

MINUTES OF AUGUST 30, 2005

COMMISSION CONFERENCE

COMMENCED: 9:35 a.m.

ADJOURNED: 10:20 a.m.

COMMISSIONERS PARTICIPATING: Chairman Baez
Commissioner Deason
Commissioner Bradley
Commissioner Edgar

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

1 Approval of Minutes

July 19, 2005 Regular Commission Conference

August 2, 2005 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

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ITEM NO. CASE

2**Consent Agenda

PAA A) Applications for certificates to provide competitive local exchange telecommunications service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
050402-TX	Fonix Telecom, Inc.
050504-TX	Spirited Technologies, Inc. d/b/a Spirited Broadband
050516-TX	FiberLight, LLC
050454-TX	InterLink Global, Corp.
050519-TX	Maintrust Telephone Companies, Corp.

PAA B) Application for certificate to provide pay telephone service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
050477-TC	Bealls Communications Group, LLC

PAA C) Requests for cancellation of competitive local exchange telecommunications certificates.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
050468-TX	Southern ReConnect, Inc.	7/8/2005
050506-TX	Kernan Associates, Ltd. d/b/a St. Johns Estates	12/31/2004
050520-TP	Global Metro Networks Florida, LLC	8/1/2005
050522-TX	VIVO-FLA, LLC	8/2/2005

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<u>ITEM NO.</u>	<u>CASE</u>
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2**	Consent Agenda
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PAA	D) Request for approval of transfer and name change on a shared tenant service certificate.
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<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
050361-TS	JABS Real Estate Management Corp. d/b/a One Park Place Executive Suites
	Heathmar, Inc. d/b/a One Park Place Executive Suites

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

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

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ITEM NO.

CASE

3**Docket No. 040451-TP - Petition by Citizens of Florida to initiate rulemaking that would require local exchange telecommunications companies to provide Lifeline service within 30 days of certification.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: GCL: Cibula

CMP: Bulecza-Banks, Casey, Maduro, Mann, Williams

ECR: Hewitt

Issue 1: Should this docket be closed?

Recommendation: Yes. This docket should be closed.

DECISION: The recommendation was approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

4**Docket No. 050531-EU - Petition to initiate rulemaking to adopt Rule 25-6.0186, F.A.C., Bulk Power System Reliability Standards, by Florida Reliability Coordinating Council, Inc.

Critical Date(s): 9/3/05 (30-day statutory deadline)

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: GCL: Moore, Brown

ECR: Harlow

Issue 1: Should the Commission grant the Florida Reliability Coordinating Council, Inc.'s (FRCC) Petition to Initiate Rulemaking to adopt the FRCC's proposed rule governing bulk power system reliability standards for electric utilities in Florida?

Recommendation: The Commission should grant the petition in part. A rule development workshop should be held before the Commission decides whether to propose the proposed rule in the form requested by the FRCC.

Issue 2: Should this docket be closed?

Recommendation: No.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

5**PAADocket No. 050268-TI - Investigation and determination of appropriate method for refunding long distance monthly recurring charge overcharges by Sprint Communications Company, Limited Partnership d/b/a Sprint.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: CMP: Watts
 ECR: Lester
 GCL: Teitzman

Issue 1: Should the Commission accept Sprint Communications Company, Limited Partnership's proposal to issue a refund of \$72,937.41, plus interest of \$748.00, for a total of \$73,685.41, to the affected customers for erroneously billing a monthly recurring long distance plan charge to customers whose long distance services were no longer provided by Sprint Communications Company, Limited Partnership from December 2004 through June 2005; require the company to submit a report within 30 days of the issuance of the Consummating Order to the Commission stating, (1) how much was refunded to its customers, (2) the number of customers, and (3) the amount of money due to those customers that cannot be located; and require Sprint Communications Company, Limited Partnership to remit any amounts due to customers that cannot be located to the Commission for deposit in the State of Florida General Revenue Fund within 30 days of the issuance of the Consummating Order?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order. The company should submit its final report to the Commission and remit payment of any unrefundable monies to the Commission for deposit in the State of Florida General Revenue Fund within 30 days of the issuance of the Consummating Order. Upon receipt of the final report and unrefundable monies, this docket should be closed administratively.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

6**Docket No. 050195-TL - Approval of refund of directory assistance overcharges by GTC, Inc. d/b/a GT Com.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Lewis
 ECR: Lester
 GCL: Scott

Issue 1: Should the Commission approve GT Com's proposed refund of \$44,644.05 (\$43,020.00 plus \$1,624.05 interest) for direct dialed Directory Assistance and refund of \$2,016.05 (\$1,943.05 plus \$72.55 interest) for Operator Assisted Directory Assistance in accordance with Rule 25-4.114 (3), Florida Administrative Code, in overcharges through direct credits to the accounts of the affected subscribers?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of a Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of the Order. The company should submit a report within 60 days of the issuance of the Consummating Order to the Commission stating, (1) how much money was refunded to its customers, (2) the total number of customers that were refunded, and (3) the amount of money (including interest) due to those customers that cannot be located; and remit any amounts due to customers that cannot be located to the Commission for deposit in the State of Florida General Revenue Fund. Upon receipt of GT Com's report and staff's review, this docket should be closed administratively.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

7**PAADocket No. 050379-TP - Compliance investigation of T-NETIX Telecommunications Services, Inc., PATS Certificate No. 5102; T-NETIX Telecommunications Services, Inc., IXC Registration No. TJ804; and T-Netix, Inc., IXC Registration No. TI158, for apparent violation of Rule 25-22.032(6)(b), F.A.C., Customer Complaints; Section 364.02, F.S., Definitions; and Section 364.604, F.S., Billing Practices.

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Edgar

Staff: CMP: Curry
GCL: Scott
RCA: Stokes

Issue 1: Should the Commission accept T-Netix's proposed settlement offer of \$15,000 to resolve the apparent violations of Rule 25-22.032(6)(b), Florida Administrative Code, Customer Complaints, Section 364.02, Florida Statutes, Definitions, and Section 364.604, Florida Statutes, Billing Practices?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. T-Netix's \$15,000 voluntary contribution should be received by the Commission no later than October 27, 2005. The payment should be made payable to the Florida Public Service Commission and should identify the docket number and the company's name. Upon receipt of the payment, the Commission shall forward the contribution to the Division of Financial Services to be deposited into the General Revenue Fund. If T-Netix fails to submit the contribution by October 27, 2005, the company's Certificate No. 5102 and tariffs should be cancelled and Registration Nos. TI158 and TJ804 should be removed from the register. If the company's certificate and tariffs are cancelled and its registration numbers are removed from the register in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing telecommunications services in Florida. This docket should be closed administratively upon either receipt of the \$15,000 voluntary contribution or upon the cancellation of the company's certificate and tariffs and the removal of the company's registration numbers from the register.

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7**PAA

Docket No. 050379-TP - Compliance investigation of T-NETIX Telecommunications Services, Inc., PATS Certificate No. 5102; T-NETIX Telecommunications Services, Inc., IXC Registration No. TJ804; and T-Netix, Inc., IXC Registration No. TI158, for apparent violation of Rule 25-22.032(6)(b), F.A.C., Customer Complaints; Section 364.02, F.S., Definitions; and Section 364.604, F.S., Billing Practices.

(Continued from previous page)

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

8**PAADocket No. 050490-TL - Petition for approval of Service Guarantee Program, with relief from requirements of Rules 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(a) and (c), and 25-4.110(6), F.A.C., by Sprint-Florida, Incorporated.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Buys, Bulecza-Banks

GCL: Scott

Issue 1: Should the Commission approve Sprint-Florida Incorporated's Petition for approval of its Service Guarantee Program with relief from the requirements of Rules 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(a) and (c), and 25-4.110(6), Florida Administrative Code?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Order issued from this recommendation become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

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ITEM NO.

CASE

9**Docket No. 050059-TL - Petition to reform unbundled network element (UNE) cost of capital and depreciation inputs to comply with Federal Communications Commission's guidance in Triennial Review Order, by Verizon Florida Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: CMP: Dowds, Lee, Mailhot, Salak

ECR: Maurey

GCL: Susac

Issue 1: Should the Commission acknowledge Verizon's Notice of Voluntary Dismissal?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. The docket should be closed upon acknowledging Verizon's Voluntary Dismissal.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO. CASE

10Docket No. 041291-EI - Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez

Staff: ECR: Slemkewicz

GCL: C. Keating

Issue 1: What is the appropriate accounting treatment for the \$91,900,000 of storm damage restoration costs that were removed from the amount of FPL's storm damage surcharge?

Recommendation: The appropriate accounting treatment for the \$91,900,000 reduction is as follows:

<u>Entry No.</u>	<u>Account No.</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
1	228.1	Storm Damage Reserve	---	\$91,900,000
2	101	Plant in Service (CIAC)	\$21,700,000	---
3	108	Accumulated Depreciation (Retired Plant)	\$36,300,000	---
4	108	Accumulated Depreciation (Cost of Removal)	\$12,200,000	---
5	228.1	Storm Damage Reserve (Not Recoverable in Surcharge)	\$21,700,000	---
TOTALS			\$91,900,000	\$91,900,000

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed if no party files a timely appeal of the Commission's final order.

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ITEM NO.

CASE

10 Docket No. 041291-EI - Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company.

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DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Bradley, Edgar

ITEM NO.

CASE

11 Docket No. 040130-TP - Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc. (Deferred from August 2, 2005 conference.)

Critical Date(s): None

Commissioners Assigned: Bradley, Edgar
Prehearing Officer: Bradley

Staff: CMP: Marsh, Barrett, Hallenstein, K. Kennedy, Moss, Pruitt, Rich, Vickery
GCL: Susac, Scott

Issue 4: What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?

Recommendation: Staff recommends that a party's liability should be limited to the issuance of bill credits in all circumstances other than gross negligence or willful misconduct.

Issue 5: If the CLEC does not have in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the resulting risks?

Recommendation: Staff recommends that CLECs have the ability to limit their liability through their customer agreements and/or tariffs. If a CLEC does not limit its liability through its customer agreements and/or tariffs, then the CLEC should bear the resulting risk.

Issue 6: How should indirect, incidental or consequential damages be defined for purposes of the Agreement?

Recommendation: Staff recommends that the Commission should not define indirect, incidental or consequential damages for purposes of the Agreement. The decision of whether a particular type of damage is indirect, incidental or consequential should be made, consistent with applicable law, if and when a specific damage claim is presented to the Commission or a court.

Issue 7: What should the indemnification obligations of the parties be under this Agreement?

Recommendation: A Party should be indemnified, defended and held harmless against claims, loss or damage to the extent reasonably arising from or in connection with the other Party's gross negligence or willful misconduct.

Issue 9: Under what circumstances should a party be allowed to take a dispute concerning the interconnection agreement to a court of law for resolution first?

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Docket No. 040130-TP - Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc. (Deferred from August 2, 2005 conference.)

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Recommendation: Staff recommends that the parties should be allowed to seek resolution of disputes arising out of the interconnection agreement from the Commission, FCC or courts of law. However, staff believes that the Commission has primary jurisdiction over most disputes arising from interconnection agreements and that a petition filed in an improper forum would ultimately be subject to being dismissed or held in abeyance while the Commission addressed the matters within its jurisdiction.

Issue 12: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?

Recommendation: No. A provision including such a statement could be subject to various interpretations in the context of a dispute. Instead, the contract should be interpreted according to its explicit terms if those terms are clear and unambiguous. If the contract language at issue in a dispute is deemed ambiguous, the terms should be interpreted in accordance with applicable law governing contract interpretation.

Issue 26: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?

Recommendation: Yes, BellSouth is required, upon a CLEC's request, to commingle or to allow commingling of UNEs or UNE combinations with any service, network element, or other offering that it is obligated to make available pursuant to Section 271.

Issue 36A: How should line conditioning be defined in the Agreement?

Recommendation: The definition should be taken from the FCC rules and contain the limiting conditions of nondiscriminatory access and suitability for xDSL delivery, which appear in the rules leading to the definition found in 47 C.F.R. § 51.319(a)(1)(iii)(A). If the parties through negotiation cannot agree on a definition that includes the stated conditions, then the following language should serve as a default:

Line Conditioning is defined as the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver xDSL capability, to ensure that the copper loop or copper subloop is suitable for providing xDSL services and provided the same for all telecommunications carriers requesting access to that network and at least in quality to that which the incumbent provides to itself.

Issue 36B: What should BellSouth's obligations be with respect to line conditioning?

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Recommendation: BellSouth's obligations with respect to line conditioning are to provide nondiscriminatory access and ensure digital subscriber line capability.

Issue 37: Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?

Recommendation: Yes. Staff recommends that the Agreement should contain specific provisions addressing the availability of load coil removal by loop length, specifically less than or greater than 18,000 feet, provided that the criteria established remain at parity with what BellSouth offers its own customers or other carriers. (See Recommendation for Issues 36A and B.)

Issue 38: Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

Recommendation: BellSouth should be required to remove bridged taps to ensure xDSL capability at parity with what it does for itself. Cumulative bridged taps greater than 6,000 feet should be removed at no charge. Cumulative bridged taps between 2,500 feet and 6,000 feet should be removed at no more than TELRIC rates. Bridged taps less than 2,500 feet may be removed based upon the rates, terms and conditions negotiated by the parties. If negotiations are not successful, BellSouth's Special Construction Process should apply.

Issue 51B: Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?

Recommendation: Yes. BellSouth should provide written notice to the CLEC 30 days prior to the date that BellSouth seeks to commence the audit. The notice should include the cause that BellSouth believes warrants the audit, but need not identify the specific circuits that are to be audited or contain additional detailed documentation.

Issue 51C: Who should conduct the audit and how should the audit be performed?

Recommendation: The audit should be performed by an independent, third-party auditor selected by BellSouth from a list of at least four auditors included in the interconnection agreement. The list should be developed as recommended in the analysis portion of staff's July 21, 2005 memorandum. The audit should be performed according to the standards of the American Institute of Certified Public Accountants (AICPA).

Issue 65: Should BellSouth be allowed to charge the CLEC a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

Recommendation: Yes. BellSouth should be allowed to charge the CLEC a Tandem Intermediary Charge (TIC) for transport of transit traffic when CLECs are not directly

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interconnected to third parties. Unless a different rate is negotiated prior to the parties filing their agreement, the applicable rate in the agreement should be \$.0015 per minute of use.

Issue 86B: How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?

Recommendation: In the event that the alleged offending party disputes the allegation of unauthorized access to customer service records (CSR) information (even after the party's inability to produce an appropriate Letter of Authorization), the alleging party should seek expedited resolution from the appropriate regulatory body pursuant to the dispute resolution provision in the Interconnection Agreement's General Terms and Conditions section. The alleging party should take no action to terminate the alleged offending party during any such pending regulatory proceeding. If the alleged offending party does not dispute the allegation of unauthorized access to CSR information, BellSouth may suspend or terminate service under the time lines proposed by BellSouth.

Issue 88: What rate should apply for Service Date Advancement (a/k/a service expedites)?

Recommendation: BellSouth's tariffed rates for service expedites should apply unless the parties negotiate different rates.

Issue 97: When should payment of charges for service be due?

Recommendation: Payment of charges for service should be payable on or before the next bill date.

Issue 100: Should CLEC be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

Recommendation: Yes. A CLEC should be required to pay past due undisputed amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination.

Issue 101: How many months of billing should be used to determine the maximum amount of the deposit?

Recommendation: The maximum deposit should not exceed two months' estimated billing for new CLECs or two months' actual billing for existing CLECs based on average monthly billings for the most recent six-month period.

Issue 102: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

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Docket No. 040130-TP - Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc. (Deferred from August 2, 2005 conference.)

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Recommendation: No. The amount of the deposit BellSouth requires from CLEC should not be reduced by past due amounts owed by BellSouth to CLEC.

Issue 103: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?

Recommendation: BellSouth should be entitled to terminate service to the CLEC pursuant to the process for termination due to non-payment if the CLEC refuses to remit any deposit required by BellSouth and does not dispute the deposit request per Section 1.8.7 of the proposed Agreement, within 30 calendar days.

Issue 115: Should this docket be closed?

Recommendation: No. The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

DECISION: The recommendations in Issues 4, 5, 6, 7, 9, 12, 36A, 36B, 37, 38, 51B, 51C, 86B, 88, 97, 100, 101, 102, 103, and 115 were approved. The recommendation in Issue 26 was denied, and the following motion was approved: "BellSouth is required, upon a CLEC's request, to commingle or to allow commingling of UNEs or UNE combinations with any service, network element, or other offering that it is obligated to make available. However, this does not include services, network elements, or other offerings made available only under Section 271." Issue 65 was modified in that, rather than setting a rate of \$.0015, parties will be strongly encouraged to continue negotiations, beginning at a rate of \$0.0015 per minute of use.

Commissioners participating: Bradley, Edgar