what number Mr. Follensbee was pointing out. I  
14 don't know if that was covering just Florida or  
15 multiple states.

16                   **COMMISSIONER SKOP:** Mr. Hatch, I'm just  
17 going by -- and, staff, feel free to chime in on  
18 this, but on Page 10 of the staff recommendation,  
19 this is staff's own words, to the extent that there  
20 is now over 1.4 million in dispute in Florida. So  
21 unless that number is wrong, that's the number I'm  
22 going by. So, staff, do you have anything to add,  
23 or Mr. Hatch?

24                   **MS. SALAK:** The 1.4 is an AT&T number, and  
25 that would be what we believe would be the maximum

1 amount of exposure. And when we say over it's only  
2 because as months go by, or time goes by, and time  
3 has gone by since the petition was filed, that they  
4 continue to bill, they continue not to pay the full  
5 amount, and it's still in dispute. And so that's  
6 the reason for the over, because we believe it  
7 continues to accrue. Which part of our  
8 recommendation was to try to stop that additional  
9 amount, and it getting larger and larger every day.

10 **COMMISSIONER SKOP:** Madam Chair, and Mr.  
11 Hatch, I don't know if you have anything to add, if  
12 not, I'm ready to move forward.

13 **MR. FOLLENSBEE:** Well, Commissioner Skop,  
14 let me just say that the reason I got to 1.5 is the  
15 number we have given staff was through May's bill.  
16 June's bill is about \$70,000 we are estimating, so  
17 that is where I was getting to 1.5 as of today.  
18 But, again, as Mr. Hatch said, 1.4 is adequate as  
19 opposed to adding in the June bill.

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

21 Madam Chair, if I may. I think where I'm  
22 at on this, just in the interest of moving forward,  
23 is I don't necessarily agree with the staff  
24 recommendation. I think that if AT&T wants to  
25 exercise its right under the interconnection



1 agreement, it should be able to do so for specific  
2 enforcement. If they choose to pursue that option,  
3 customers should be given 14-day advanced notice.  
4 And that if, you know, LifeConnex expects AT&T not  
5 to terminate or exercise its rights to terminate,  
6 then the posting of a bond or appropriate security  
7 in the amount of \$1.4 million is probably  
8 appropriate. But I'll open that up to discussion.  
9 Thank you.

10 **CHAIRMAN ARGENZIANO:** I'd like to ask  
11 staff a question. If we move forward with your  
12 recommendation today, tell me the likely scenario to  
13 occur for both parties. I'm not saying the final  
14 determination, I mean procedural.

15 **MR. TEITZMAN:** Well, the matter is  
16 currently held in abeyance and that has been  
17 discussed by joint motion of both parties. There  
18 has been no indication that either party has an  
19 interest in lifting the abeyance. The Commission  
20 could do that its own motion, of course. So as far  
21 as how things would proceed, the 1.4 million would  
22 be frozen -- this is under staff's recommendation --  
23 would be frozen, and LifeConnex would be expected to  
24 remit payment on the next month's -- well, we said,  
25 you know, from this date forward, so on the next

1 month's bill for all amounts, including the disputed  
2 amounts. And if they fail to do so, at that point  
3 AT&T could initiate the procedures set forth in the  
4 interconnection agreement for discontinuation of  
5 service. And with that, LifeConnex would be  
6 expected to provide to staff the notice that they  
7 are going to provide customers so staff can review  
8 and approve.

9           So as far as how much longer, I don't know  
10 when the bill -- what the billing date is, but  
11 depending on the billing date, there's a time and a  
12 procedure set forth in their interconnection  
13 agreement. So if they fail to pay on the first  
14 month, you're looking at, I guess, maybe about two  
15 months of additional service at the most. The  
16 parties may be able to speak to that more clearly.

17           **MR. HATCH:** I think the billing date is,  
18 like, the 20th of the month, so the June bill is out  
19 there and is due in 30 days, which would be  
20 July 20th roughly. And that was a question that  
21 actually I had was to clarify what exactly you mean  
22 after July 13th. Would it be bills due after the  
23 13th, bills rendered after the 13th, or just usage  
24 from the 13th? Our preference, obviously, would be  
25 the bills due, certainly.

1                   **MR. TEITZMAN:** And that is consistent with  
2 staff's position. We believe it would be the bills  
3 due.

4                   **CHAIRMAN ARGENZIANO:** Commissioner Skop.

5                   **COMMISSIONER SKOP:** Thank you, Madam  
6 Chair.

7                   Just to staff, again, I thought I heard  
8 two different things there. Because in the staff  
9 recommendation staff believed that the 1.4 million  
10 in dispute as discussed above is fundamentally  
11 retroactive in character, and the proceeding  
12 currently held in abeyance is the most efficient  
13 means of resolving that dispute. So staff believes  
14 that AT&T had its right to protect itself on a  
15 forward-going basis pending the resolution. So  
16 staff recommended, you know, AT&T have strict  
17 compliance on a forward-going -- with the payment  
18 terms on the forward-going amounts. But what I just  
19 heard you say was that there is some way to require  
20 that there's a security on this 1.4 million to be  
21 paid.

22                   So, again, are we changing the staff  
23 recommendation on the fly, or did you suggest a  
24 solution that addresses the concern? Because the  
25 tension here is that AT&T wants the entire

1 outstanding amount paid to it and then any disputes  
2 can be resolved, and that seems to be in accordance  
3 with the terms of the interconnection agreement.  
4 Absent that, AT&T, I think, wants to exercise its  
5 specific right under the interconnection agreement  
6 to terminate the agreement with 14 days notice.

7 **MR. TEITZMAN:** I believe what I stated was  
8 consistent with our recommendation. If I misspoke,  
9 I apologize. And I think you have depicted the  
10 recommendation accurately.

11 **COMMISSIONER SKOP:** Okay. So staff is  
12 essentially not addressing the \$1.4 million, they  
13 are holding that in abeyance, leaving AT&T somewhat  
14 naked and exposed to those outstanding disputed  
15 amounts. Say, for instance, a bankruptcy filing.  
16 Obviously, that would tie those amounts up. So  
17 there is some -- let me think of the right word.  
18 There is some risk exposure there for AT&T on the  
19 outstanding amounts or disputed amounts that haven't  
20 been resolved, and I think that is the difference  
21 between what AT&T is asking the Commission to do,  
22 what LifeConnex is opposing, and what the staff  
23 recommendation is taking the middle of the ground  
24 approach. And that seems to be a significant sum of  
25 the disputed amount outstanding in today's

1 environment. That's a lot of, you know, working  
2 capital.

3 So I'm trying to find a resolution that is  
4 win/win and fair to the parties, but I go back to  
5 the fact that the staff recommendation does not  
6 address the \$1.4 million in disputed amounts in  
7 providing adequate protection or security to address  
8 that. And that's my concern, so I will let you  
9 respond.

10 **MR. TEITZMAN:** Yes, Commissioner. I guess  
11 I would just point out that, like I said, the idea  
12 behind the recommendation was to freeze that  
13 1.4 million. And in reviewing this, if AT&T  
14 discontinued service, they would not come any closer  
15 to receiving payment on that 1.4 million. The  
16 concern of staff was that that amount would continue  
17 to increase, and that was the basis for our  
18 recommendation.

19 **COMMISSIONER SKOP:** Okay. And then I  
20 understand the staff recommendation, and, you know,  
21 in principle it's fine. I think that, you know, it  
22 does address ensuring the performance of the parties  
23 on a forward-going basis. But, again, that  
24 outstanding amount is something that I think that  
25 AT&T has made a case. Even staff's own

1 recommendation has stated that LifeConnex has been  
2 consistent in not paying its bills and actually  
3 benefited from those and now the outstanding amount  
4 is 1.4.

5           So those are not my words, those are words  
6 I am reading straight from Page 10 of the staff  
7 recommendation. Which, you know, obviously  
8 LifeConnex would ask us to ignore and focus on the  
9 staff recommendation, but it seems to me that, you  
10 know, if you enter into a contract, you are expected  
11 to make payment. If I don't pay my electric bill,  
12 I'm going to have my service terminated. But in  
13 this case we are dealing with obviously larger  
14 amounts than a residential bill, and I think that,  
15 you know, under the interconnection agreement  
16 whether there would be terms and conditions that  
17 provide for additional security being posted absent  
18 payment or what have you, but clearly at least based  
19 on staff's analysis, LifeConnex has failed to meet  
20 its payment obligations under the terms of the  
21 interconnection agreement and under the auspices of  
22 the dispute. Is that fair?

23           **MR. TEITZMAN:** That's fair. I think I  
24 fall into that category that believes that both  
25 parties are at wrong here. AT&T probably should

1 have enforced their interconnection agreement  
2 starting in 2007 when LifeConnex began to not pay  
3 their disputed amounts, and LifeConnex should have  
4 been paying their disputed amounts since 2007.

5 **COMMISSIONER SKOP:** Okay. But did staff  
6 not conclude, though, on Page 10 of the staff  
7 recommendation that LifeConnex' argument regarding  
8 waiver failed?

9 **MR. TEITZMAN:** Absolutely, correct.

10 **COMMISSIONER SKOP:** Okay. So then AT&T  
11 maybe should have -- no party is right here, but at  
12 the end of the day if AT&T provided services to  
13 LifeConnex, then LifeConnex should obviously, absent  
14 some problem, pay its bill in a timely manner. Is  
15 that a central premise you agree with?

16 **MR. TEITZMAN:** That is correct. The  
17 waiver argument does fail legally.

18 **COMMISSIONER SKOP:** All right. Thank you.

19 **CHAIRMAN ARGENZIANO:** I have a question,  
20 just a question going back. In the petition that's  
21 before the Commission now in regards to the dispute,  
22 and I guess to determine if there needs to be  
23 correcting of the discounts and credits, which seems  
24 to be what LifeConnex is saying, if that comes  
25 before us and it is determined that AT&T owes those

1 discounts or they weren't properly given, or there  
2 was a delay in that, then LifeConnex would get -- if  
3 this Commission determines so, would get that  
4 reimbursement of those credits regarding -- no  
5 matter what we did today.

6 **MR. TEITZMAN:** Well, since they haven't  
7 paid the disputed amounts, I'm not sure that there  
8 would be a reimbursement.

9 **CHAIRMAN ARGENZIANO:** I know. But if they  
10 are going to pay the 1.4, and then that comes up,  
11 then that is the point I'm getting at.

12 **MS. SALAK:** I mean, at the end of the day,  
13 and once the Commission makes a decision, based upon  
14 that decision, whether you make AT&T pay or, you  
15 know, or LifeConnex pay, whichever way it needs to  
16 go it will happen. I mean, the monies will all be  
17 split up the proper way at the end.

18 **CHAIRMAN ARGENZIANO:** Okay.

19 Commissioner Edgar.

20 **COMMISSIONER EDGAR:** Thank you.

21 I know that Commissioner Skop said a few  
22 minutes ago about trying to find a win/win; I'm not  
23 sure that this is the sort of scenario that provides  
24 that, but I do know that we have had numerous  
25 examples over the years where we have said that if



1 both parties are grumbling a little, then probably  
2 we have hit it close to right somewhere in the  
3 center.

4 I don't think this is a perfect answer,  
5 but I think it's a good enough answer to the  
6 situation that is before us. So with that, I would  
7 move that we adopt the staff recommendation with the  
8 addition of directing LifeConnex to provide a bond  
9 in the amount of 1.4 million.

10 **COMMISSIONER SKOP:** Second. Actually, can  
11 I ask for a clarification on that?

12 **COMMISSIONER EDGAR:** Sure.

13 **COMMISSIONER SKOP:** Some discussion. So,  
14 Commissioner Edgar, we would move forward with the  
15 staff recommendation, LifeConnex would be required  
16 to post a \$1.4 million bond to the satisfaction of  
17 AT&T. And if they did not do so, then AT&T would be  
18 free to exercise its rights under the existing  
19 interconnection agreement to terminate with 14-days  
20 notice, is that your understanding as embodied in  
21 the motion?

22 **COMMISSIONER EDGAR:** Yes.

23 **COMMISSIONER SKOP:** Great. Thank you.

24 **CHAIRMAN ARGENZIANO:** I just want to make  
25 one comment. I still have a problem, and I guess it

1 is because I'm not an attorney, but I still have a  
2 problem with trying to get past the contract issue.  
3 To me, if you sign a contract and say this is what  
4 you are going to do, even though maybe AT&T could  
5 have been delaying the discounts and the credits,  
6 I'm not sure that it's proper for us to -- and  
7 maybe, Mr. Kiser, you could help me out there.

8 **MR. KISER:** I think your initial instincts  
9 are correct. I mean, you could very easily sit up  
10 there and say we just don't think that we should be  
11 intervening in this matter. We are not a debt  
12 collection agency here at the Public Service  
13 Commission. The contract is what it is, and we  
14 think the terms ought to be enforced the way they  
15 are unless we find some activity on behalf of AT&T  
16 that is, you know, outrageous or something like that  
17 we expect that contract to be honored. And I think  
18 that is a fully defensible position to be in.

19 I think staff has taken steps to try to  
20 soften that approach a little bit, but I do think  
21 that the issues of the 1.4 being at risk and being  
22 subject to having to go through bankruptcy issues is  
23 very real. I mean, bankruptcies are at an all-time  
24 filing rate, and in the last year or two they have  
25 been very high, and so that's a very real concern on

1 their part. So I can't argue with your basic  
2 feelings about that at all, Madam Chairman.

3 **CHAIRMAN ARGENZIANO:** Thank you.

4 Commissioner Skop.

5 **COMMISSIONER SKOP:** Just one final point  
6 before we take a vote on the motion that has been  
7 properly seconded. You had raised a point,  
8 Chairman, that you are concerned about at the end of  
9 the day that when the dispute is resolved that the  
10 money will flow to the right party.

11 And I look at the posting of the bond, and  
12 correct me if I have wrong, staff, as somewhat of,  
13 you know, it ensures that AT&T is protected, but  
14 it's also subject to refund, because at the end date  
15 when the disputes are resolved the money will  
16 ultimately change hands and be appropriately  
17 accounted for. Is that correct?

18 **MR. TEITZMAN:** That is correct.

19 **COMMISSIONER SKOP:** Okay, great.

20 So, Madam Chair, I think you made a good  
21 point there.

22 **CHAIRMAN ARGENZIANO:** It still doesn't cut  
23 the mustard for me. Sorry.

24 **COMMISSIONER SKOP:** Okay.

25 **CHAIRMAN ARGENZIANO:** But I understand,

1 and I respect staff's approach. I think it is  
2 trying to get there. I just have a real -- you  
3 know, anytime I have ever signed a contract I'm  
4 going to live by it, and I can't help that. But,  
5 thank you.

6 Okay. We have a second. All those in  
7 favor say aye.

8 **COMMISSIONER EDGAR:** Aye.

9 **COMMISSIONER SKOP:** Aye.

10 **CHAIRMAN ARGENZIANO:** Opposed.

11 Aye.

12 The motion is adopted. It passes. Thank  
13 you.

14 **MR. FEIL:** Thank you.

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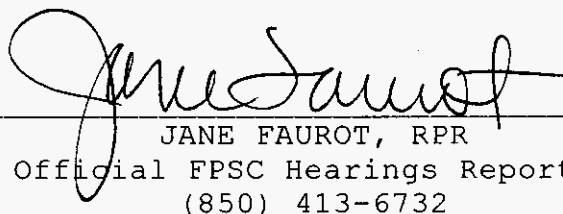
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3 COUNTY OF LEON )  
4

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

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

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

19 DATED THIS 16th day of July, 2010.

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