

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20180099-TP

COMMISSION APPROVAL OF  
FLORIDA TELECOMMUNICATIONS  
RELAY, INC.'S 2018-2019  
PROPOSED BUDGET.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 3

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER JULIE I. BROWN  
COMMISSIONER DONALD J. POLMANN  
COMMISSIONER GARY F. CLARK  
COMMISSIONER ANDREW G. FAY

DATE: Tuesday, July 10, 2018

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

REPORTED BY: DEBRA KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Good morning.

3 COMMISSIONER BROWN: Good morning.

4 CHAIRMAN GRAHAM: Come on, let's try that one  
5 more time.

6 Good morning.

7 AUDIENCE: Good morning.

8 CHAIRMAN GRAHAM: I am glad you guys are all  
9 here with your smiling faces. I guess maybe there  
10 is no bad news for most people out there today.  
11 That's a good thing, right?

12 If you would like to join us for the  
13 invocation and pledge led by Commissioner Clark, if  
14 I could get you to stand, please.

15 (Invocation and Pledge of Allegiance.)

16 CHAIRMAN GRAHAM: Thank you for the  
17 invocation, Pastor Clark.

18 Let the record show it is Tuesday,  
19 January 10th, and this is our Agenda Conference.  
20 We are going to take things a little out of order  
21 today. We have Items No. 1, 2, 4, 4A, 5, 6, 7, 8  
22 and 9 all on the move staff list. Item 3 we are  
23 actually going to take up first. And item No. 4,  
24 we will take up after we go through the move staff  
25 list.

1           So if we can start off with Item No. 3, staff.

2           MR. WILLIAMS: Good morning, Commissioners.

3           Curtis Williams on behalf of staff.

4           Item 3 addresses Florida Telecommunications  
5           Relay, Incorporated 2018-2019 proposed budget and  
6           one new appointment to the Telecommunications  
7           Access System Act Advisory Committee.

8           In Issue 1, staff recommends that the  
9           Commission reduce FTRI's proposed budget expenses  
10          by \$19,823 for legal expense, and \$39,469 for  
11          insurance expense.

12          Staff also recommends that the Commission  
13          allow FTRI to transfer \$203,746 from the reserve  
14          account to offset projected expense increases  
15          resulting from the new relay contract with Sprint,  
16          and \$57,723 in additional expense primarily related  
17          to equipment, employee compensation and auditing.

18          Staff also recommends that the surcharge be  
19          maintained at 10 cents per access line per month.

20          In Issue 2, staff recommends that the  
21          Commission approve the appointment of Commissioner  
22          Margaret Brown to the TASA Advisory Committee  
23          effective immediately.

24          Staff has an oral modification which has been  
25          placed in the docket file. FTRI is here to address

1 the Commission and answer any questions.

2 Thank you.

3 CHAIRMAN GRAHAM: Thank you.

4 FTRI.

5 Cable.

6 MR. McCABE: Good morning, my name is Tom  
7 McCabe. I am the Manager of Regulatory Affairs for  
8 TDS Telecom which provide local exchange service in  
9 Quincy Florida. I am currently the President of  
10 the FTRI Board of Directors, and have been a member  
11 of the board for 21 years now.

12 We appreciate the opportunity to share some  
13 comments regarding staff's recommendation regarding  
14 the FTRI budget.

15 Yesterday we met with staff to address some  
16 concerns regarding the recommendation in the area  
17 of insurance, retirement and legal fees. We are in  
18 agreement with the oral recommendation offered by  
19 staff with regard to the review of the insurance  
20 and retirement; however, I would like to make some  
21 comments regarding the remaining recommendation for  
22 legal fees.

23 FTRI, a nonprofit entity, is the administrator  
24 of TASA, and is responsible for the day-to-day  
25 operations of the program. The Commission is

1 charged with the overseeing the relay program.

2 The amount proposed in FTRI's original budget  
3 and the services rendered by FTRI's legal counsel  
4 are both entirely reasonable and in line with the  
5 market rate and services for this type of entity.  
6 One particular area of concern with staff's  
7 recommendation is the proposed 36,000 cap on  
8 attorney's fees which cannot be exceeded without  
9 giving the Commission 90 days advance notice.

10 FTRI is operating a business, just like  
11 numerous other entities. As any business owner  
12 knows, every day is different with the myriad of  
13 issues can arise. These issues often arise quickly  
14 and do not give us the luxury of having 90 days  
15 advance notice.

16 In addition, the implication in this  
17 recommendation, it is that the Commission will then  
18 have the ability to decide whether or not we  
19 actually get to use our attorney and expend those  
20 funds.

21 For example, on page 10 of staff  
22 recommendation, staff questions why the FTRI  
23 counsel serves on the FTRI board as the secretary,  
24 suggesting that that role could be performed by  
25 someone else.

1           Regardless of whether counsel is taking the  
2           minutes, the board would expect to have legal  
3           representation at all board meetings. I don't  
4           believe I have ever attended a Public Service  
5           Commission meeting with staff where the staff was  
6           not represented by legal counsel. I don't believe  
7           that this is a matter that is squarely with the  
8           responsibility of the FTRI, and the FTRI alone, in  
9           managerial decisions to be made about the  
10          day-to-day operations of the entity.

11          The cap and the notice requirement suggested  
12          by staff is unworkable and has a very likely  
13          probability of leaving FTRI without legal  
14          representation in a time when it is most likely  
15          needed. I, and I am sure other board members and  
16          FTRI staff would be hesitant to continue to provide  
17          services to the entity without legal  
18          representation.

19          This recommendation also runs contrary to the  
20          Commission's precedent of allowing adjustments  
21          between budget categories without approval.  
22          Overall, this budget category constitutes less than  
23          one percent of the 2018-2019 operating revenues,  
24          and less than 0.2 percent of the 2018-2019 total  
25          revenues. Minute deviations and expenditures of

1           such relatively small amounts clearly should be  
2           left to the judgment and discretion of the FTRI,  
3           and do not warrant the level of oversight.

4           As former Commissioner Brisé voiced during the  
5           2016 agenda hearing regarding FTRI's budget 2017  
6           budget, quote: There is just one thing from a  
7           philosophical perspective, I would believe that  
8           boards are in a place to set budgets. It's their  
9           job to set their budget. And part of my concern  
10          with option one is that we are, from my  
11          perspective, if we pursue option one, we really get  
12          into micromanaging of the budget, so I think option  
13          two provides us with the greater flexibility and  
14          still provides FTRI the flexibility that they might  
15          need in order to make decisions down the line in  
16          this year.

17          Accordingly, FTRI requests the Commission  
18          rejects staff's recommendation with the respect to  
19          legal assistance in order to allow FTRI to retain  
20          the necessary flexibility to conduct business and  
21          operate on a day-to-day basis.

22                   Thank you.

23                   CHAIRMAN GRAHAM: Thank you, sir.

24                   Commissioners. Commissioner Brown.

25                   COMMISSIONER BROWN: Thank you, and I

1 appreciate your comments here, and also appreciate  
2 you referencing Commissioner Brisé. I remember  
3 that conversation we had, and I think we ultimately  
4 did go ahead with option two, so thank you for  
5 refreshing our memory.

6 And I also agree with former Commissioner  
7 Brisé, that we shouldn't be in the business of  
8 micromanaging; however, given that FTRI's entire  
9 budget consists of money from landline users, I  
10 think that we do have a role in making sure that  
11 those dollars are spent very prudently.

12 We all know that minutes continue to decline  
13 while consumers opt for newer technologies, and we  
14 have continuously advised you all to make efforts  
15 to cut back. And I was trying to look at the  
16 budget -- I did not pull this item by any means. I  
17 understand that I think the recommendation that  
18 staff gave us was very, very thorough. I really  
19 hear your concerns about the lawyer, the legal  
20 fees, but I don't really understand where you would  
21 be in a position where you would need immediate  
22 legal fees for something that doesn't -- that  
23 negates that 90-day notice. Can you give us an  
24 example where you would need immediate services  
25 over that \$36,000 cap?



1           MR. McCABE: Things change all the time. We  
2           don't know at what point in time we are going to  
3           hit that \$36,000 cap. We may have some personnel  
4           issues that come up that require immediate  
5           attention to. We may be at -- it may be December  
6           and we are at \$25,000, never anticipating that we  
7           are going to go over, and the next thing we are  
8           involved in a legal case with some employees, or a  
9           customer issue. You know, that's -- you know,  
10          that's a concern that we have.

11           And then it also becomes a matter of we would  
12          then have to come to the Commission to get  
13          approval, and you may say, no, we are not going to  
14          allow you to be represented. And as a member of a  
15          board, I am not getting compensated here, and I am  
16          not going to serve on a board in which I don't have  
17          legal representation.

18           COMMISSIONER BROWN: I hear you loud and  
19          clear. And I think 90 days is a little excessive.  
20          Your last budget, though, for that line item was  
21          36,000 in this Commission's last approval, right?

22           MR. McCABE: Yes.

23           COMMISSIONER BROWN: And did you -- do you  
24          estimate to go over that this fiscal year,  
25          2017-2018?

1           MR. McCABE: I believe the recommendation in  
2           the budget was, what? 58,000 -- it was based on  
3           the actuals for last year.

4           COMMISSIONER BROWN: What does your attorney  
5           typically do for FTRI on a day-to-day basis that  
6           doesn't require you to have the retainer kind of  
7           model? He is not an employee, correct?

8           MR. McCABE: Correct.

9           COMMISSIONER BROWN: So what does he typically  
10          do? I also agree with you that I think an attorney  
11          should be at the board meetings. Could you  
12          elaborate on that role? Would it be more prudent  
13          to have an in-house attorney, fiscally?

14          MR. McCABE: I don't -- I am not involved in  
15          the day-to-day operations, so I will leave that to  
16          James, but --

17          MR. FORSTALL: Thank you. Good morning --

18          MR. McCABE: -- as a board member -- I am  
19          sorry, as a board member, I probably would not be  
20          one recommending to have in-house counsel. I mean,  
21          I can tell you that the board shared your concerns  
22          with regard to the budgets, and we do --

23          COMMISSIONER BROWN: That's good to hear.

24          MR. McCABE: I mean, the budget that you  
25          received is not the budget that we receive, I can

1           assure you that. And we take our role on the board  
2           very seriously. We understand that every penny is  
3           somebody else's money, and so with that, I would  
4           have probably -- would not be one suggesting that  
5           we have in-house counsel, but I am not involved in  
6           the day-to-day operations.

7           MR. FORSTALL: Good morning. My name is James  
8           Forstall. I am the Executive Director of FTRI.

9           COMMISSIONER BROWN: Good to see you here.

10          MR. FORSTALL: Thank you.

11          We -- normally, whenever we have contract  
12          issues with the vendors, or the regional  
13          distribution centers, we always have the attorney  
14          available to review those, and answer any questions  
15          that may be pertaining to that.

16          Recently, and I will say maybe four or five  
17          years ago, we did have a particular situation with  
18          a particular client that did involve legal  
19          assistance, and that particular issue went on for  
20          probably 18 months. So that's an example of what  
21          could come up that's unexpected, or out of the  
22          ordinary.

23          They also review equipment bids that we send  
24          out to make sure that we are in compliance with  
25          requirements of asking for the appropriate

1 information, things of that nature.

2 COMMISSIONER BROWN: You have a new position,  
3 Mr. Forstall, that you are requesting to be  
4 included in the budget, along with a three-percent,  
5 I guess, raise to that position. Who would be  
6 filling that new position's role? What type of  
7 duties would be filled by that currently vacant  
8 position?

9 MR. FORSTALL: The position is accounts  
10 payable, and we did fill the position. That was  
11 needed because we -- of course, we have nine  
12 full-time staff right now available. We did have  
13 120 last year. We reduced it to nine. And at this  
14 point, the accounts payable position became  
15 available, so we proceeded some time without, and  
16 realized that we have to have it in order to  
17 function every day, so we did fulfill it.

18 COMMISSIONER BROWN: But you were operating at  
19 eight for the majority of the fiscal year, even  
20 though you were funded for 10.

21 MR. FORSTALL: No. I am sorry. We were  
22 operating at nine positions for the whole year.

23 COMMISSIONER BROWN: Okay.

24 Commissioners, I think that -- I think FTRI  
25 has made some good points on the legal aspect. I

1 think 90 days is a little bit excessive.

2 I think the 36,000 that's proposed by the  
3 staff recommendation is in accordance with our  
4 previous recommendation last year, so I think  
5 that's reasonable; however, I think 90 days is  
6 excessive, so open to ideas from you all.

7 CHAIRMAN GRAHAM: Thank you, Commissioner  
8 Brown.

9 Commissioner Polmann.

10 COMMISSIONER POLMANN: Thank you, Mr.  
11 Chairman.

12 There were two points made on the legal; one,  
13 if I understood you correctly, one being that  
14 dollar amount, and then the other being the review  
15 or seeking approval within a 90-day timeframe. I  
16 would like to understand which is the more  
17 important issue, if there is one that's more  
18 important. Commissioner Brown spoke on two of  
19 those, so can you give me some more information in  
20 terms of the dollars versus the review and approval  
21 for additional funds with regard to a 90-day  
22 review?

23 MR. McCABE: Well, I think the 36 -- the cap  
24 is simply setting up the 90-day review. I mean, in  
25 all likelihood, it comes out to be above \$36,000 on

1 an annual basis. I mean, last year, our -- I think  
2 the actual fees were \$56,000, in that neighborhood,  
3 from what I recall.

4 So I don't -- I think what staff has proposed  
5 with regard to what the fees are, it's \$250 an hour  
6 per month. After the first 12 months, it goes to  
7 225 for each additional hour after that within a  
8 given month. It's fairly reasonable, and so I  
9 don't really think that there needs to be a cap. I  
10 think that what we proposed on it, based on our  
11 initial budget, was based on the actual one, and we  
12 think that should be approved without the 90 days.  
13 We can even do away with the \$36,000 in there and  
14 just go to a straight hourly rate.

15 COMMISSIONER POLMANN: I don't have an issue  
16 with paying an attorney an hourly rate, whatever,  
17 you know, a reasonable hourly rate is. I think if  
18 we were to specify an hourly rate, that would be  
19 micromanaging. So I think, you know, prudence on  
20 an hourly rate would be appropriate for your  
21 manager to be in charge of.

22 In terms of, you know, having a minimum flat  
23 fee seems to me to be not a reasonable use of  
24 money. To say we are going to pay an attorney, you  
25 know, I think a flat fee of some dollars per month

1           whether or not there is an assignment, I have an  
2           issue with that. So, you know, a dollar per hour,  
3           given that you provide an assignment, seems a  
4           reasonable approach in that there is a specified  
5           hourly amount.

6           Now, whether there is an upset limit, that's a  
7           budgeting issue. You set aside a certain amount of  
8           money in a budget, and then if you exceed the  
9           budget, then that's a separate issue. In terms of  
10          coming back for review, again, that -- that's  
11          another matter.

12          So I was trying to determine whether coming  
13          back for a review was problematic. I agree with  
14          Commissioner Brown that 90 days, that seems to me  
15          to be extraordinary. I am trying to focus on  
16          weather --

17          MR. McCABE: I understand.

18          COMMISSIONER POLMANN: -- the upset limit is a  
19          problem, and then we can decide --

20          MR. McCABE: Let me defer to counsel here.

21          MS. BROWN: This is Denay Brown with Messer  
22          Caparello.

23          We have discussed, and we are happy to do away  
24          with the flat fee per month. I can tell you, as a  
25          practical matter looking back over the last 12

1 months, out of the 12 months, there was only one  
2 month that they didn't use the number of hours that  
3 the \$3,000 provided for.

4 So we are happy to move to an hourly billing  
5 system, and move away from the flat fee. I think  
6 as a practical matter, on a month-to-month basis,  
7 it's not, at the end of the day, really going to  
8 result in much of a difference; but on the months  
9 they did use the full 12 months, it would result in  
10 some cost savings for them, and we are happy to  
11 accommodate that.

12 COMMISSIONER POLMANN: Is there a  
13 reasonable -- Mr. Chairman.

14 CHAIRMAN GRAHAM: Sure.

15 COMMISSIONER POLMANN: Is there a reasonable  
16 timeframe given that there is an upset limit for  
17 review to approve additional funding?

18 COMMISSIONER BROWN: Well, I think one of the  
19 practical issues is, as Tom mentioned, is just any  
20 business that you are operating, you never know  
21 what the next day is going to bring. So, you know,  
22 if we do a contract dispute or an employment issue,  
23 even 30 days is sometimes -- you know, obviously we  
24 are going to try and forecast and make sure we are  
25 not pushing up on that budget limit, but sometimes



1           you don't know what's going to happen.

2                   And I think traditionally, they've had the  
3 flexibility to exceed, you know, their budget  
4 categories in small amounts, and so the goal would  
5 be to be able to retain some of that flexibility.

6                   I mean, we are obviously not going to  
7 completely exceed the budget without considering  
8 that, but we don't want to be in a situation where  
9 our hands are tied and have a legal issue that  
10 needs to be dealt with and they have no  
11 representation.

12                   And as Tom also mentioned, one concern is if  
13 we do come back to the Commission for approval and  
14 the decision is that they are not allowed to expend  
15 those extra funds, then it leaves them without  
16 legal representation, which he has indicated would  
17 be quite a barrier for a lot of the board members  
18 who are voluntary. They are not necessarily going  
19 to want to serve on the board where they have been  
20 told they are not allowed to have legal  
21 representation.

22                   COMMISSIONER POLMANN: Well, I understand  
23 that. That would -- certainly, that would be an  
24 obstacle for conducting your work. But from my  
25 experience, normally if there is a contract issue

1 or there is some kind of dispute, there is  
2 necessarily a period for cure, and it's not usually  
3 overnight. I mean, there is a reasonable period  
4 for someone to seek legal representation. Now,  
5 whether that's 10 days, or 30 days, or whatever it  
6 is, so I will just leave it there. I don't know if  
7 other members have comments.

8 CHAIRMAN GRAHAM: Commissioner Fay.

9 COMMISSIONER FAY: Thank you, Mr. Chairman.  
10 I have a few questions. I guess my first  
11 question is for Ms. Brown.

12 How long have you been representing FTRI?

13 MS. BROWN: I have recently stepped into the  
14 role. Rob Telfer, who was the former counsel  
15 within the same firm obviously, was recently  
16 appointed to the bench at DOAH within the last  
17 month. So he was the former counsel over the last  
18 year, and since he has taken up on to the bench, I  
19 have taken up the representation.

20 COMMISSIONER FAY: Okay. Do you know how long  
21 the firm has represented?

22 MS. BROWN: A while. I think it's over 20  
23 years.

24 COMMISSIONER FAY: Okay. And do you know why  
25 there was a previous flat fee agreement for 72,000

1 a year?

2 MS. BROWN: That's kind of prior to my time.  
3 My understanding is that that was the agreement. I  
4 think back at that time there were more services  
5 being provided by counsel. I think some of that  
6 has gone in-house.

7 James could probably correct me if I am wrong,  
8 but I think some of those services have kind of  
9 gone in-house, and so we've -- in an attempt to  
10 reduce that expenditure, we have reduced our role  
11 some. So that's why the amount has been able to  
12 come down.

13 COMMISSIONER FAY: Okay. And can you  
14 describe, I guess, what a typical billed hour would  
15 include for this client?

16 COMMISSIONER BROWN: Sure. We do a lot of  
17 different things. We attend the board meetings, so  
18 that's one thing. We do contract reviews. So if  
19 they are going to enter into an agreement with an  
20 advertiser, or anything like that, we review those  
21 contracts and consult with them.

22 Employment issues, if there is any personnel  
23 things that arise. We have had FCHR complaints in  
24 the past. Just your typical personnel issues that  
25 arise in any business, so we consult on those.

1           Any disputes that they may have with vendors,  
2           or anything like that. I mean, generally we are  
3           available if they have any questions that are of a  
4           legal nature in any matter to consult with them  
5           regarding that.

6           COMMISSIONER FAY: Okay. And then this might  
7           be a question for Mr. Forstall, but do you know why  
8           your firm in particular has been retained for this  
9           long?

10          MS. BROWN: We have had a good working  
11          relationship. You know, this relationship was  
12          established quite a while back, and we've, you  
13          know, provided good services, and it's been  
14          cost-effective for them. And, I mean, to my  
15          knowledge, there has not been a reason for them  
16          to --

17          COMMISSIONER FAY: I was just curious if you  
18          go out every year and look at what firms would  
19          potentially provide the services and at what rates.

20          MR. McCABE: No, we don't. I can tell you  
21          from, based on the -- as a small telephone company  
22          that's had to engage in legal services, the rate  
23          that FTRI is receiving is very, very good, in my  
24          opinion. And the difficulty that you run into when  
25          you have to find legal counsel from time to time,

1 and not having somebody that's available whenever  
2 needed, is you run into all of these conflicts of  
3 interest, and you have a very difficult time  
4 finding representation.

5 I have been in this business for 30 years now,  
6 and, you know, \$36,000 in annual legal fees, in my  
7 mind, is not a lot of money. And I understand the  
8 Commission's role in overseeing the budgets, and  
9 the fact that consumers pay into the fund, but I  
10 think what we have is a very reasonable arrangement  
11 with legal, and it's been very effective.

12 COMMISSIONER FAY: And I guess going forward,  
13 and I think -- I don't want to be repetitive, but  
14 just to be clear, there is two hurdles, in your  
15 opinion; one is the actual threshold, and the other  
16 is the timeline that the Commission would respond  
17 to that situation.

18 Based on the history of what you have handled,  
19 is there a specific example of where the 90-day  
20 timeframe would prohibit what you have been able to  
21 do in the past?

22 MR. McCABE: I can't speak to any of the  
23 details, but I will let James or counsel. But  
24 every year, we've never been at \$36,000, okay. We  
25 have billing records that, you know, they submit

1 hourly billing statements. So we are already  
2 looking at, based on our actuals, at \$58,000. So  
3 if you cap it at 56, now I have got \$20,000 that I  
4 don't know whether this Commission is going to say,  
5 we think that's prudent, or we don't think that's  
6 prudent. That is the concern that we have.

7 We don't want to find ourselves in a situation  
8 in which we are up against -- we've got a board  
9 meeting, for example, and we are still waiting to  
10 find out whether or not we can have counsel attend  
11 a board meeting because it's over \$36,000 because  
12 it's still 30 days left before the Commission is  
13 going to make a decision.

14 COMMISSIONER FAY: And you wouldn't be able to  
15 anticipate that that number is going up is what you  
16 are saying?

17 MR. McCABE: Exactly; or it may have reached  
18 that point, we had filed something with the  
19 Commission and we are still waiting 90 days for a  
20 decision.

21 COMMISSIONER FAY: And so I guess in addition  
22 to the threshold, the timeline resolution that you  
23 are proposing would be what?

24 MR. McCABE: That there be no timeline in  
25 which -- that it would be back to the normal way

1           that we've been doing this for 25 years, since the  
2           inception of the FTRI. You know, we propos a  
3           budget, and it gets approved by the Commission, and  
4           we abide by that budget. And we find ourselves in  
5           a situation in which we are going to go over, we  
6           would notify -- more than 10 percent, we would then  
7           come to the Commission and notify the Commission,  
8           or move funds within -- I believe that's the  
9           process, is that you can move funds into that.

10                 We don't -- I mean, I can assure you that if  
11           we find ourselves in a situation where the budget  
12           is going to be out of whack, this Commission is  
13           going to know about it. We are going to let you  
14           know. We provide quarterly statements to the  
15           Commission. If we find ourselves, and we are going  
16           to have a legal situation, we will be letting you  
17           know.

18                 COMMISSIONER FAY: I guess, as a proposed  
19           solution, there is no concern of an hourly rate.  
20           Is there a cap that you believe is appropriate, or  
21           do you believe no cap is necessary?

22                 MR. McCABE: I don't believe that a cap is  
23           necessary, but, you know, the budget is the budget,  
24           you know. It -- we make -- actuals maybe \$45,000  
25           as opposed to the 58 that we are projecting. The

1 projection was based on last year's annual.

2 So with that, if we were going to be exceeding  
3 that \$58,000, we would probably come to the  
4 Commission if it was beyond 10 percent to let you  
5 know that we've had some legal issues that we are  
6 going to need to address.

7 COMMISSIONER FAY: Mr. Chairman, can I ask a  
8 quick question to staff?

9 So I think this might be for either Curtis or  
10 Pamela. But I have heard multiple times they've  
11 said that you can move certain money from  
12 categories into other categories. Can you explain  
13 that as far as --

14 MR. WILLIAMS: Yes.

15 COMMISSIONER FAY: -- if they would be able to  
16 move certain allocations into legal to cover costs  
17 if they went over?

18 MR. WILLIAMS: Yes. Sure, Commissioner Fay.

19 In terms of the budgeting process, the overall  
20 budget, when staff has recommended, and in the past  
21 when the Commission has set the budget, we have  
22 given FTRI the flexibility to move funds, as Tom  
23 mentioned, within categories. You know, we have  
24 the equipment category, general administrative  
25 expense category. So within a 10-percent range, we



1 do allow them to move funds within the category.

2 And as Tom indicated, if there is a major  
3 issue, unforeseen issue during the budget year,  
4 FTRI, they do have the flexibility or the option to  
5 come back to the Commission to address that issue.

6 COMMISSIONER FAY: And is -- how is that  
7 process done? How would they come back before the  
8 Commission?

9 MR. WILLIAMS: They would -- I am not sure if  
10 it has ever been done. It hasn't been done, but  
11 it's available. And they would just notify the  
12 Commission that there is an issue that's before  
13 them, and they would come back to the Commission to  
14 have that issue addressed.

15 COMMISSIONER FAY: Okay.

16 MS. PAGE: Commissioner Fay, if I might, I  
17 believe that that would be in the form of a  
18 petition or a request to the Commission, and that  
19 the Commission would make the decision on the  
20 approval for that increase, not staff.

21 COMMISSIONER FAY: I appreciate that.

22 Mr. Chairman, I just have a few comments, but  
23 I am happy to wait if there is other questions.

24 CHAIRMAN GRAHAM: Sure.

25 COMMISSIONER FAY: So I think on the initial

1 review for this, I had concerns of the long-term  
2 agreement at a certain level with no hourly  
3 analysis done up to a certain level. I don't  
4 understand why it was like that for a long time,  
5 and I presume that that's structurally what a lot  
6 of firms were doing, and so it was appropriate  
7 going forward.

8 I do think some of your points are very well  
9 taken. I think we all appreciate at the end of the  
10 day there is the same goal for the entity to  
11 operate in the way that it should with the legal  
12 services that are needed, but knowing that every  
13 dollar counts. Every dollar matters for the  
14 services that are provided.

15 And so I think going forward, knowing that  
16 this Commission has some strong thoughts about what  
17 the allocation of these funds would look like,  
18 specifically the hourly rates, I don't have an  
19 objection to having that threshold at a higher  
20 level to allow you to operate without a concern  
21 that you have to come back before the Commission.

22 I think the reason that that recommendation is  
23 there -- and I don't want to speak for staff, but I  
24 think it's based on the historical structure of the  
25 way the agreement was between the parties.

1           I think we have counsel here today saying that  
2           they are going to operate in the most efficient way  
3           possibly at an hourly rate, and they don't have any  
4           objection to that going forward. There is just  
5           concerns that from a timeframe you might have an  
6           issue where something is brought forward, you are  
7           not able to predict it, and then you have the  
8           potential to exceed your budget beyond what Curtis  
9           and staff has addressed to allow for an allocation  
10          to switched over to cover that cost.

11           I personally don't want to put the  
12          organization in that position, and so I think we  
13          appreciate those points. But without any sort of  
14          detailed information for billing at an hourly rate,  
15          it's hard for us to know that that's going to be  
16          done properly. And so I think with that hourly  
17          allocation, it's important for the Commission to  
18          receive documentation about those hourly charges  
19          and what they entail, which I know your firm does,  
20          to allocate what they are billing, so then every  
21          year we are able to make an analysis of what an  
22          appropriate rate would be, because every year you  
23          might come forward with different circumstances,  
24          which that number might be less or more.

25           And I think from everything I have heard you

1 say, in Forstall, today, you understand that, and  
2 you are going only -- you are going to get the  
3 budget, and you are only going to bring forward  
4 what you think is absolutely necessary to bring  
5 forward. And I think, from my perspective, that's  
6 a fair ask, and I don't want the Commission to any  
7 way be in the way of the organization moving  
8 forward on things that are necessary, specifically  
9 a potential lawsuit, or a challenge that would  
10 require counsel at a further rate that would exceed  
11 what you have.

12 Mr. Chairman, if there are other comments, I  
13 would be happy to let everyone weigh in. If not, I  
14 am ready to make a motion for the board.

15 CHAIRMAN GRAHAM: We have a few other comments  
16 first.

17 COMMISSIONER FAY: Okay.

18 CHAIRMAN GRAHAM: Commissioner Clark.

19 COMMISSIONER CLARK: Unfortunately, everything  
20 has now been said, so...

21 CHAIRMAN GRAHAM: Okay, Commissioner Brown.

22 COMMISSIONER CLARK: Hang on. Of course it  
23 does my heart good to see attorneys arguing over  
24 legal fees. This is always good. I am thinking of  
25 about 100 analogies. I am going to keep them to

1           myself.

2                   I do have a couple of very quick questions.  
3           And thank you, Commissioner Fay. You got to the  
4           heart of kind of where I wanted to go in  
5           understanding how the budget could be reallocated.

6                   But specifically the overage that has occurred  
7           in previous years. Right now, they are  
8           anticipating running \$49,000 on a \$36,000 budget.  
9           Well, that's way more than 10 percent. Had they  
10          come to us and requested an allocation to be moved  
11          already for this year's budget?

12                   MR. WILLIAMS: No.

13                   COMMISSIONER CLARK: Okay. I will turn my  
14          question to FTRI.

15                   Had you -- why have you not come and asked for  
16          the overage for this year's budget?

17                   MR. FORSTALL: The 10 percent represent of the  
18          total category, not the individual line item, just  
19          for clarification purposes. So the 10 percent of  
20          the category five would be, if I recall correctly,  
21          about \$900,000, so it would be \$90,000 that could  
22          be moved.

23                   COMMISSIONER CLARK: Okay. I am sorry. I was  
24          looking -- I thought we were referring to the  
25          specific budget allocation for legal expenses.

1           So you are saying that it has to move  
2           10 percent among the larger categorical group  
3           before. So they could spend \$90,000 above a budget  
4           line item in here without having to come back for  
5           permission right now, is that correct?

6           MR. FORSTALL: Correct. Yes, that's correct.

7           COMMISSIONER CLARK: I didn't expect that  
8           answer. So now I have to think this through a  
9           little bit clearer.

10          So why the change? If we have been operating  
11          under a system, and it's working -- I think I just  
12          answered my own question. It's now -- it's a  
13          \$90,000 budget shift, is that why you are proposing  
14          the 90 days?

15          MS. PAGE: We are proposing the 90 days,  
16          Commissioner, so that we can be sure that FTRI is  
17          managing this budget. And we want to make sure  
18          that there are no overages without the Commission  
19          knowing about that in advance, without the  
20          Commission being able to approve that overage.

21          As it stands right now, as just revealed, the  
22          Commission is without knowledge of increases. We  
23          don't know.

24          COMMISSIONER CLARK: But they still have to  
25          stay within their overall budget allocation. And

1 let's just say the approved budget was 5.8 million.  
2 They can't spend over 5.8 million, correct? There  
3 is no -- there is no procedure or no pre-authorized  
4 procedure where they could spend 5.9 million. The  
5 funds aren't there, correct? The funds are  
6 reverted back to the fund at the end of each year  
7 is that correct?

8 MS. PAGE: Correct.

9 COMMISSIONER CLARK: So they don't -- are they  
10 allowed to keep a reserve?

11 MR. WILLIAMS: There is a reserve account  
12 that's a part of FTRI's entire operation.

13 COMMISSIONER CLARK: Is it with inside the  
14 five -- the 2017-18 \$5.851 million budget, is that  
15 reserved with inside that number?

16 MR. WILLIAMS: Well, there is an overall  
17 reserve amount of more like \$17 million.

18 COMMISSIONER CLARK: But they don't have  
19 access to that fund?

20 MR. WILLIAMS: No. No. No, they do not.  
21 Correct.

22 COMMISSIONER CLARK: The reserve -- do they  
23 have a reserve within the \$5.851 million '17-'18  
24 budget fund?

25 MR. WILLIAMS: No. No, they do not,

1 Commissioner.

2 COMMISSIONER CLARK: So they are capped.

3 So we do know, if they do shift within the  
4 budget, within their budget categories, they still  
5 can't exceed the overall allocation that we've  
6 given them?

7 MR. WILLIAMS: Correct.

8 COMMISSIONER CLARK: Okay. That's all I have,  
9 Mr. Chairman.

10 MR. McCABE: Commissioner, if I could make one  
11 comment. We do provide a quarterly update on the  
12 budget to staff.

13 CHAIRMAN GRAHAM: Commissioner Brown.

14 COMMISSIONER BROWN: Thank you.

15 And I just want to point out that the legal  
16 fees is just one-twentieth of the overall budget  
17 here of the expenses. So while it's very  
18 important, and the dollars are very important,  
19 there are other categories that we -- that deserve  
20 some merit and some attention since this door has  
21 been opened here.

22 I think we could solve this issue, though,  
23 looking at allowing FTRI to have the flexibility,  
24 as it has had in the past, to if it goes over the  
25 36,000, then it has the discretion as long as it



1 stays within the 10 percent range; and if it just  
2 notifies the Commission so that they are aware that  
3 it is going over rather than seeking approval, I  
4 think that would solve the issue of everyone's  
5 concern here.

6 But I want to touch on Commissioner Fay's  
7 question about the -- this is an unusual  
8 arrangement that you all have with legal, that you  
9 have had over the years, and it seems to have  
10 worked for you all, correct?

11 MR. McCABE: Yes.

12 COMMISSIONER BROWN: I think converting to, or  
13 switching to an hourly rate would really increase  
14 those legal fees, would you agree? Since you have  
15 had the historical data of serving this entity.

16 MS. BROWN: Well, I honestly, I don't think it  
17 would make that much of a difference, because  
18 they've had a flat fee up to the 12 hours, and then  
19 it's been hourly after that.

20 Like I said, over the last 12 months, there  
21 has only been one month that they didn't exceed the  
22 12 hours. So -- I mean, we can switch it to hourly  
23 billing, but I think at the end of the day, it's  
24 going to be a minute difference, just because most  
25 of the months they are ending up getting billed

1 hourly anyway because they are exceeding the  
2 12-hour cap.

3 COMMISSIONER BROWN: All right. I don't want  
4 to really switch it to something that we don't  
5 really know if that's going to work right now. We  
6 have the historical data of what has worked.

7 Mr. Forstall, you have got an estimate for the  
8 remaining -- and I want to just close this legal  
9 circle up real quickly, but you have an estimate of  
10 55,000, does that include the attorney serving as  
11 the board's Secretary for the board meeting next  
12 month?

13 MR. FORSTALL: That is correct.

14 COMMISSIONER BROWN: Okay. And that's still  
15 within the 10 percent range, just deviation?

16 MR. FORSTALL: Yes.

17 COMMISSIONER BROWN: Okay. I know that.

18 Commissioners, I think if we go with the staff  
19 recommendation on the proposed budget of 36,000, as  
20 we've had in the past, and give the FTRI the  
21 discretion, as we have in the past, so long as they  
22 give us notice of any anticipated overage of the  
23 budget -- not approval, notice -- then I think that  
24 would accomplish everyone's concerns here, but  
25 that's just -- I'm throwing that out there.

1           Before we move on, Mr. Chairman, I will hold  
2           off if everyone wants to comments on it.

3           CHAIRMAN GRAHAM: There are some more  
4           comments.

5           Commissioner Fay, do you want to continue?

6           COMMISSIONER FAY: Thank you, Mr. Chairman.

7           I am in full agreeance with Commissioner  
8           Brown's analysis in going forward in that I think  
9           there is accountability here, and that I think, to  
10          a certain extent, we are entering the territory of  
11          managing at a level that might hinder the  
12          organization.

13          I have read the analysis, and staff can  
14          correct me, I read the analysis to say that they  
15          would provide notice to us when they exceeded that  
16          level. I did not read specifically that there was  
17          a mandate for approval. And so if presenting that  
18          information is consistent with staff's  
19          recommendation, then I think that that might be in  
20          line with the intent of my recommendation, and  
21          Commissioner Brown's.

22          And so if there are other comments, I will --  
23          Mr. Chairman, I will let you direct that, but  
24          otherwise, I think we are -- the attorneys on this  
25          side of the room are inclined to agree with

1 something, which is always a good start, and I  
2 think we could probably move forward based on the  
3 historical recommendations that have been put in  
4 front of us and this staff recommendation.

5 CHAIRMAN GRAHAM: Commissioner Fay, if only it  
6 was that simple.

7 Commissioner Polmann.

8 COMMISSIONER POLMANN: Thank you, Mr.  
9 Chairman.

10 Not being an attorney on this side of the  
11 room, I am happy the attorneys agree, but I don't  
12 know what they said, so...

13 Commissioner Brown, you mentioned 10 percent.  
14 I don't know what 10 percent of something is  
15 because I don't know what the something is you are  
16 talking about. I heard from staff that it's  
17 10 percent of the category, and Commissioner Clark  
18 made reference to that.

19 So 10 percent, in this case, of 900,000 --

20 COMMISSIONER BROWN: General --

21 COMMISSIONER POLMANN: -- it could be given  
22 that if there is no other item within that category  
23 that's fluctuating, it could be \$90,000 against a  
24 \$36,000 legal budget; was that your intent?

25 COMMISSIONER BROWN: Uh-huh, with a general

1 item.

2 COMMISSIONER POLMANN: I don't have an issue  
3 with FTRI coming back and seeking approval from  
4 this Commission. So are you seeking that we would  
5 be noticed -- notified of anything?

6 COMMISSIONER BROWN: Just notify staff if they  
7 go over the legal budget.

8 COMMISSIONER POLMANN: The budget that they --

9 COMMISSIONER BROWN: Not seek approval from  
10 the Commission.

11 COMMISSIONER POLMANN: The legal -- the legal  
12 line item budget that the staff has recommended?

13 COMMISSIONER BROWN: (Commissioner nods head  
14 in the affirmative.)

15 COMMISSIONER POLMANN: Thank you for the  
16 clarification.

17 CHAIRMAN GRAHAM: Commissioner Brown.

18 COMMISSIONER BROWN: Do you want to -- okay.

19 All right. Just moving on to another category  
20 that's a bigger chunk here, really. And I wasn't  
21 going to address it, but since you are here, please  
22 allow me the indulgence.

23 Mr. Forstall, outreach is half a million  
24 dollars, and it has been -- I know a couple years  
25 ago you asked for a million. We cut it back a

1 little bit, and we are cutting it back a little bit  
2 more. And it looks like you all are converting  
3 to -- from traditional outreach to social media.

4 What portion of that -- and I think that's a  
5 good thing, too. But what portion -- where are  
6 your dollars going here? We don't have a breakdown  
7 in the discovery responses, really, of how you are  
8 utilizing outreach. And it is a big chunk, and  
9 it's a really important part of your program to  
10 communicate with the traditional relay folks out  
11 there. Can you go over it for us?

12 MR. FORSTALL: Sure.

13 This year, for the first time, we have done  
14 some social media campaigns or outreach in the  
15 past. But this year, we are focusing heavily on  
16 social media, such as Facebook, Twitter, Instagram,  
17 the whole packet, with banner ads on websites, et  
18 cetera.

19 We are not shifting the entire budget over to  
20 social media. We still are doing newspaper ads,  
21 because we do feel that is a representable response  
22 rate for that. So we have taken that particular  
23 media budget and split it. We are going to do half  
24 newspaper and half social media. And we are  
25 working with a firm called B-H Marketing located in

1 Bradenton, Florida. And they have mapped out a  
2 whole plan for the whole year for us in how to go  
3 ahead and appropriate the funding for a specific  
4 campaign.

5 And we did a pilot program, and early on last  
6 year it was pretty successful, but we -- it's going  
7 to take time for the social media campaign to  
8 really kick in and provide the results we are  
9 looking for.

10 COMMISSIONER BROWN: What percentage would you  
11 say of the budget is going to be dedicated towards  
12 the social media expense?

13 MR. FORSTALL: Out of the outreach budget  
14 of --

15 COMMISSIONER BROWN: 546,250.

16 MR. FORSTALL: Yes, 546,000, I am going to say  
17 120,000 of that would be for the social media.

18 COMMISSIONER BROWN: Okay. And then the rest  
19 would be traditional advertising?

20 MR. FORSTALL: We will be doing newspaper, and  
21 also we contract with regional distribution  
22 centers. Those are our centers that we work with  
23 throughout the state. We have 28 of them.

24 And they go into the field in the community  
25 and do face-to-face presentation, or they go to

1 exhibits health fairs. They do exhibiting of the  
2 equipment and the services.

3 And we have seen an uptake in that over the  
4 last year compared to the year before. So that  
5 will always be a mainstay of the outreach program,  
6 and that will be continued.

7 COMMISSIONER BROWN: Okay. Moving to another  
8 category that last year we -- under your  
9 accounting, we talked about -- I think we discussed  
10 at the agenda possibly having a compensation  
11 analysis. Where are you on that?

12 MR. FORSTALL: We budgeted this year in this  
13 year's budget for that to happen, and we anticipate  
14 having that done during the next -- during this  
15 fiscal year, once the budget is approved.

16 COMMISSIONER BROWN: Was that included in last  
17 year's budget?

18 MR. FORSTALL: No, it was not.

19 COMMISSIONER BROWN: No. Have you retained a  
20 firm yet?

21 MR. FORSTALL: We have sent out for bids, but  
22 we have not retained a firm yet.

23 COMMISSIONER BROWN: And it's a compensation  
24 of the overall -- is it for the accounting, or for  
25 the employees? Refresh our memories here.



1           MR. FORSTALL: Yeah. It's an employee  
2           compensation.

3           COMMISSIONER BROWN: Okay. That is all, Mr.  
4           Chairman.

5           CHAIRMAN GRAHAM: Was it that a motion?

6           COMMISSIONER BROWN: Unless Commissioner Fay  
7           wants to make one. Do you want to make one?

8           COMMISSIONER FAY: I can try.

9           COMMISSIONER BROWN: I believe in you.

10          COMMISSIONER FAY: So, Mr. Chairman, I have  
11          one quick question for staff before that motion  
12          just to make sure I get us in the right posture  
13          here.

14          The staff recommendation states, as it relates  
15          to the legal fees, that notice will be provided,  
16          but they cannot exceed that 36,000 retainer without  
17          Commission approval, and FTRI is not authorized to  
18          transfer funds from other areas in Category 5 to  
19          subsidize the overages.

20          My motion would be to accept staff's  
21          recommendation with the modification that the last  
22          sentence in staff's recommendation there about  
23          exceeding the approval and not allowing FTRI to  
24          move their budget into other categories would be  
25          stricken from the recommendation.

1 CHAIRMAN GRAHAM: Okay.

2 COMMISSIONER FAY: That's my motion.

3 CHAIRMAN GRAHAM: And that includes the oral  
4 modification?

5 COMMISSIONER FAY: Yes. Correct.

6 CHAIRMAN GRAHAM: That's been moved and  
7 seconded.

8 Any further discussion?

9 COMMISSIONER POLMANN: I am sorry, where are  
10 you reading from?

11 COMMISSIONER FAY: Page 10 of the analysis,  
12 about halfway down. This paragraph right here.

13 COMMISSIONER POLMANN: Thank you.

14 CHAIRMAN GRAHAM: Commissioner Clark.

15 COMMISSIONER CLARK: Just a, I guess kind of  
16 procedural. If we are looking at page 10, in that  
17 specific item, that doesn't address a lot of the  
18 things I think we are needing to approve today.  
19 The conclusion on page 12 may address that a little  
20 clearer. Is that -- I may be way off, but I would  
21 turn to staff for more --

22 COMMISSIONER FAY: So, Commissioner Clark,  
23 just for clarification. It would be motion staff's  
24 recommendation which would include that conclusion,  
25 the full body of the item with just the

1 modification --

2 COMMISSIONER CLARK: Yeah, you needed approval  
3 on the 10 cents per line charge in the budget  
4 itself, correct? I think that was correct.

5 COMMISSIONER FAY: Yes.

6 COMMISSIONER CLARK: Yes, Commissioner Fay, I  
7 think you are right.

8 COMMISSIONER FAY: Okay.

9 CHAIRMAN GRAHAM: Any further discussion?  
10 Seeing none, all in favor say aye.

11 (Chorus of ayes.)

12 CHAIRMAN GRAHAM: Any opposed?

13 (No response.)

14 CHAIRMAN GRAHAM: By your action, you have  
15 approved the Fay motion.

16 Thank you very much.

17 MR. WILLIAMS: Excuse me, Chairman Graham.

18 In terms of the motion, I just want to make  
19 sure that it included Issue 2 as well. We had the  
20 Issue 2, which was procedural on the appointment of  
21 Commissioner Michael Brown.

22 COMMISSIONER FAY: Yes, it would include all  
23 issues.

24 MR. WILLIAMS: Okay.

25 CHAIRMAN GRAHAM: The only thing that changed

1           was the 90-day notification.

2                   MR. WILLIAMS: Thank you.

3                   (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA     )  
COUNTY OF LEON     )

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED this 18th day of July, 2018.



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DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #GG015952  
EXPIRES JULY 27, 2020