

**MINUTES OF March 3, 2009**  
**COMMISSION CONFERENCE**  
**COMMENCED: 9:38 am**  
**RECESSED: 11:03 am**  
**RECONVENED: 11:17 am**  
**ADJOURNED: 12:28 pm**

**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**

January 9, 2009 Special Commission Conference  
January 26, 2009 Regular Commission Conference  
February 10, 2009 Regular Commission Conference

DECISION: The minutes were approved.

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

**ITEM NO.** **CASE**

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2\*\*                    **Consent Agenda**

PAA                    A) Application for certificate to provide competitive local exchange telecommunications service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
090012-TX	Vanco US, LLC

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
080619-TP	Progress Telecom, LLC	12/31/2008

PAA                    C) Request for cancellation of an alternative access vendor certificate.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
080728-TA	Fort Pierce Utilities Authority d/b/a GigaBand Communications	12/31/2008

**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. 090079-EI** – Petition for increase in rates by Progress Energy Florida.

**Critical Date(s):** 03/13/09 - Emergency Rule Waiver Petition deemed approved if not granted or denied within 30 days of receipt.

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Skop

**Staff:** GCL: Bennett, Brown

ECR: Willis

**Issue 1:** Should the Commission approve the Agreed Motion on Procedure?

**Recommendation:** Yes. The Commission should approve the motion and permit PEF to file its petition for general rate increase on March 20, 2009. With the clear understanding that the Commission has the ultimate authority and responsibility to determine the schedules of its cases, the Commission should approve the parties' desire to provide input into the scheduling of this case, to the extent possible; but the ultimate decision on scheduling must be the Commission's prerogative.

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

**Recommendation:** No. This docket should remain open to process PEF's petition for a rate increase.

**DECISION:** The recommendations were withdrawn.

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

**ITEM NO.**

**CASE**

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4

**Docket No. 070699-TP** – Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc., pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, F.S.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** GCL: Tan

RCP: Barrett

**(Motion for Reconsideration - Oral Argument Requested)**

**Issue 1:** Should the Commission grant Intrado Comm's Request for Oral Argument?

**Recommendation:** No. The Commission should deny Intrado Comm's Request for Oral Argument.

**Issue 2:** Should the Commission grant Intrado Comm's Motion for Reconsideration of Order No. PSC-08-0799-FOF-TP?

**Recommendation:** No. The Commission should deny Intrado Comm's Motion for Reconsideration of Order No. PSC-08-0799-FOF-TP.

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

**Recommendation:** Yes. If the Commission approves staff's recommendations in Issues 1 and 2, this Docket should be closed.

**DECISION:** The recommendations were approved.

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

**ITEM NO.**

**CASE**

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5

**Docket No. 070736-TP** – Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida, pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** GCL: Tan

RCP: Barrett

**(Motion for Reconsideration - Oral Argument Requested)**

**Issue 1:** Should the Commission grant Intrado Comm's Request for Oral Argument?

**Recommendation:** No. The Commission should deny Intrado Comm's Request for Oral Argument.

**Issue 2:** Should the Commission grant Intrado Comm's Motion for Reconsideration of Order No. PSC-08-0798-FOF-TP?

**Recommendation:** No. The Commission should deny Intrado Comm's Motion for Reconsideration of Order No. PSC-08-0798-FOF-TP.

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

**Recommendation:** Yes. If the Commission approves staff's recommendations in Issues 1 and 2, this Docket should be closed.

**DECISION:** The recommendations were approved.

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

**ITEM NO.**

**CASE**

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6\*\*

**Docket No. 060476-TL** – Petition to initiate rulemaking to amend Rules 25-24.630(1) and 25-24.516(1), F.A.C., by BellSouth Telecommunications, Inc.

**Critical Date(s):** None

**Rule Status:** Proposed

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** McMurrian

**Staff:** GCL: Bellak  
RCP: Kennedy  
ECR: Hewitt  
SSC: Moses

**Issue 1:** Should the Commission propose amendments to Rule 25-24.516, F.A.C., Pay Telephone Rate Caps, and Rule 25-24.630, F.A.C., Rate and Billing Requirements?

**Recommendation:** Yes, the Commission should propose the amendments to Rule 25-24.516, F.A.C., and Rule 25-24.630, F.A.C., as set forth in Attachment A of staff's memorandum dated February 19, 2009.

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

**Recommendation:** Yes, if no requests for hearing or comments are filed, the rule amendments as proposed in Issue 1 should be filed for adoption with the Secretary of State and the docket should be closed.

**DECISION:** The recommendations were deferred. Staff was directed to re-examine and provide cost justification as discussed at the commission conference. This item is to be brought back to the Commission Conference within 60 days.

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

**ITEM NO.**

**CASE**

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7\*\*PAA

**Docket No. 080680-TL** – Notice of election of price regulation by Frontier Communications of the South, LLC.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** RCP: Pruitt, King

GCL: Tan

**Issue 1:** Should the Commission acknowledge Frontier's election to become subject to price regulation effective January 1, 2009?

**Recommendation:** Yes. With Frontier's election of price regulation effective January 1, 2009, its basic local telecommunications service rates are subject to Section 364.051(3), Florida Statutes, and its nonbasic services rates are subject to Section 364.051(5), Florida Statutes.

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

**Recommendation:** Yes. With the Commission's approval of staff's recommendation in Issue 1, this docket should be closed if no person whose substantial interests are affected files a protest within 21 days of the issuance of this Order.

**DECISION:** The recommendations were approved.

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

**ITEM NO.**

**CASE**

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8\*\*PAA

**Docket No. 090015-TS** – Request for cancellation of STS Certificate No. 8634 by Digital Community Networks, Inc., effective December 31, 2008.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** RCP: Isler

GCL: Brooks

**Issue 1:** Should the Commission deny Digital Community Networks, Inc., a voluntary cancellation of its shared tenant service (STS) Certificate No. 8634 and cancel the certificate on the Commission's own motion with an effective date of December 31, 2008?

**Recommendation:** Yes, the company should be denied a voluntary cancellation as listed on Attachment A of staff's memorandum dated February 19, 2009.



**ITEM NO.**

**CASE**

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8\*\*PAA

**Docket No. 090015-TS** – Request for cancellation of STS Certificate No. 8634 by Digital Community Networks, Inc., effective December 31, 2008.

(Continued from previous page)

**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, including any applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, then the cancellation of the company's STS certificate will be voluntary. If the company fails to pay the Regulatory Assessment Fee, including any applicable late payment charges, prior to the expiration of the Proposed Agency Action Order, then the company's STS certificate should be cancelled administratively, and the collection of the unpaid Regulatory Assessment Fee should be referred to the Florida Department of Financial Services for further collection efforts. If the company's STS certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing telecommunications service in Florida. This docket should be closed administratively either upon receipt of the payment of the Regulatory Assessment Fee, including any applicable late payment charges, or upon cancellation of the company's STS certificate.

**DECISION:** The recommendations were approved.

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

**ITEM NO.**

**CASE**

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9\*\*PAA

**Docket No. 080201-TX** – Application for designation as an eligible telecommunications carrier by Tele Circuit Network Corporation.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** RCP: Mann, Casey

GCL: Brooks, Teitzman

**Issue 1:** Should Tele Circuit be granted ETC designation in the state of Florida?

**Recommendation:** Yes. Staff recommends that Tele Circuit's application for Florida ETC designation in the AT&T and Verizon wire centers listed in Attachment A of the recommendation dated February 19, 2009 be granted.

**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 withdrawn.

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

**ITEM NO.**

**CASE**

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10\*\*PAA

**Docket No. 000121A-TP** – Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (AT&T FLORIDA TRACK)

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Carter

**Staff:** RCP: Harvey, Hallenstein, Rich

GCL: Teitzman, Brooks

**Issue 1:** Should AT&T be allowed to move forward with the next 22-state OSS release?

**Recommendation:** Yes. Staff recommends that AT&T be allowed to move forward with the next 22-state OSS release on the condition that selected Tier 1 and Tier 2 Self-Effectuating Enforcement Mechanism (SEEM) remedies are doubled for each data month beginning with implementation of the next 22-state OSS release, for a period of six months. The performance measurement categories that should be included are *OSS (Pre-ordering), Ordering, Provisioning, and Change Management*. After the implementation of the next 22-state OSS release, staff will recommend if the Commission should take any further action on this matter.

**DECISION:** The recommendation was modified. AT&T is to be allowed to move forward with the next 22-state OSS release including remedies assured by AT&T without the condition of doubling the SEEM remedies. The Commission reserves the right to bring a show cause proceeding if deemed appropriate.

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

**Recommendation:** No. If the Commission approves staff's recommendation in Issue 1 the resulting Order will be issued as a Proposed Agency Action. The Order will become final upon issuance of a Consummating Order, if no person whose substantial interests are affected timely files a protest within 21 days of the issuance of the Order. Staff will bring a recommendation back to the Commission addressing the petitioners' request for the Commission to initiate a show cause proceeding at a later date. This docket should remain open pending the implementation of the Commission's decision and for purposes of future performance measure monitoring.

**DECISION:** The recommendation was approved.

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

**ITEM NO.**

**CASE**

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11\*\*PAA

**Docket No. 080665-EI** – Petition of Florida Power & Light Company for approval of long-term agreement for full requirements electric service with Lee County Electric Cooperative.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Edgar

**Staff:** ECR: Kummer, Lee

GCL: Bennett

SGA: Graves

**Issue 1:** Should the Commission approve FPL’s proposed regulatory treatment of the fuel costs and base rate benefits associated with the proposed Wholesale Power Agreement with Lee County Electric Cooperative?

**Recommendation:** Yes, if Staff’s additional condition is included as part of the Order. Staff recommends the Commission approve the following changes to the regulatory treatment proposed by FPL: (1) shortening the initial term of the contract from 2033 to 2026, with the initial review by the Commission in 2021 and by the parties in 2022; (2) implementing a fixed per unit credit through the Capacity Cost Recovery Clause to recognize the base rate benefits of the change in the Separation Factor; and (3) providing for Commission review of the regulatory treatment of both fuel and base rate impacts during any need determination proceeding during the term of the Agreement.

Because of the discretionary nature of this Agreement, staff believes ratepayers should not be harmed. Therefore, staff recommends an additional condition: In the year the cumulative Net Present Value (NPV) becomes negative, the retail portion of the fuel adjustment shall be reduced by the annual shortfall. In any subsequent year that the cumulative NPV again becomes positive, FPL will be permitted to increase the fuel clause to the extent of the prior year’s reduction, up to the level of the benefit.

Staff also recommends that the approved regulatory treatment continue only through 2026.

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

**Recommendation:** Yes. Upon Commission vote on Issue 1, 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 withdrawn.

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

**ITEM NO.**

**CASE**

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12\*\*

**Docket No. 080610-WS** – Application for transfer of water and wastewater utility assets of Ferncrest Utilities, Inc., in Broward County, to Tindall Hammock Irrigation and Soil Conservation District, and cancellation of Certificate Nos. 13-W and 10-S.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** ECR: Clapp, Marsh

GCL: Bennett

**Issue 1:** Should the transfer of Ferncrest Utilities, Inc.’s water and wastewater facilities to Tindall Hammock Irrigation and Soil Conservation District and the cancellation of Certificate Nos. 13-W and 10-S be approved?

**Recommendation:** Yes. The transfer of Ferncrest Utilities, Inc.’s water and wastewater facilities to Tindall Hammock Irrigation and Soil Conservation District should be approved as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate Nos. 13-W and 10-S should be cancelled effective November 3, 2008.

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

**Recommendation:** Yes. Pursuant to Section 367.071(4)(a), F.S., approval of a transfer to a governmental authority is a matter of right. As such, no further Commission action is necessary and this docket should be closed.

**DECISION:** The recommendations were approved.

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

**ITEM NO.**

**CASE**

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13\*\*

**Docket No. 080698-WS** – Application for transfer of water and wastewater facilities to Martin County, and cancellation of Certificate No(s). 362-W and 317-S, by Laniger Enterprises of America, Inc.

**Critical Date(s):** None

**Commissioners Assigned:** All Commissioners

**Prehearing Officer:** Administrative

**Staff:** ECR: Clapp, Kaproth

GCL: Williams

**Issue 1:** Should the transfer of Laniger Enterprises of America, Inc. water and wastewater facilities to Martin County and the cancellation of Certificate Nos. 362-W and 317-S be acknowledged?

**Recommendation:** Yes. The transfer of Laniger Enterprises of America, Inc. water and wastewater facilities to Martin County should be acknowledged as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate Nos. 362-W and 317-S should be cancelled effective December 16, 2008. Laniger should pay its 2008 regulatory assessment fees on or before March 31, 2009.

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

**Recommendation:** Yes. This docket should be closed because no further action is necessary.

**DECISION:** The recommendations were approved.

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