

**MINUTES OF January 8, 2008  
COMMISSION CONFERENCE**

**COMMENCED: 11:00 a.m.**

**ADJOURNED: 12:23 p.m.**

**COMMENCED: 12:48 p.m.**

**ADJOURNED: 1:36 p.m.**

**COMMISSIONERS PARTICIPATING:** Chairman Carter  
Commissioner Edgar  
Commissioner McMurrian  
Commissioner Argenziano  
Commissioner Skop

Parties were allowed to address the Commission on items designated by double asterisks (\*\*).

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1

**Approval of Minutes**  
December 4, 2007, Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

**ITEM NO.**

**CASE**

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2\*\*PAA

**Consent Agenda**

A) Request for cancellation of a competitive local exchange telecommunications certificate.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
070335-TP	OnFiber Carrier Services, Inc.	10/31/2007
070664-TP	Hotline, Inc. d/b/a Hotline Telephone Service, Inc.	12/31/2007

**Recommendation:** The Commission should approve the action requested in the dockets referenced above and close these dockets.

**DECISION:** The recommendation was approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

**ITEM NO.**

**CASE**

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3

**Docket No. 070408-TP** – Petition by Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for resolution of interconnection dispute with Level 3 Communications, LLC, and request for expedited resolution. (Deferred from 12/04/07 Conference; revised recommendation filed.)

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** McMurrian

**Staff:** GCL: Teitzman, Mann

CMP: Lee, King

**Issue A:** Should the Commission grant Neutral Tandem’s Request for Oral Argument?

**Recommendation:** No. Staff believes that Neutral Tandem’s Request for Oral Argument is untimely and should be denied. However, staff notes that Rule 25-22.0022(7)(b), Florida Administrative Code (F.A.C.), sets forth that regardless of whether a party has requested oral argument, the Commission can request oral argument on any issue to be decided by a dispositive motion or recommended order. Therefore, although staff believes Neutral Tandem’s Request for Oral Argument should be denied for lack of timeliness, staff believes the Commission does have the discretion, on its own Motion, to entertain oral argument on the issues addressed in staff’s recommendation.

**DECISION:** The Commission, on its own motion, requested oral argument.

**Issue 1:** Does the Commission have jurisdiction over Neutral Tandem’s Petition? If so, what is the source of the Commission’s authority?

**Recommendation:** Yes. Pursuant to §364.16(2), Florida Statutes, the Commission has authority to ensure that a CLEC provides access to and interconnection with its telecommunications service to any other provider of local exchange telecommunications service.

**DECISION:** The recommendation was approved.

**ITEM NO.**

**CASE**

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3

**Docket No. 070408-TP** – Petition by Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for resolution of interconnection dispute with Level 3 Communications, LLC, and request for expedited resolution. (Deferred from 12/04/07 Conference; revised recommendation filed.)

(Continued from previous page)

**Issue 2:** If the Commission has jurisdiction over Neutral Tandem’s Petition, does Neutral Tandem have standing to seek relief under §§364.16 and 364.162, Florida Statutes?

**Recommendation:** No. Staff does not believe Neutral Tandem’s delivery of transit traffic constitutes provision of local exchange telecommunications service for the purposes of §364.16(2), Florida Statutes. Furthermore, staff does not believe that under Florida law, Neutral Tandem qualifies as an agent for originating carriers. Accordingly, staff believes that Neutral Tandem lacks standing to seek relief under §§364.16 and 364.162, Florida Statutes.

While Neutral Tandem is not an agent under the legal definition, staff reiterates that the Commission has already held that (1) the originating carrier, not the terminating carrier, chooses how the originating call is routed to the end user; (2) the originating carrier is obligated to compensate the transit provider; (3) the originating carrier is responsible for delivering traffic to the transit provider in such a manner that it can be identified, routed, and billed; and, (4) the originating carrier, not the transit provider, should compensate the terminating carrier for terminating traffic to the end user. If an originating carrier believes that it is being adversely impacted by the actions of a terminating carrier, then the originating carrier is the appropriate party to file a letter of complaint or dispute with the Commission against the terminating carrier.

**DECISION:** The recommendation was moot.

**Issue 3A:** If the Commission has jurisdiction over Neutral Tandem’s Petition and determines that Neutral Tandem has standing to bring its Petition:

Can the Commission require direct interconnection between Level 3 and Neutral Tandem, for the purpose of terminating transit traffic from originating carriers, delivered by Neutral Tandem to Level 3?

**Recommendation:** If the Commission approves staff’s recommendation in Issue 2, this issue will be rendered moot.

**DECISION:** The recommendation was moot.

**ITEM NO.**

**CASE**

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3

**Docket No. 070408-TP** – Petition by Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for resolution of interconnection dispute with Level 3 Communications, LLC, and request for expedited resolution. (Deferred from 12/04/07 Conference; revised recommendation filed.)

(Continued from previous page)

**Issue 4:** Should the Commission grant Level 3's Motion to Dismiss?

**Recommendation:** Yes. If the Commission approves staff's recommendation in Issue 2, Level 3's Motion to Dismiss should be granted, ~~without prejudice~~, because Neutral Tandem lacks standing to seek relief under §§364.16 and 364.162, Florida Statutes.

**DECISION:** The recommendation was denied. Staff is to work with the Chairman's office to set for hearing.

**Issue 5:** Should this docket be closed?

**Recommendation:** Yes, if the Commission approves staff's recommendation in Issue 2, this docket should be closed.

**DECISION:** The docket is to remain open.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

**ITEM NO.**

**CASE**

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4\*\*

**Docket No. 070249-TP** – Petition by Sprint Communications Company Limited Partnership and Sprint Spectrum Limited Partnership d/b/a Sprint PCS for arbitration of rates, terms and conditions of interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Carter

**Staff:** CMP: Pruitt, King

GCL: Teitzman, Wiggins

**Issue 1:** Should the Commission approve the Amendment to the existing Interconnection Agreement between AT&T and Sprint submitted December 4, 2007?

**Recommendation:** Yes. The Amendment has been signed by the respective parties, reviewed by staff for compliance with 47 U.S.C. Section 252 , and has provided Sprint its requested relief in resolving the one issue in this docket, a three-year extension of the ICA beginning March 20, 2007.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. Staff recommends that if the Commission approves staff's recommendation in Issue 1, this docket should be closed because no other issues need to be addressed by the Commission.

**DECISION:** The recommendations were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

**ITEM NO.**

**CASE**

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5\*\*PAA

**Docket No. 070647-TI** – Bankruptcy cancellation by Florida Public Service Commission of IXC Registration No. TJ789 issued to Florida Phone Service, Inc., effective 10/31/07. (Deferred from 12/04/07 Conference; revised recommendation filed.)

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** CMP: Isler

GCL: McKay

**Issue 1:** Should the Commission grant Florida Phone Service, Inc., as listed in Attachment A of staff's memorandum dated December 26, 2007, cancellation of its IXC tariff and remove its name from the register with an effective date of October 31, 2007, due to bankruptcy; notify the Division of Administrative Services that any unpaid Regulatory Assessment Fees, including statutory late payment charges, should not be sent to the Florida Department of Financial Services and request permission to write-off the uncollectible amounts; and require the company to immediately cease and desist providing intrastate interexchange telecommunications service in Florida?

**Recommendation:** Yes, the company's IXC tariff and Registration No. TJ789 should be granted a bankruptcy cancellation with an effective date of October 31, 2007.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if no protest is filed and upon issuance of a Consummating Order.

**DECISION:** The recommendations were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

**ITEM NO.**

**CASE**

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6\*\*PAA

**Docket No. 070651-TX** – Request for cancellation of CLEC Certificate No. 8406 by Andre Trajean Fidel d/b/a Andrex Telecom, effective October 16, 2007.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** CMP: Isler

GCL: McKay

**Issue 1:** Should the Commission deny Andre Trajean Fidel d/b/a Andrex Telecom, a voluntary cancellation of its CLEC Certificate No. 8406 and cancel the certificate on the Commission's own motion with an effective date of October 16, 2007?

**Recommendation:** Yes, the company should be denied a voluntary cancellation as listed on Attachment A of staff's memorandum dated December 26, 2007.

**Issue 2:** Should this docket be closed?

**Recommendation:** Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company pays the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's competitive local exchange telecommunications certificate will be voluntary. If the company fails to pay the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then the company's competitive local exchange telecommunications certificate should be cancelled administratively, and the collection of the past due Regulatory Assessment Fee should be referred to the Florida Department of Financial Services for further collection efforts. If the company's competitive local exchange telecommunications certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing competitive local exchange telecommunications service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fee or upon cancellation of the company's competitive local exchange telecommunications certificate.

**DECISION:** The recommendations were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop



**ITEM NO.**

**CASE**

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7\*\*PAA

**Docket No. 070655-TX** – Request for cancellation of CLEC Certificate No. 7497 by Deland Actel, Inc., effective December 31, 2007.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** CMP: Isler

GCL: McKay

**Issue 1:** Should the Commission deny Deland Actel, Inc., a voluntary cancellation of its CLEC Certificate No. 7497 and cancel the certificate on the Commission's own motion with an effective date of December 31, 2007?

**Recommendation:** Yes, the company should be denied a voluntary cancellation as listed on Attachment A of staff's memorandum dated December 26, 2007.

**Issue 2:** Should this docket be closed?

**Recommendation:** Staff recommends that the Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If the company fails to timely file a protest and to request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted and the right to a hearing waived. If the company pays the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's competitive local exchange telecommunications certificate will be voluntary. If the company fails to pay the Regulatory Assessment Fee prior to the expiration of the Proposed Agency Action Order, then the company's competitive local exchange telecommunications certificate should be cancelled administratively, and the collection of the past due Regulatory Assessment Fee should be referred to the Florida Department of Financial Services for further collection efforts. If the company's competitive local exchange telecommunications certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing competitive local exchange telecommunications service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fee or upon cancellation of the company's competitive local exchange telecommunications certificate.

**DECISION:** The recommendations were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

**ITEM NO.**

**CASE**

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8\*\*PAA

**Docket No. 060638-EI** – Petition for approval of storm cost recovery surcharge to recover costs associated with mandatory storm preparedness initiatives, by Florida Public Utilities Company.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** ECR: Colson, Bulecza-Banks, Kummer, Lee, Slemkewicz

GCL: Brown

**Issue 1:** Should the Commission approve FPUC's proposed three year vegetation management cycle for main feeders and a six year cycle for laterals (3/6 trimming cycle) in both divisions?

**Recommendation:** Yes. If approved, FPUC has agreed to withdraw its request for a storm cost recovery surcharge. The reliability impact and all costs associated with FPUC's implementation of its storm hardening plan should be addressed in the upcoming rate case.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if no protest is filed within 21 days of the proposed agency action order by a person whose interests are substantially affected, no further action will be required and this docket should be closed upon the issuance of a consummating order.

**DECISION:** The recommendations were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

**ITEM NO.**

**CASE**

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9\*\*PAA

**Docket No. 070645-EQ** – Joint petition to amend negotiated contract for firm capacity and energy from qualifying facility between Florida Power Corporation d/b/a Progress Energy Florida, Inc. and Innovative Energy Group of Florida.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** ECR: Sickel, Garl

GCL: Klancke

**Issue 1:** Should the Commission approve the amendments to the contract requested by Progress Energy Florida, Inc. (PEF) and Innovative Energy Group of Florida, LLC in their joint petition?

**Recommendation:** Yes. The net present value of projected savings to PEF's ratepayers is projected to be \$113 million.

**Issue 2:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

**DECISION:** The recommendations were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

**ITEM NO.**

**CASE**

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10

**Docket No. 070680-WS** – Application for staff-assisted rate case in Pasco County by Orangewood Lakes Services, Inc.

**Critical Date(s):** 02/05/08 (60-Day Suspension Date)  
04/07/09 (15-Month Effective Date (SARC))

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** McMurrin

**Staff:** ECR: Hudson, Bulecza-Banks, Rendell

GCL: Klancke

**Issue 1:** Should Orangewood's request for interim wastewater rates be approved?

**Recommendation:** Yes, Orangewood's request for interim wastewater rates should be approved. The company should be granted a 63.57% interim wastewater rate increase. The interim wastewater rate should be set as a flat rate of \$39.37. If the company submits revised tariffs reflecting the Commission's decision on interim rates, staff should be given administrative authority to approve the submitted tariffs. The approved rates should be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided customers have received notice. The rates should not be implemented until staff verifies that the tariff sheets are consistent with the Commission's decision, the proposed customer notice is adequate, and the required security has been filed. The company should provide proof of the date notice was given within 10 days after the date the notice is provided to the customers.

**Issue 2:** What is the appropriate security to guarantee the interim wastewater rate increase?

**Recommendation:** The company should be required to file a bond, letter of credit, or escrow agreement as security to guarantee any potential refunds of revenues collected under interim conditions. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund as of the end of the proceeding month.

**Issue 3:** Should this docket be closed?

**Recommendation:** No. This docket should remain open pending the final resolution of the company's staff-assisted rate case.

**DECISION:** The recommendations were approved.

Commissioners participating: Carter, Edgar, McMurrin, Argenziano, Skop

**ITEM NO.**

**CASE**

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11\*\*

**Docket No. 070548-WS** – Application for certificates to provide water and wastewater service in Marion County by Century - Fairfield Village, Ltd.

**Critical Date(s):** 01/08/08 (Statutory deadline for granting certificates)

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Skop

**Staff:** ECR: Johnson, Rieger

GCL: Bennett

**Issue 1:** Should Century - Fairfield Village, Ltd.'s application for water and wastewater certificates be granted?

**Recommendation:** Yes, Century - Fairfield Village, Ltd. should be granted Certificate Nos. 640-W and 549-S to serve the territory described in Attachment A of staff's memorandum dated December 26, 2007, effective the date of the Commission's vote. The resultant order should serve as Century - Fairfield Village, Ltd.'s water and wastewater certificates and should be retained by the utility.

**Issue 2:** Should this docket be closed?

**Recommendation:** No. The docket should remain open to establish initial rates, charges and return on equity. As discussed in staff's memorandum dated December 26, 2007, the company has requested that the certification and the rate setting process be bifurcated. Therefore, staff recommends that the docket remain open for the setting of initial rates, charges, and return on equity at a later date.

**DECISION:** The recommendations were approved.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop