

**MINUTES OF
COMMISSION CONFERENCE, AUGUST 14, 2001**

COMMENCED: 9:30 A.M.

ADJOURNED: 2:00 P.M.

COMMENCED: 3:00 P.M.

ADJOURNED: 5:45 P.M.

COMMISSIONERS PARTICIPATING: Chairman Jacobs
Commissioner Deason
Commissioner Jaber
Commissioner Baez
Commissioner Palecki

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

1** Consent Agenda

- PAA A) Docket No. 010976-TX - Application for certificate to provide alternative local exchange telecommunications service by R & D Network Services, Inc.
- PAA B) Docket No. 010952-TI - Application for certificate to provide interexchange telecommunications service by Miko Telephone Communications, Inc.
- PAA C) Docket No. 010989-TC - Application for certificate to provide pay telephone service by G.J.C. Cleaning, Inc. d/b/a JC Communications.
- PAA D) Docket No. 010974-TP - Request for cancellation of ALEC Certificate No. 7783 and IXC Certificate No. 7784 by eVoice Telecom, Inc., effective 6/29/01.

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

DECISION: The recommendation was approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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ITEM NO.

CASE

2**

DOCKET NO. 010977-TL - State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: CMP: Dowds
LEG: B. Keating

ISSUE 1: Should the Commission certify to the FCC and to USAC that for the year 2002 ALLTEL Florida, Inc., Frontier Communications of the South, Inc., GTC, Inc., Indiantown Telecommunications Systems, Inc., Northeast Florida Telephone Company, TDS Telecom, and Smart City Telecom will only use the federal high-cost support they receive for the provision, maintenance and upgrading of facilities and services for which the support is intended?

RECOMMENDATION: Yes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open in order to deal with future certification of rural telephone companies.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

ITEM NO.

CASE

3 DOCKET NO. 000733-TL - Investigation to determine whether BellSouth Telecommunications, Inc.'s tariff filing to restructure its late payment charge is in violation of Section 364.051, F.S.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer JB

Staff: CMP: Audu, Simmons
LEG: B. Keating, Christensen

(Participation limited to Commissioners and staff.)

ISSUE 1: Is BellSouth's interest charge of 1.50% on unpaid balances, as filed in T-991139, a rate element of an existing service that is subject to the provisions of Section 364.051(5)(a), Florida Statutes?

RECOMMENDATION: Yes. BST's restructured interest charge of 1.50% on unpaid balances, as filed in T-991139, is a rate element of an existing service that is subject to the provisions of Section 364.051(5)(a), Florida Statutes.

ISSUE 2: Is the interest charge filed by BellSouth in T-991139 a "new service" for the purposes of Section 364.051(5)(a), Florida Statutes?

RECOMMENDATION: No. The restructured interest charge as filed in BST's T-991139 is not a new service for the purposes of Section 364.051(5)(a), Florida Statutes.

ISSUE 3: Does BellSouth's tariff filing (T-991139) violate Section 364.051(5)(a), Florida Statutes? If so, what amount needs to be refunded, and how should the refund be determined and made effective?

RECOMMENDATION: Yes. BST's tariff filing (T-991139) violates Section 364.051(5)(a), Florida Statutes. Staff recommends that BST be required to discontinue assessing the restructured 1.50% interest charge on unpaid balances in excess of \$6.00 upon the issuance of an order in this proceeding. The Commission should order BST to refund all amounts collected through the restructured interest charge of 1.50%, with interest, to all affected customers within 120 days of a final order. Staff further recommends that this refund be made in the form of a credit to the affected

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3

DOCKET NO. 000733-TL - Investigation to determine whether BellSouth Telecommunications, Inc.'s tariff filing to restructure its late payment charge is in violation of Section 364.051, F.S.

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customers' bills; where BST cannot provide a refund through a bill credit, BST should send the customers a check for the appropriate amount.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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ITEM NO.

CASE

4**

DOCKET NO. 001150-TC - Cancellation by Florida Public Service Commission of Pay Telephone Certificate No. 7053 issued to Anthony Narducci for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: CMP: Isler
LEG: Banks

ISSUE 1: Should Anthony Narducci's Motion for Reconsideration of Order No. PSC-01-1157-FOF-TC be granted?
RECOMMENDATION: No. Anthony Narducci has failed to identify that there has been a mistake of fact or law, or a point of law which was overlooked or which the Commission failed to consider in rendering its order. Therefore, staff recommends that Anthony Narducci's Motion for Reconsideration of Order Denying Settlement Offer and Rendering Order No. PSC-00-1788-PAA-TC Final and Closing Docket should not be granted.

ISSUE 2: Should this docket be closed?
RECOMMENDATION: Since there is no further action required by the Commission, this docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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ITEM NO.

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5**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 010540-TC - Payphone Advertising Media, Inc.
DOCKET NO. 010545-TC - GCB Communications, Inc.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: CMP: Isler
LEG: K. Pena, B. Keating

ISSUE 1: Should the Commission impose a \$1,000 fine or cancel the certificates issued to the companies listed on Attachment A of staff's August 2, 2001 memorandum for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$1,000 fine or cancel each company's respective certificate as listed on Attachment A if the fine and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, the certificate numbers listed on Attachment A should be canceled administratively.

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5**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

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ISSUE 2: Should these dockets be closed?

RECOMMENDATION: Yes. The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. These dockets should then be closed upon receipt of the fine and fees or cancellation of the certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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6**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 010607-TC - Belony Saint-Vil d/b/a SAINTEL, INC.

DOCKET NO. 010610-TC - Jan Davis

DOCKET NO. 010611-TC - Michael R. Kraus d/b/a M.C. Communications

DOCKET NO. 010622-TC - Paras Enterprises, Inc.

DOCKET NO. 010623-TC - Naples Dial Tone & Telephone Inc.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehrg Officer ADM

Staff: CMP: Isler

LEG: K. Pena, B. Keating, Elliott

ISSUE 1: Should the Commission impose a \$500 fine or cancel each company's respective certificate listed on Attachment A of staff's August 2, 2001 memorandum for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel each company's certificate as listed on Attachment A if the fine and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, the certificate numbers listed on Attachment A should be canceled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts.

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6**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

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ISSUE 2: Should these dockets be closed?

RECOMMENDATION: Yes. The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. These dockets should then be closed upon receipt of the fine and fees or cancellation of the certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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7**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 010595-TC - Charles B. Brenn d/b/a KTB Communications

DOCKET NO. 010598-TC - Triangle Management Systems, Inc. d/b/a Cheval Executive Center

DOCKET NO. 010601-TC - Gordon Douglas Wenner

DOCKET NO. 010604-TC - Alexander Dinu II

DOCKET NO. 010605-TC - Pinellas County Call Center Services, Inc.

DOCKET NO. 010606-TC - Telephones Calling Services Corporation

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: CMP: Isler
LEG: K. Pena, B. Keating, Elliott

ISSUE 1: Should the Commission impose a \$500 fine or cancel each company's respective certificate listed on Attachment A of staff's August 2, 2001 memorandum for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel each company's certificate as listed on Attachment A if the fine and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, the certificate numbers listed on Attachment A should be

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7**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

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canceled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts.

ISSUE 2: Should these dockets be closed?

RECOMMENDATION: Yes. The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. These dockets should then be closed upon receipt of the fine and fees or cancellation of the certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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8**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 010597-TC - Manatee Telcom, Inc.

DOCKET NO. 010599-TC - Cross City Airport Inc.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: CMP: Isler
LEG: Elliott, K. Pena, B. Keating

ISSUE 1: Should the Commission deny the companies listed on Attachment A of staff's August 2, 2001 memorandum a voluntary cancellation of their respective certificates?
RECOMMENDATION: Yes. The Commission should deny each company a voluntary cancellation of its telecommunications certificate as listed on Attachment A. Instead, the Commission should cancel each company's respective certificate on its own motion with an effective date as listed on Attachment A. The collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts.

ISSUE 2: Should these dockets be closed?

RECOMMENDATION: Yes. The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of issuance of the Proposed Agency Action Order. These dockets should then be closed upon receipt of the fees or cancellation of the certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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<u>ITEM NO.</u>	<u>CASE</u>
9**	<p>DOCKET NO. 010612-TC - Cancellation by Florida Public Service Commission of Pay Telephone Certificate No. 7360 issued to Salauddin Chawdury for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.</p> <p>Critical Date(s): None</p> <p>Commissioners Assigned: Full Commission Prehrg Officer ADM</p> <p>Staff: CMP: Isler LEG: K. Pena, B. Keating</p> <p><u>ISSUE 1</u>: Should the Commission grant a voluntary cancellation of Certificate Number 7360 issued in the name of Salauddin Chawdury? <u>RECOMMENDATION</u>: Yes. The Commission should grant the company a voluntary cancellation of its Certificate No. 7360 with an effective date of December 31, 2000. In addition, the Division of the Commission Clerk & Administrative Services will be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write-off the uncollectible amount should be requested.</p> <p><u>ISSUE 2</u>: Should this docket be closed? <u>RECOMMENDATION</u>: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed.</p> <p><u>DECISION</u>: The recommendations were approved.</p> <p>Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki</p>

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10**

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees, Telecommunications Companies.

DOCKET NO. 010484-TC - James Paul Elliott

DOCKET NO. 010587-TC - Patricia Thomas

DOCKET NO. 010621-TC - Dudley James Sadhi

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: CMP: Isler

LEG: K. Pena, B. Keating, Elliott

ISSUE 1: Should the Commission grant the companies listed on Attachment A of staff's August 2, 2001 memorandum a voluntary cancellation of their respective certificates?
RECOMMENDATION: Yes. The Commission should grant each company a voluntary cancellation of its telecommunications certificate with an effective date as listed on Attachment A.

ISSUE 2: Should these dockets be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, these dockets should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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11**PAA

DOCKET NO. 001361-TI - Cancellation by Florida Public Service Commission of Interexchange Telecommunications Certificate No.7219 issued to PointeCom, Incorporated for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: CMP: Isler
LEG: Banks

ISSUE 1: Should the Commission vacate Order No. PSC-01-1154-AS-TI and grant cancellation of PointeCom, Incorporated's Certificate Number 7219?

RECOMMENDATION: Yes. The company had filed for bankruptcy protection prior to the issuance of the Order accepting PointeCom, Incorporated's settlement offer. Therefore, the Commission should vacate Order No. PSC-01-1154-AS-TI and grant PointeCom Incorporated a bankruptcy cancellation effective May 14, 2001. In addition, the Division of the Commission Clerk & Administrative Services should not forward the 2001 RAF to the Comptroller's Office for collection.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed upon cancellation of the certificate.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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CASE

12**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rules 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and 25-24.520, F.A.C., Reporting Requirements.

DOCKET NO. 010594-TC - Lukas Botha

DOCKET NO. 010596-TC - JASZ Communications Inc.

DOCKET NO. 010600-TC - Zev Inc. d/b/a World Wide Telecommunications

DOCKET NO. 010602-TC - Suleiman Inc.

DOCKET NO. 010609-TC - Florida Equipment Management, Inc.

DOCKET NO. 010619-TC - SoTel Communications, Inc.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehrg Officer ADM

Staff: CMP: Isler

LEG: K. Pena, B. Keating, Elliott

ISSUE 1: Should the Commission impose a \$500 fine or cancel each telecommunications company's respective certificate as listed on Attachment A of staff's August 2, 2001 memorandum for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel each company's respective certificate as listed on Attachment A if the fine and the regulatory assessment fees, including statutory penalty and interest charges, are not received by the Commission within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and regulatory assessment fees, including statutory penalty and interest charges, are not received, the certificate numbers listed on Attachment A should be canceled administratively and the

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12**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rules 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies, and 25-24.520, F.A.C., Reporting Requirements.

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collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts.

ISSUE 2: Should the Commission impose a \$500 fine or cancel each telecommunications company's respective certificate as listed on Attachment A for apparent violation of Rule 25-24.520, Florida Administrative Code, Reporting Requirements?

RECOMMENDATION: Yes. The Commission should impose a \$500 fine or cancel each company's respective certificate as listed on Attachment A if the information required by Rule 25-24.520, F.A.C., and fine are not received by the Commission within five business days after the issuance of the Consummating Order. The fine should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the Commission's Order is not protested and the fine and required information are not received, the certificate numbers listed on Attachment A should be canceled administratively.

ISSUE 3: Should these dockets be closed?

RECOMMENDATION: Yes. The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The dockets should then be closed upon receipt of the fines, fees, and required information or cancellation of the certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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ITEM NO.

CASE

13**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees, Telecommunications Companies.

DOCKET NO. 010487-TC - FKI Enterprises, Inc.
DOCKET NO. 010496-TC - Gary Michael Capasso
DOCKET NO. 010588-TC - George J. Semple d/b/a
TelCommunications

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: CMP: Isler
LEG: K. Pena, B. Keating, Elliott

ISSUE 1: Should the Commission deny the companies listed on Attachment A of staff's August 2, 2001 memorandum a voluntary cancellation of their respective certificates?

RECOMMENDATION: Yes. The Commission should deny each company a voluntary cancellation of its telecommunications certificate as listed on Attachment A. Instead, the Commission should cancel each company's respective certificate on its own motion with an effective date as listed on Attachment A. The collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts.

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13**PAA

Cancellation by Florida Public Service Commission of pay telephone certificates for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees, Telecommunications Companies.

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ISSUE 2: Should these dockets be closed?

RECOMMENDATION: Yes. The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of issuance of the Proposed Agency Action Order. These dockets should then be closed upon receipt of the fees or cancellation of the certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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ITEM NO.

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14**

DOCKET NO. 000076-TC - Application for certificate to provide pay telephone service by Edward Wong.
DOCKET NO. 010613-TC - Cancellation by Florida Public Service Commission of Pay Telephone Certificate No. 7361 issued to Edward Wong for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: CMP: Isler
LEG: K. Pena, B. Keating

ISSUE 1: Should the Commission vacate that portion of Order No. PSC-00-0359-PAA-TC, which granted Edward Wong Pay Telephone Certificate No. 7361 and close Docket Number 000076-TC?

RECOMMENDATION: Yes. The Commission should vacate that portion of Order No. PSC-00-0359-PAA-TC, which granted Edward Wong Certificate No. 7361, as it relates to Edward Wong. In addition, the Commission should close Docket Number 000076-TC.

ISSUE 2: Should Docket No. 010613-TC be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, Docket Number 010613-TC should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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15**

DOCKET NO. 010876-EI - Petition for approval of a new pilot Commercial/Industrial Service Rider to replace existing Economic Development Rider by Florida Power Corporation.

Critical Date(s): 8/24/01 (60-day suspension date)

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: ECR: E. Draper
LEG: Stern

ISSUE 1: Should the Commission approve FPC's proposed Commercial/Industrial Service Rider tariff and Pilot Study Implementation Plan?

RECOMMENDATION: Yes. The proposed CISR tariff and Pilot Study Implementation Plan should be approved, provided that FPC develops procedures for evaluating CISR applications from two customers competing in the same industry to ensure that the application of the CISR tariff does not result in undue discrimination.

ISSUE 2: Should the Commission approve FPC's request to withdraw its Economic Development Rider, Rate Schedule GSED-1?

RECOMMENDATION: Yes. If the Commission approves the staff recommendation in Issue 1, Rate Schedule GSED-1 should be closed effective August 14, 2001. If the Commission denies the staff recommendation in Issue 1, Rate Schedule GSED-1 should remain in effect.

ISSUE 3: What is the appropriate effective date for FPC's proposed CISR tariff and Pilot Study Implementation Plan?

RECOMMENDATION: The appropriate effective date for FPC's proposed CISR tariff and Pilot Study Implementation Plan is August 14, 2001.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes. If no protest is filed 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 with the understanding under Issue 4 that the procedures for evaluating applications from customers competing in the same industry will be submitted within 30

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15**

DOCKET NO. 010876-EI - Petition for approval of a new pilot Commercial/Industrial Service Rider to replace existing Economic Development Rider by Florida Power Corporation.

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days. Additionally, staff was directed to include a statement in the order indicating this change in FPC's CISR tariff does not impact Tampa Electric's or Gulf Power's CISR tariffs.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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16**

DOCKET NO. 010942-EC - Proposed tariff filing to offer new electric rate schedule, Transmission Voltage Service, by Withlacoochee River Electric Cooperative, Inc.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: ECR: Hudson
LEG: Stern

ISSUE 1: Should the Commission approve Withlacoochee River Electric Cooperative, Inc.'s proposed Transmission Voltage Service Rate Schedule?

RECOMMENDATION: Yes. The Commission should approve Withlacoochee River Electric Cooperative, Inc.'s (WREC) proposed Transmission Voltage Service Rate Schedule.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the Commission's order in this docket files a protest within 21 days of the issuance of the order, this docket should be closed. If a protest is timely filed, the tariff should remain in effect, pending resolution of the protest.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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16A**

Docket No. 010827-EI - Petition by Gulf Power Company for approval of purchased power arrangement regarding Smith Unit 3 for cost recovery through recovery clauses dealing with purchased capacity and purchased energy. (Deferred from August 7, 2001 Commission Conference; recommendation replaced.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehearing Baez

Staff: LEG: Stern
SER: Harlow

ISSUE 1: Should OPC's Motion to Dismiss be granted?

RECOMMENDATION: No. OPC's Motion to Dismiss should be denied.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, this docket should not be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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CASE

17**

DOCKET NO. 010198-TI - Initiation of show cause proceedings against LCI International Telecom Corp. d/b/a Qwest Communications Services for apparent violation of Rule 25-22.032(5)(a), F.A.C., Customer Complaints.

DOCKET NO. 010204-TX - Initiation of show cause proceedings against Qwest Communications Corporation for apparent violation of Rule 25-22.032(5)(a), F.A.C., Customer Complaints.

DOCKET NO. 000778-TI - Initiation of show cause proceedings against Qwest Communications Corporation for apparent violation of Rules 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection; and 25-22.032(5)(a), F.A.C., Customer Complaints.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehrg Officer ADM (010198-TI,
010204-TX), BZ (000778-TI)

Staff: LEG: Knight, Elliott
CAF: Lowery
CMP: Craig, M. Watts

ISSUE 1: Should the Commission accept the settlement offer proposed by Qwest Communications, Inc. to resolve the show cause proceedings in Docket Nos. 010198-TI, 010204-TX, and 000778-TI, for its apparent violation of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints?

RECOMMENDATION: Yes. Staff recommends that the Commission accept the company's settlement proposal of a \$34,500 voluntary contribution and assurance that the company will implement measures to ensure future compliance. The voluntary contribution should be received by the Commission within ten business days of the issuance date of an Order approving the settlement offer and should include the docket numbers and company names. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. If the company fails to pay in accordance with the terms of the

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DOCKET NO. 010198-TI - Initiation of show cause proceedings against LCI International Telecom Corp. d/b/a Qwest Communications Services for apparent violation of Rule 25-22.032(5)(a), F.A.C., Customer Complaints.

DOCKET NO. 010204-TX - Initiation of show cause proceedings against Qwest Communications Corporation for apparent violation of Rule 25-22.032(5)(a), F.A.C., Customer Complaints.

DOCKET NO. 000778-TI - Initiation of show cause proceedings against Qwest Communications Corporation for apparent violation of Rules 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection; and 25-22.032(5)(a), F.A.C., Customer Complaints.

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Commission Order, Certificate Nos. 2300, 5801, and 3534 should be canceled administratively.

ISSUE 2: Should the Commission accept the settlement offer proposed by Qwest Communications, Inc. to resolve the show cause proceedings in Docket No. 000778-TI for its apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, and Toll Provider Selection?

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. If the company fails to pay in accordance with the terms of the Commission Order, Certificate No. 3534 should be canceled administratively.

ISSUE 3: Should these dockets be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation in Issue 1, these dockets should remain open pending remittance of the \$34,500 voluntary contribution. Upon staff's verification of receipt of the voluntary contribution, or failure to pay the contribution and subsequent cancellation of Certificate Nos. 2994, 5711 and 3534, Docket Nos. 010198-TI and 010204-TX should be administratively closed. If the Commission approves staff's recommendation in Issue 2, Docket No. 000778-TI should

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DOCKET NO. 010198-TI - Initiation of show cause proceedings against LCI International Telecom Corp. d/b/a Qwest Communications Services for apparent violation of Rule 25-22.032(5)(a), F.A.C., Customer Complaints.

DOCKET NO. 010204-TX - Initiation of show cause proceedings against Qwest Communications Corporation for apparent violation of Rule 25-22.032(5)(a), F.A.C., Customer Complaints.

DOCKET NO. 000778-TI - Initiation of show cause proceedings against Qwest Communications Corporation for apparent violation of Rules 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection; and 25-22.032(5)(a), F.A.C., Customer Complaints.

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remain open pending the remittance of the \$18,000 voluntary contribution. Upon staff's verification of receipt of the voluntary contribution, or failure to pay the contribution and subsequent cancellation of Certificate No. 3534, Docket No. 000778-TI should be administratively closed.

DECISION: The recommendations were approved.

Commissioners participating: Deason, Baez, Palecki

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18**	DOCKET NO. 001503-TP - Cost recovery and allocation issues for number pooling trials in Florida. Critical Date(s): None Commissioners Assigned: Full Commission Prehrg Officer BZ Staff: LEG: Christensen CMP: Casey, Ileri, Bulecza-Banks, Fadiora, Dowds, Simmons <u>ISSUE 1</u> : Should Ms. Peggy Arvanitas' Motion for Reconsideration of Re-issued Order No. PSC-01-0883-TP be granted? <u>RECOMMENDATION</u> : No. Staff recommends that the Commission deny Ms. Peggy Arvanitas' Motion for Reconsideration of Re-issued Order No. PSC-01-0883-TP. <u>ISSUE 2</u> : Should this docket be closed? <u>RECOMMENDATION</u> : No. This docket should remain open pending resolution of the cost recovery and allocation issues for the number pooling trials in Florida. <u>DECISION</u> : The recommendations were approved. Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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19 DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer PL

Staff: RGO: Harvey, Vinson, Hallenstein, Kelley
CMP: Simmons
LEG: Fudge, B. Keating

(Participation is limited to Commissioners and staff.)

ISSUE A: How should the results of KPMG's review of BellSouth performance measures be incorporated into this proceeding?

RECOMMENDATION: Staff recommends the Commission approve the stipulated position of the parties.

DECISION: The recommendation was approved.

ISSUE 1a: What are the appropriate service quality measures to be reported by BellSouth?

RECOMMENDATION: All 71 metrics proposed by BellSouth should be adopted as part of the Florida SQMs. Additionally, the following four metrics should be included in the Florida Service Quality Measures:

Percent Order Accuracy

Percent Completion/Attempts without a Notice or with less than 24 Hours Notice

Percent Completion of Timely Loop Modification

Percent Billing Errors Corrected in X Days

DECISION: The recommendation was approved with the understanding that staff will gather additional information on No. 11, Mean Jeopardy Interval for Maintenance and Trouble Handling, for the six-month review, and to include it in OSS to the extent possible, and with the clarification at conference concerning No. 5, Percent of Orders Canceled or Supplemented at the Request of the ILEC.

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19	<p>DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.</p> <p>(Continued from previous page)</p> <p><u>ISSUE 1b</u>: What are the appropriate business rules, exclusions, calculations, and levels of disaggregation and performance standards for each metric?</p> <p><u>RECOMMENDATION</u>: The Commission should adopt the BellSouth business rules, disaggregation and standards as proposed, with the exception of the changes reflected in Attachments 3, 4 and 5 of staff's August 2, 2001 memorandum.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 2a</u>: What are the appropriate Enforcement Measures to be reported by BellSouth for Tier 1 and Tier 2?</p> <p><u>RECOMMENDATION</u>: Staff believes that the metrics displayed in the "Staff Recommended" column in Attachment 6 should be included in the Florida Performance Assessment Plan as Tier 1 and Tier 2 Enforcement Metrics.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 2b</u>: What are the appropriate levels of disaggregation for compliance reporting?</p> <p><u>RECOMMENDATION</u>: The appropriate level of disaggregation for compliance reporting is specified in Attachment 7. This recommendation includes more detailed reporting of product and mechanization disaggregation than that proposed by BellSouth.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 3a</u>: What performance data and reports should be made available by BellSouth to ALECs?</p> <p><u>RECOMMENDATION</u>: Staff recommends BellSouth be required to post data and reports for all approved performance measures to its Interconnection Services Web site. The raw data that supports all reports derived from PMAP should also be provided on the Web site. Each report should contain the information specified in the BellSouth SQM "Report</p>

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Structure" section. Staff would like to encourage BellSouth to consider incorporating these measures into PMAP if at all possible. Additionally, this issue can be revisited during the six-month review period to determine if additional changes should be made.

DECISION: The recommendation was approved with the understanding that BellSouth will be encouraged to take action to incorporate measures into PMAP as soon as possible.

ISSUE 3b: Where, when, and in what format should BellSouth performance data and reports be made available?

RECOMMENDATION: Staff recommends that BellSouth be required to post data and reports for all approved performance measures via its Interconnection Services Web site. These reports should be posted by the 30th day after the month in which the reported activity occurs.

DECISION: The recommendation was approved.

ISSUE 4a: Does the Commission have the legal authority to order implementation of a self-executing remedy plan?

RECOMMENDATION: Staff believes the Commission has the authority under state and federal law to implement the measures, benchmarks, and analogs recommended by staff in this proceeding. Staff also believes that the Commission can implement the Tier 2 penalties, which are payments to the State.

As for the Tier 1 payments to ALECs, staff believes it is not necessary for the Commission to determine at this time whether or not it has authority to enforce payments to ALECs under this plan, or otherwise enforce the self-effectuating payment provisions, because it appears that BellSouth is willing to implement such a plan, as long as it is reasonable. A problem only arises if BellSouth contends that any plan approved by the Commission is unreasonable. Only then would the Commission really need to take a stand

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on this issue. Staff suggests that the Commission need not take a firm stance on this aspect of its authority at this time. If the reasonableness of ALEC payments under a plan approved by the Commission is contested, the Commission should then make its determination based on the state of the law at the time its authority is actually contested.

As for the Tier 2 penalties, staff believes that Section 364.285, Florida Statutes, allows the Commission to penalize BellSouth for failure to comply with Commission rules, statutes, or Orders. Staff also believes that should BellSouth report that it has missed benchmarks set forth in the approved plan, such failure could be deemed to constitute a prima facie showing that the company has willfully failed to comply with the Commission's performance measures, unless BellSouth provides an explanatory response not later than 21 days of reporting that it has failed to comply with any performance measure. The company's response should be in writing and should set forth specific allegations of fact and law explaining why the situation that has resulted in noncompliance was not a "willful" violation. The Commission can then make an initial determination as to whether BellSouth's noncompliance was, indeed, willful based upon the filings. Staff notes that this initial determination would, however, need to provide BellSouth with the opportunity to request a hearing. In some circumstances, it may be appropriate to set the matter for an expedited hearing without the intervening step of the Commission making an initial determination based upon BellSouth's response. Staff notes that this analysis is equally applicable to the penalties recommended in Issues 5, 6, 13, and 15.

ISSUE 4b: With BellSouth's consent?

RECOMMENDATION: Yes. Furthermore, staff notes that if BellSouth were to consent, the Tier 2 penalties could be implemented without the response period outlined in Issue 4(a).

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19	<p>DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.</p> <p>(Continued from previous page)</p> <p><u>ISSUE 4c</u>: Without BellSouth's consent?</p> <p><u>RECOMMENDATION</u>: Staff's recommendation on this issue is the same as set forth in Issue 4a.</p> <p><u>DECISION</u>: The recommendations were approved with a directive to staff to attempt to bring the parties together on the issue of a self-executing remedy plan.</p> <p>Commissioner Deason dissented.</p> <p><u>ISSUE 5a</u>: Should BellSouth be penalized when BellSouth fails to post the performance data and reports to the Web site by the due date?</p> <p><u>RECOMMENDATION</u>: Staff recommends that BellSouth be required to develop a Performance Assessment Plan that includes a self-executing voluntary enforcement mechanism if performance data and reports are not posted to the BellSouth Interconnection Web site by the due date.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 5b</u>: If so, how should the penalty amount be determined, and when should BellSouth be required to pay the penalty?</p> <p><u>RECOMMENDATION</u>: Staff recommends that BellSouth be required to develop a Performance Assessment Plan that includes a self-executing voluntary enforcement mechanism if performance data and reports are not posted to the BellSouth Interconnection Services Web site by the due date. Staff recommends that the penalty be no less than \$2,000 per day for the aggregate of any such delinquent reports. This penalty should be payable to the Florida Public Service Commission for deposit into the State General Revenue Fund. The payment should be received within fifteen calendar days of the actual publication date.</p> <p><u>DECISION</u>: The recommendation was approved.</p>

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19	<p>DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.</p> <p>(Continued from previous page)</p> <p><u>ISSUE 6a</u>: Should BellSouth be penalized if performance data and reports published on the BellSouth Web site are incomplete or inaccurate?</p> <p><u>RECOMMENDATION</u>: Staff recommends that BellSouth be required to develop a Performance Assessment Plan that includes a self-executing voluntary enforcement mechanism if performance data and reports are incomplete or inaccurate. Reports should be deemed to be incomplete if they do not present data for all of the required metrics. Reports should be deemed inaccurate if any of the required data is not calculated as specified in the approved Service Quality Measurement document.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 6b</u>: If so, how should the penalty amount be determined, and when should BellSouth be required to pay the penalty?</p> <p><u>RECOMMENDATION</u>: Staff recommends that BellSouth be required to develop a Performance Assessment Plan that includes a self-executing voluntary enforcement mechanism if performance data and reports are incomplete or inaccurate. Staff suggests that a penalty of no less than \$400 per day should be assessed for the aggregate of all such reports. This payment should be made to the Florida Public Service Commission, for deposit into the State General Revenue Fund, within 15 calendar days of the final publication date or the report revision date.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 7</u>: What review process, if any, should be instituted to consider revisions to the Performance Assessment Plan that is adopted by this Commission?</p> <p><u>RECOMMENDATION</u>: Staff recommends the Commission approve the stipulated position of the parties.</p>

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DECISION: The recommendation was approved.

ISSUE 8: When should the Performance Assessment Plan become effective?

RECOMMENDATION: Staff is recommending several changes to BellSouth's original performance assessment plan and to staff's strawman methodology. Staff believes that BellSouth is in the best position to modify its original plan to conform to the requirements of the Order in this docket. Therefore, staff recommends that BellSouth file a revised performance assessment plan consistent with staff's recommendation herein, within 45 days of the Final Order in this docket. Staff also requests that it be given administrative authority to approve the performance assessment plan and enforcement mechanism if it complies with the Final Order in this docket. Staff recommends that the Performance Assessment Plan become effective 90 days from the approval of the Performance Assessment Plan.

DECISION: The recommendation was approved with modifications and clarifications discussed at the conference.

ISSUE 9: What are the appropriate Enforcement Measurement Benchmarks and Analogs?

RECOMMENDATION: The appropriate Enforcement Measurement Benchmarks and Analogs are those specified in Attachment 7 under Issue 2b.

DECISION: The recommendation was approved.

ISSUE 10: Under what circumstances, if any, should BellSouth be required to perform a root cause analysis?

RECOMMENDATION: Staff does not believe root cause analysis should be implemented at this time as part of the Performance Assessment Plan.

DECISION: The recommendation was approved.

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ISSUES 11 & 12:

- a. What is the appropriate methodology that should be employed to determine if BellSouth is providing compliant performance to an individual ALEC? (Tier 1 and Tier 2)
- b. How should parity be defined for purposes of the Performance Assessment Plan? (Tier 1 and Tier 2)
- c. What is the appropriate structure? (Tier 1 and Tier 2)
 1. What is the appropriate statistical methodology?
 2. What is the appropriate parameter delta, if any?
 3. What is the appropriate remedy calculation?
 4. What is the appropriate benchmark table for small sample sizes?
 5. Should there be a floor on the balancing critical value?

RECOMMENDATION:

- a. Where the standard for a measure is a retail analog, compliance should be evaluated through a statistical process. Where the standard for a measure is a benchmark, compliance should be determined by a "bright-line" comparison, with an adjustment for small sample sizes.
- b. Where a measure has a retail analog, BellSouth should be required to provide access to a competing carrier in substantially the same time and manner as it provides to itself. For those functions that have no retail analog, BellSouth should be required to provide access that would offer an efficient carrier a meaningful opportunity to compete.
- c.1. Based on staff's recommendation in Issue 2, the Truncated Z statistic should be used to evaluate compliance for enforcement measures with retail analogs. For small samples (30 or less), a permutation test should be used to calculate Z-scores for mean measures. In addition, the transformed data method, also known as the arcsine square root transformation, should be used to calculate Z-scores for proportion and rate measures. For small samples, the hypergeometric test, also known as Fisher's Exact Test, should be used for proportion and rate measures.

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c.2. Z-Tel Witness Ford's delta function and recommended parameter values should be adopted.

c.3. BellSouth should be directed to develop a remedy plan which includes certain features. Remedies should be measure-based, rather than transaction-based, and should vary by type of measure and duration for Tier 1, and type of measure for Tier 2. The relative relationships between the various measure-based remedy payments should be consistent with the relative relationships between the various BellSouth proposed, transaction-based remedy payments. Tier 1 remedies should be set such that the average Month 1 remedy approximates the \$2,500 minimum payment recommended by the ALEC Coalition. Tier 2 remedies should be applicable after three consecutive months of violations, as proposed by BellSouth.

c.4. BellSouth's proposed benchmark table, which reflects a statistical approach based on a 95% confidence interval, should be adopted for small samples.

c.5. Based on staff's recommendation on Issues 11.c.2 and 12.c.2, there should not be a floor on the balancing critical value.

DECISION: The recommendation was approved.

ISSUE 13: When should BellSouth be required to make payments for Tier 1 and Tier 2 noncompliance, and what should be the method of payment?

RECOMMENDATION: BellSouth should be required to make payments for Tier 1 and Tier 2 noncompliance by check, by the 30th day following the due date of the performance measurement report, for the month in which the obligation arose.

DECISION: The recommendation was approved.

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19	<p>DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.</p> <p>(Continued from previous page)</p> <p><u>ISSUE 14a</u>: Should BellSouth be required to pay interest if BellSouth is late in paying an ALEC the required amount for Tier 1?</p> <p><u>RECOMMENDATION</u>: Staff recommends the Commission approve the stipulated position of the parties.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 14b</u>: If so, how should the interest be determined?</p> <p><u>RECOMMENDATION</u>: Staff recommends the Commission approve the stipulated position of the parties.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 15</u>: Should BellSouth be fined for late payment of penalties under Tier 2? If so, how?</p> <p><u>RECOMMENDATION</u>: BellSouth has voluntarily agreed to a payment to the Commission of \$1,000 per day, to be deposited in the State's General Revenue Fund, for each day that payment is late under the Tier 2 enforcement mechanism.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 16</u>: What is the appropriate process for handling Tier 1 disputes regarding penalties paid to an ALEC?</p> <p><u>RECOMMENDATION</u>: If an ALEC disputes the amount paid under Tier 1 enforcement mechanisms, the ALEC should submit a written claim to BellSouth within 60 days after the payment due date. BellSouth should investigate all claims and provide the ALEC with written findings within 30 days after receipt of the claim. If BellSouth determines the ALEC is owed additional amounts, BellSouth should pay the ALEC such additional amounts within 30 days after its findings along with six percent simple interest per annum. However, the ALEC should be responsible for all administrative costs associated with resolution of disputes that result in no actual payment. Administrative costs are all expenses that</p>

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are incidental in nature and reasonably incurred in the resolution of the disputed matter. Such costs would include, but not be limited to, postage, travel and lodging, communication expenses, and legal costs. If BellSouth and the ALEC are unable to reach a mutually agreeable settlement pertaining to the amount disputed, the Commission should settle the dispute. If Commission intervention is required, the dispute should be settled through mediation conducted by staff.

DECISION: The recommendation was approved.

ISSUE 17: What is the appropriate mechanism for ensuring that all penalties under Tier 1 and Tier 2 enforcement mechanisms have been paid and accounted for?

RECOMMENDATION: At the end of each calendar year, an independent accounting firm, mutually agreeable to the Commission and BellSouth, should certify that all penalties under Tier 1 and Tier 2 enforcement mechanisms were paid and accounted for in accordance with Generally Accepted Accounting Principles. Furthermore, staff contends that these audits should be performed based upon valid audited data of BellSouth's performance measures.

DECISION: The recommendation was approved.

ISSUE 18: What limitation of liability, if any, should be applicable to BellSouth?

RECOMMENDATION: Staff recommends that BellSouth not be held liable for performance measure failures resulting from circumstances beyond BellSouth's control. Staff recommends the following limitations of liability:

1) BellSouth will not be responsible for an ALEC's acts or omissions that cause performance measures to be missed or failed, including, but not limited to, accumulation and submission of orders at unreasonable quantities or times or failure to submit accurate orders or inquiries. BellSouth

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shall provide the ALEC with reasonable notice of such acts or omissions or provide the ALEC with any such supporting documentation.

2) BellSouth shall not be obligated for penalties under Tier 1 or Tier 2 Enforcement Mechanisms for noncompliance with a performance measure if such noncompliance was the result of an act or omission by the ALEC that was in bad faith.

3) BellSouth shall not be obligated for penalties under Tier 1 or Tier 2 Enforcement Mechanisms for noncompliance with a performance measurement if such noncompliance was the result of any of the following: a Force Majeure event; an act or omission by an ALEC that is contrary to any of its obligations under the Act, Commission rule, or state law; or an act or omission associated with third-party systems or equipment.

In addition to these specific limits of liability, staff notes that BellSouth may petition the Commission to consider a waiver based upon other circumstances.

DECISION: The recommendation was approved.

ISSUE 19a: What type of cap, if any, is appropriate for inclusion in the Performance Assessment Plan?

RECOMMENDATION: Staff recommends that the Commission's Performance Assessment Plan include an absolute annual cap, limiting total annual payments under Tier 1 and Tier 2 as specified in Issue 19b.

DECISION: The recommendation was approved.

ISSUE 19b: What is the appropriate dollar value of a cap if applicable?

RECOMMENDATION: Staff recommends the absolute annual cap for Tier 1 and Tier 2 payments be set at 39 percent of BellSouth's annual Florida net operating revenues, based upon the most recently reported ARMIS data.

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19	<p>DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.</p> <p>(Continued from previous page)</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 20</u>: What process, if any, should be used to determine whether penalties in excess of the cap should be required?</p> <p><u>RECOMMENDATION</u>: Staff does not recommend that penalties in excess of the annual absolute cap be considered by the Commission.</p> <p><u>DECISION</u>: The recommendation was approved with a modification made at the conference.</p> <p><u>ISSUE 21</u>: If there is a cap, for what period should the cap apply?</p> <p><u>RECOMMENDATION</u>: Staff recommends that the absolute cap on Tier 1 and Tier 2 payments apply on an annual basis from the effective date of the Performance Assessment Plan as determined in Issue 8.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 22</u>: Should the Performance Assessment Plan include a Market Penetration Adjustment, and, if so, how should such an adjustment be structured?</p> <p><u>RECOMMENDATION</u>: No. The Performance Assessment Plan should not include a Market Penetration Adjustment.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 23</u>: Should the Performance Assessment Plan include a Competitive Entry Volume Adjustment, and if so, how should such an adjustment be structured?</p> <p><u>RECOMMENDATION</u>: No. The Performance Assessment Plan should not include a Competitive Entry Volume Adjustment.</p> <p><u>DECISION</u>: The recommendation was approved.</p>

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19	<p>DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.</p> <p>(Continued from previous page)</p> <p><u>ISSUE 24a</u>: Should periodic third-party audits of Performance Assessment Plan data and reports be required?</p> <p><u>RECOMMENDATION</u>: Yes. Third-party audits of BellSouth's Performance Assessment Plan metrics and reports should be required. The metrics and reports should be audited at a state level unless the data is only reported and collected at a regional level.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 24b</u>: If so, how often should audits be conducted, and how should the audit scope be determined?</p> <p><u>RECOMMENDATION</u>: A comprehensive independent third-party audit of the Performance Assessment Plan data and reports for both BellSouth and the ALECs should be conducted for the current year data for each of the next five years. BellSouth, the ALECs, and the Commission should jointly determine the scope of the audit.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 25</u>: If periodic third-party audits are required, who should be required to pay the cost of the audits?</p> <p><u>RECOMMENDATION</u>: The cost of third-party audits should be borne by BellSouth.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 26</u>: Who should select the third-party auditor if a third-party audit is required?</p> <p><u>RECOMMENDATION</u>: In Issue 25, staff recommends for the cost of third-party audits to be borne by BellSouth. If the Commission chooses to approve this recommendation, the third-party auditor should be selected by BellSouth, and subject to confirmation by the Commission staff to ensure adherence to the general standards of the Institute of Internal Auditors.</p>

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19	<p>DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.</p> <p>(Continued from previous page)</p> <p><u>DECISION</u>: The recommendation was approved with the understanding that the ALECs will have a voice in selection of the auditor, with consultation by staff.</p> <p><u>ISSUE 27a</u>: Should an ALEC have the right to audit or request a review by BellSouth for one or more selected measures when it has reason to believe the data collected for a measure is flawed or the report criteria for the measure are not being adhered to?</p> <p><u>RECOMMENDATION</u>: No. BellSouth should not have to undergo an individual audit (i.e., mini-audit) whenever an ALEC has reason to believe the data collected for a performance measure is flawed or that the report criteria are not being followed.</p> <p><u>DECISION</u>: The recommendation was approved with the modification that Commission will revisit if necessary.</p> <p><u>ISSUE 27b</u>: If so, should the audit be performed by an independent third party?</p> <p><u>RECOMMENDATION</u>: In Issue 27a, staff recommends that BellSouth should not have to undergo individual audits (mini-audits) of performance measures at the request of the ALECs. However, if the Commission chooses to authorize these audits, an ALEC should be allowed to request in writing that a review be performed by BellSouth on specific measures and/or submeasures. If within 30 days of the request, the issue has not been resolved, the ALEC may, at its own expense, commence a focused audit by an independent third party upon providing BellSouth with five business days' advance notice.</p> <p><u>DECISION</u>: No vote.</p> <p><u>ISSUE 28</u>: Should BellSouth be required to retain performance measurement data and source data, and if so, for how long?</p>

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19	<p>DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.</p> <p>(Continued from previous page)</p> <p><u>RECOMMENDATION</u>: Yes. BellSouth should retain the performance measurement raw data files for a period of 18 months and further retain the monthly reports produced in PMAP for a period of three years.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 29</u>: What is the appropriate definition of "affiliate" for the purpose of the Performance Assessment Plan?</p> <p><u>RECOMMENDATION</u>: Staff recommends that the definition of "affiliate" contained in the Act be used for purposes of the Performance Assessment Plan. The Act states the following: The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10%.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p><u>ISSUE 30a</u>: Should BellSouth be required to provide "affiliate" data as it relates to the Performance Assessment Plan?</p> <p><u>RECOMMENDATION</u>: Yes. Staff recommends that only BellSouth ALEC affiliate data should be reported for purposes of monitoring under the Performance Assessment Plan. BellSouth should be required to provide monthly results for each metric for each BellSouth ALEC affiliate; however, only the Commission should be provided the number of transactions or observations for BellSouth ALEC affiliates. Staff further recommends that BellSouth be directed to inform the Commission of any changes regarding non-ALEC affiliates' use of its OSS databases, systems, and interfaces.</p> <p><u>DECISION</u>: The recommendation was approved.</p>

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19	DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.

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ISSUE 30b: If so, how should data related to BellSouth affiliates be handled for purposes of:

1. Measurement reporting?
2. Tier 1 compliance?
3. Tier 2 compliance?

RECOMMENDATION: The Commission should monitor the BellSouth ALEC affiliate performance metrics results provided each month until an assessment can be made of the data's relevance and significance. At this time, no use should be made of the affiliate data for determining Tier 1 or Tier 2 compliance.

DECISION: The recommendation was approved.

ISSUE 31: Should this docket be closed?

RECOMMENDATION: No. Staff recommends this docket to remain open pending administrative approval by staff of the final Performance Assessment Plan. BellSouth should prepare and submit a plan for implementing the requirements of the Final Order in this docket within 45 days of its issuance. This document, entitled "Florida Performance Assessment Plan," should document BellSouth's proposed implementation of the plan and should include, but not necessarily be limited to, detailed descriptions of the following key elements:

1. Administration Plan
2. Service Quality Measures
3. Tier 1 and Tier 2 Enforcement Measures
4. Analogs and Benchmarks
5. Calculation Procedures
6. Statistical Methodology

This docket should also remain open for the periodic reviews of the Performance Assessment Plan to begin six months after the Commission's order, as recommended in Issue 7.

DECISION: The recommendation was approved with the understanding/clarification that the decision here will agree with the

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19 DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.

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decision in Issue 8. Further, staff should make any changes necessary to agree with the decisions made in other issues.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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CASE

20 DOCKET NO. 990696-WS - Application for original certificates to operate a water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation.
DOCKET NO. 992040-WS - Application for certificates to operate a water and wastewater utility in Duval and St. Johns Counties by Intercoastal Utilities, Inc. (Deferred from the August 7, 2001 Commission Conference.)

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg Officer DS

Staff: RGO: Daniel, Messer, Johnson, Redemann, Clapp,
Rieger
LEG: Cibula, Espinoza

(Participation is limited to Commissioners and staff.)

ISSUE A: Has NUC factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for original certificates?

RECOMMENDATION: Yes. NUC has factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for original certificates.

ISSUE 1: Is there a need for service in the territory proposed by NUC's application, and if so, when will service be required?

RECOMMENDATION: Yes. There is a need for water, wastewater, and reuse service for the Nocatee development. Service will be required in the fourth quarter of 2002.

ISSUE 2: Does NUC have the financial ability to serve the requested territory?

RECOMMENDATION: Yes, NUC and JEA have the financial ability to serve the requested territory.

ISSUE 3: Does NUC have the technical ability to serve the requested territory?

RECOMMENDATION: NUC has the technical ability to provide water, wastewater, and reuse service to the requested

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territory, through its Agreement for Wholesale Utilities, Operations, Management and Maintenance with JEA.

ISSUE 4: Does NUC have the plant capacity to serve the requested territory?

RECOMMENDATION: NUC has the capacity to provide water and wastewater, reuse service to the proposed Nocatee Development through its bulk water, wastewater and reuse service agreement with JEA. The utility should file an executed and recorded copy of the deed for the land on which the reuse storage and pumping facilities will be located, within 30 days of the issuance date of the order granting the certificates, as required by Rule 25-30.033(1)(j), Florida Administrative Code.

ISSUE 5: What is the appropriate return on equity for NUC?

RECOMMENDATION: NUC's return on equity should be based on the leverage graph formula contained in Order No. PSC-00-1162-PAA-WS, issued June 26, 2000, in Docket No. 000006-WS. Using this leverage graph formula, the appropriate return on equity for NUC is 9.62%.

ISSUE 6: What are the appropriate water, wastewater, and reuse rates and charges for NUC?

RECOMMENDATION: If NUC is granted original water and wastewater certificates, the rates and charges detailed in the analysis portion of staff's July 26, 2001 memorandum should be approved. The utility should be required to file tariffs which reflect the recommended rates and charges. NUC should be required to continue to charge these rates and charges until authorized to change by the Commission. The tariff should be effective for services rendered or connections made on or after the stamped approval date of the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code.

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DOCKET NO. 992040-WS - Application for certificates to operate a water and wastewater utility in Duval and St. Johns Counties by Intercoastal Utilities, Inc. (Deferred from the August 7, 2001 Commission Conference.)

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ISSUE 7: What are the appropriate service availability charges for NUC?

RECOMMENDATION: The service availability charges and policy set forth within the staff analysis are appropriate and should be approved. NUC and JEA should be put on notice that if JEA's plant capacity charge changes, NUC may not pass any change on to the customers without prior Commission approval. The charges should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

ISSUE 7A: What is the appropriate AFUDC rate for NUC?

RECOMMENDATION: If NUC is granted a certificate, an AFUDC rate of 9.77% should be approved and a discounted monthly rate of .813802% should be applied to qualified construction projects beginning on the date the certificate of authorization is issued.

ISSUE 8: What is the Nocatee landowner's service preference and what weight should the Commission give the preference?

RECOMMENDATION: While the Nocatee landowner's service preference is to receive service from NUC, the Commission should not give the landowner's service preference any particular weight.

ISSUE 9: Will the certification of NUC result in the creation of a utility which will be in competition with, or duplication of, any other system?

RECOMMENDATION: No. The certification of NUC will not result in the creation of a system which will be in competition with or a duplication of any other system.

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ISSUE 10: Should the Commission deny NUC's application based on the portion of Section 367.045(5)(a), Florida Statutes, which states that the Commission may deny an application for a certificate of authorization for any new Class C system, as defined by Commission rule, if the public can be adequately served by modifying or extending a current wastewater system?

RECOMMENDATION: No. The Commission should find that the portion of Section 367.045(5)(a), Florida Statutes, pertaining to the denial of a certificate for a new Class C wastewater system is not applicable because NUC's proposed wastewater system will not be a Class C system, and because Intercoastal has not proposed to modify or extend its current wastewater system.

ISSUE 11: Is it in the public interest for NUC to be granted a water certificate and wastewater certificate for the territory proposed in its application?

RECOMMENDATION: Yes, it is in the public interest to grant NUC its request for water and wastewater certificates. Nocatee should be granted Certificates Nos. 617-W and 531-S for water and wastewater to serve the territory described in Attachment A of staff's July 26, 2001 memorandum.

ISSUE 12: Is Intercoastal barred by the doctrines of res judicata and/or collateral estoppel in this proceeding from applying for the same service territory in St. Johns County which it was previously denied by St. Johns County?

RECOMMENDATION: No. The Commission should find that neither the doctrine of res judicata nor collateral estoppel apply in this proceeding to bar Intercoastal from applying for the same service territory in St. Johns County to which it was previously denied by St. Johns County.

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ISSUE B: Has Intercoastal factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for original certificates?

RECOMMENDATION: Yes. Intercoastal has factually established that its proposed water and wastewater systems satisfy the requirements of Section 367.171(7), Florida Statutes, sufficient to invoke Commission jurisdiction to grant its application for certificates.

ISSUE 13: Is there a need for service in the territory proposed by Intercoastal's application, and if so, when will service be required?

RECOMMENDATION: Yes. In addition to Intercoastal's existing area, there is a need for service in the fourth quarter of 2002 for the Nocatee development. There is no need for service for other areas included in Intercoastal's application.

ISSUE 14: Does Intercoastal have the financial ability to serve the requested territory?

RECOMMENDATION: Yes. Intercoastal has the financial ability to serve the territory requested in its application.

ISSUE 15: Does Intercoastal have the technical ability to serve the requested territory?

RECOMMENDATION: Yes, Intercoastal has the technical ability necessary to serve the requested territory.

ISSUE 16: Does Intercoastal have the plant capacity to serve the requested territory?

RECOMMENDATION: No. Intercoastal does not currently have sufficient water, wastewater, or reuse capacity to serve the requested territory. Although Intercoastal has developed a Conceptual Master Plan to serve the Nocatee development, the

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utility's ability to provide capacity on a timely basis is questionable.

ISSUE 17: What are the appropriate water, wastewater, and reuse rates and charges for Intercoastal?

RECOMMENDATION: If the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted the certificates, Intercoastal's existing water and wastewater rates and charges should be approved for its existing customers and the Nocatee development. Staff further recommends that the utility be required to retain these rates and charges until authorized to change by the Commission. Intercoastal has filed tariffs for water and wastewater which reflect the existing rates and charges. Intercoastal should also be required to file a reuse tariff reflecting a zero rate for the Sawgrass Country Club until 2013. The tariffs should be effective for services provided on or after the stamped approval date on the tariff sheets, in accordance with Rule 25-30.475, Florida Administrative Code. The utility should return to the Commission for a determination regarding reuse rates prior to providing that service to any other customers.

ISSUE 18: What are the appropriate service availability charges for Intercoastal?

RECOMMENDATION: If the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted the certificates, Intercoastal's existing water and wastewater service availability policy and charges should be approved. Staff further recommends that the utility be required to retain these charges until authorized to change by the Commission. Intercoastal has filed tariff sheets for water and wastewater which reflect the current charges. The tariff should be effective for services provided on or after

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the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code.

ISSUE 18A: Should Intercoastal be authorized an AFUDC rate by the Commission?

RECOMMENDATION: Yes. If the Commission does not approve staff's recommendation in Issue 11 and Intercoastal is granted certificates, an annual AFUDC rate of 7.09% should be approved with a discounted monthly rate of 0.590641%. The approved rate should be applicable for eligible construction projects beginning on the date the certificate of authorization is issued.

ISSUE 19: Do Intercoastal's existing customers support the proposed extension of its service territory and what weight should the Commission give to their preference?

RECOMMENDATION: The Sawgrass Association, Inc., which represents a portion of Intercoastal's customers, does not support Intercoastal's proposed extension of its service territory. Although customers cannot choose their utility, the Commission may consider the concerns of Intercoastal's current customers that are set forth in the record which pertain to the utility's quality of service. Quality of service of a utility is directly linked to the technical ability of that utility. Therefore, the Commission should consider Intercoastal's technical ability in conjunction with this issue. Whether Intercoastal has the technical ability to serve the requested territory is addressed in Issue 15.

ISSUE 20: Is it in the public interest for Intercoastal to be granted a water certificate and a wastewater certificate for the territory proposed in its application?

RECOMMENDATION: No. It is not in the public interest for Intercoastal to be granted water and wastewater certificates for the territory proposed in its application.

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ISSUE 21: Can the Commission grant Intercoastal or NUC a certificate which will be in competition with, or a duplication of, any other water and wastewater system?

RECOMMENDATION: No. The Commission may not grant a certificate of authorization for a proposed system or an amendment to a certificate of authorization for the extension of an existing system which will be in competition with, or duplication of any other system or portion of a system. However, granting either Intercoastal or NUC an original certificate will not result in a system which will be in competition with or a duplication of another water or wastewater system.

ISSUE 22: What are the implications for this case of the decisions in the Alafaya Utilities and Lake Utility Services cases?

RECOMMENDATION: Neither the Alafaya Utilities case nor the Lake Utility Services case prohibits the Commission from granting either NUC or Intercoastal a certificate to serve the Nocatee development.

ISSUE 23: What would be the ramifications of denying both pending applications?

RECOMMENDATION: Potential ramifications as identified in the staff analysis are speculative and not based on the evidence of record in this case. While it is in the Commission's discretion to deny both applications, to do so, the Commission would need to find, based on the record evidence, that it is not in the public interest to grant either application. Staff recommends that there is no such evidence in the record.

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ISSUE 24: In light of the agreement between JEA and NUC for operations, management and maintenance service, is NUC exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes?

RECOMMENDATION: The Commission should find that the agreement between JEA and NUC for operations, management and maintenance service, does not render NUC exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes.

ISSUE 25: Should the Commission defer a decision in these cases until after the conclusion of a pending administrative challenge to the Department of Community Affairs' decision that found the St. Johns County Comprehensive Plan Amendments for Nocatee in compliance with Chapter 163, Florida Statutes?

RECOMMENDATION: No. The Commission should not defer its decision in this matter until after the conclusion of a pending administrative challenge to the Department of Community Affairs' decision.

ISSUE 26: Should these dockets be closed?

RECOMMENDATION: No. These dockets should remain open for an additional thirty days from the date of the Order so that Nocatee Utility Corporation may file proof of ownership or continued use of the land upon which its reuse facilities will be located as discussed in Issue 4. Staff should be given administrative authority to close these dockets once staff has verified that this information has been filed.

DECISION: This item was deferred.

<u>ITEM NO.</u>	<u>CASE</u>
21**	<p>DOCKET NO. 001820-SU - Application for transfer of wastewater utility facility in Lee County from Cross Creek of Fort Myers Community Association, Inc., a not-for-profit Florida corporation, to Utilities, Inc. of Eagle Ridge, holder of Certificate No. 369-S, and for amendment of Certificate No. 369-S to include additional territory.</p> <p>Critical Date(s): None</p> <p>Commissioners Assigned: Full Commission Prehrg DS</p> <p>Staff: RGO: Brady, Redemann LEG: Jaeger</p> <p><u>ISSUE 1</u>: Should the transfer of the wastewater system from Cross Creek of Fort Myers Community Association, Inc. to Utilities, Inc. of Eagle Ridge be approved? <u>RECOMMENDATION</u>: Yes. The transfer should be approved. The effective date of the transfer should be November 28, 2000. Certificate No. 369-S should be amended to include the territory described in Attachment A of staff's memorandum dated August 2, 2001.</p>
PAA	<p><u>ISSUE 2</u>: What is the rate base for Cross Creek's wastewater system at the time of the transfer? <u>RECOMMENDATION</u>: The rate base is \$750,000 as of December 31, 2000.</p>
PAA	<p><u>ISSUE 3</u>: Should an acquisition adjustment be approved? <u>RECOMMENDATION</u>: No. UIER did not request an acquisition adjustment and none should be approved.</p> <p><u>ISSUE 4</u>: What rates and charges should be approved for Cross Creek? <u>RECOMMENDATION</u>: A monthly general service wastewater rate of \$12,172 should be approved for service to Cross Creek. Zero reclaimed water rates should be approved for service to the Cross Creek Golf Club and the Eagle Ridge Golf and Tennis Club, Ltd. No service availability charges for Cross Creek should be approved at this time. The tariff sheets reflecting these rates should be effective for services rendered or connections made on or after the stamped approval date. The utility should be required to return to</p>

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DOCKET NO. 001820-SU - Application for transfer of wastewater utility facility in Lee County from Cross Creek of Fort Myers Community Association, Inc., a not-for-profit Florida corporation, to Utilities, Inc. of Eagle Ridge, holder of Certificate No. 369-S, and for amendment of Certificate No. 369-S to include additional territory.

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the Commission for a determination regarding the rates for reclaimed water service prior to providing reclaimed water service to any other customers.

ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes. If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period a Consummating Order should be issued and the docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

Commissioner Deason dissented on Issue 2.

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<u>ITEM NO.</u>	<u>CASE</u>
22**PAA	<p>DOCKET NO. 010001-EI - Fuel and purchased power cost recovery clause and generating performance incentive factor.</p> <p>Critical Date(s): None</p> <p>Commissioners Assigned: Full Commission Prehrg Officer JB</p> <p>Staff: SER: Bohrmann LEG: C. Keating</p> <p><u>ISSUE 1</u>: Should the Commission change the length of the recovery period for its fuel and purchased power cost recovery clause? <u>RECOMMENDATION</u>: No. In Order No. PSC-98-0691-FOF-PU, the Commission cited five objectives for making the change from a semi-annual, seasonal recovery period to an annual, calendar-year recovery period. Staff believes that an annual, calendar-year recovery period can meet the Commission's objectives as stated in Order No. PSC-98-0691-FOF-PU better than any alternative recovery period.</p> <p><u>DECISION</u>: The recommendation was approved with the understanding that the order from this decision will be issued this week so that parties can file testimony at the time fuel adjustment testimony is due, if there is a protest to this PAA order.</p> <p><u>ISSUE 2</u>: Should this docket be closed? <u>RECOMMENDATION</u>: No.</p> <p><u>DECISION</u>: The recommendation was approved.</p> <p>Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki</p>

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23**PAA

DOCKET NO. 010561-EI - Petition by Florida Power & Light Company for approval of residential on-call research project and for waiver of Rule 25-6.0438(4)(c), F.A.C., or for issuance of order stating rule does not apply.

Critical Date(s): 90-day deadline for decision on rule waiver request waived by petitioner

Commissioners Assigned: Full Commission
Prehrg Officer ADM

Staff: SER: Futrell, Ballinger
ECR: Springer
LEG: Elias

ISSUE 1: Should Florida Power & Light Company's Petition for a Waiver of Rule 25-6.0438(4)(c), Florida Administrative Code, be granted?

RECOMMENDATION: No. FPL has not demonstrated that the purpose of the underlying statute will be met, nor has it shown that the application of Rule 25-6.0438(4)(c), Florida Administrative Code, would create a substantial hardship to FPL and its customers.

DECISION: On its own motion, the Commission determined that no vote was necessary on this issue and that the issue is moot.

ISSUE 2: Should Florida Power & Light's Residential On Call Research Project be approved, including approval for cost recovery?

PRIMARY RECOMMENDATION: If Staff's recommendation on Issue 1 is approved, the tariff should be denied on the basis that it is inconsistent with Rule 25-6.0438(4)(c), Florida Administrative Code. However, if Staff's recommendation on Issue 1 is denied, staff recommends that the Residential On Call Research Project be approved. The research could provide FPL with further justification to lower On Call program expenses recovered from all customers. Research project expenses, to be recovered through the Energy Conservation Cost Recovery Clause, should be limited to \$247,500. A final report detailing the findings of the

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DOCKET NO. 010561-EI - Petition by Florida Power & Light Company for approval of residential on-call research project and for waiver of Rule 25-6.0438(4)(c), F.A.C., or for issuance of order stating rule does not apply.

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research project should be filed with the Commission by March 31, 2003.

ALTERNATE RECOMMENDATION: If Staff's recommendation on Issue 1 is approved, the tariff should be denied on the basis that it is inconsistent with Rule 25-6.0438(4)(c), Florida Administrative Code. However, if Staff's recommendation on Issue 1 is denied, staff recommends that the Residential On Call Research Project be denied. The current On Call program is cost-effective with a RIM value of 1.25 which indicates no immediate need to reduce credits to participants. The initial survey results indicate a 10% drop off rate. This equates to a decrease in reserve margin of approximately 0.5%, from 21.7% to 21.2% in the summer of 2002. In addition, the proposed pilot program is biased because participants will receive a refund of all reduced credits, including interest.

DECISION: The primary recommendation was denied. The alternate recommendation was approved as modified, with the understanding that no vote was taken on Issue 1.

Commissioner Baez dissented.

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23**PAA

DOCKET NO. 010561-EI - Petition by Florida Power & Light Company for approval of residential on-call research project and for waiver of Rule 25-6.0438(4)(c), F.A.C., or for issuance of order stating rule does not apply.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the proposed agency actions 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 recommendation was modified consistent with Issues 1 and 2.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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CASE

24**PAA

DOCKET NO. 010562-EI - Petition for approval of Consumptive Use-Shield Water Substitution Project as new program for cost recovery through Environmental Cost Recovery Clause by Gulf Power Company.

Critical Date(s): None

Commissioners Assigned: Full Commission
Prehrg DS

Staff: SER: Breman, D. Lee
ECR: Brinkley, E. Draper, D. Draper, Gardner, P. Lee
LEG: Stern

ISSUE 1: Should the Commission approve Gulf's petition for the Consumptive Use-Shield Water Substitution Project as a new program for cost recovery through the ECRC?

RECOMMENDATION: Yes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Deason, Jaber, Baez, Palecki

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24A Docket No. 991220-TP - Petition by Global NAPS, Inc. for arbitration of interconnection rates, terms and conditions and related relief of proposed agreement with BellSouth Telecommunications, Inc.

Critical Date(s): None

Commissioners Assigned: Deason, Jaber, Jacobs
Prehearing Jacobs

Staff: CMP: Hinton
 LEG: B. Keating

(Participation is limited to Commissioners and staff.)

ISSUE 1: Should the Commission grant the parties' Joint Motion For Extension of Time?

RECOMMENDATION: Yes. Allowing the parties an additional day to file their agreement will not prejudice any party to this proceeding.

ISSUE 2: Should the Commission approve the interconnection agreement between BellSouth and Global NAPs filed on August 2, 2001?

RECOMMENDATION: Yes, the Commission should approve the interconnection agreement between BellSouth and Global NAPs filed on August 2, 2001.

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: Jacobs, Deason, Jaber

ITEM NO.

CASE

25

DOCKET NO. 000649-TP - Petition by MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.

Critical Date(s): None

Commissioners Assigned: JC, JB, BZ
Prehrg Officer JB

Staff: LEG: Christensen
CMP: Fulwood, Barrett, Bloom, Audu, Hinton

(Participation is limited to Commissioners and staff.)

ISSUE 1: Should WorldCom's Motion for Reconsideration be granted?

RECOMMENDATION: No. Staff recommends that WorldCom failed to identify a mistake of fact or law made by the Commission in rendering its decision. In addition, staff recommends that to the extent WorldCom's Motion for Reconsideration seeks clarification of Order No. PSC-01-0824-FOF-TP regarding Issue 18, that request for clarification should be denied. Therefore, staff recommends that WorldCom's Motion for Reconsideration be denied.

ISSUE 2: Should WorldCom's Motion for Extension of Time to file the final agreement be granted?

RECOMMENDATION: Yes. Staff recommends that the Joint Motion for Extension of Time filed April 27, 2001, and the Motion for Extension of Time filed May 21, 2001, be granted. Staff recommends that the parties be required to file the final interconnection agreement 14 days from the issuance date of the Order resolving the disputed contract language and WorldCom's Motion for Reconsideration.

ISSUE 3: In accordance with Order No. PSC-01-0824-FOF-TP, should the Commission approve WorldCom's or BellSouth's proposed agreement language as it applies to the routing of access traffic, Issue 42?

RECOMMENDATION: The Commission should adopt the language proposed by BellSouth regarding the routing of access traffic. However, staff notes that the exclusion of

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BellSouth's name in Attachment 4, §2.3.8 of the agreement, does not imply that BellSouth may commingle local and access traffic.

ISSUE 4: In accordance with Order No. PSC-01-0824-FOF-TP, should the Commission approve WorldCom's or BellSouth's proposed agreement language as it applies to Issue 36 (Attachment 5, §2.1.4)?

RECOMMENDATION: The Commission should adopt language proposed by BellSouth for the purposes of determining demarcation points in the agreement.

ISSUE 5: In accordance with Order No. PSC-01-0824-FOF-TP, should the Commission approve WorldCom's or BellSouth's proposed agreement language regarding billing records, Issue 95?

RECOMMENDATION: The Commission should adopt the language proposed by BellSouth regarding billing records.

ISSUE 6: Should the Commission incorporate language in the final interconnection agreement for the disputed language identified in BellSouth's Statement Regarding Disputed Issues that were not considered in the arbitration proceeding?

RECOMMENDATION: No. The Commission should not incorporate language in the arbitration agreement for the disputed language identified in BellSouth's Statement Regarding Disputed Issues that were not considered in the arbitration proceeding.

ISSUE 7: Should this docket be closed?

RECOMMENDATION: No. Should the Commission approve staff's recommendations in the preceding Issues, this docket should remain opening in order that the parties may file a final interconnection agreement. If the Commission approves staff's recommendation on Issue 2, then the parties should be required to file this final interconnection agreement

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within 14 days of the issuance date of the Commission's
order.

DECISION: The recommendations were approved.

Commissioners participating: Jacobs, Jaber, Baez