

MINUTES OF FEBRUARY 7, 2006

COMMISSION CONFERENCE

COMMENCED: 9:35 a.m.

ADJOURNED: 1:45 p.m.

COMMENCED: 2:35 p.m.

ADJOURNED: 5:05 p.m.

COMMISSIONERS PARTICIPATING: Chairman Edgar
Commissioner Deason
Commissioner Arriaga
Commissioner Carter
Commissioner Tew

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

1 Approval of Minutes

January 5, 2006 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

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>
050897-TX	Telrite Corporation
050914-TX	CBB Carrier Services, Inc.
050907-TX	LMDS Holdings, Inc.

PAA B) Application for certificate to provide shared tenant service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
050903-TS	A C J & J Investment Corp d/b/a Senator Executive & Law Center

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
050972-TC	ABC Payphones Inc.

PAA D) Application for certificate to provide alternative access vendor service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
050887-TA	Dhaka Tel, Inc. d/b/a DTI Telecom

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

DECISION: The recommendation was approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

3****Docket No. 040763-TP** - Request for submission of proposals for relay service, beginning in June 2005, for the hearing and speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: CMP: Moses, Casey
GCL: Tan, Wiggins

Issue 1: Should the Commission modify Section B, Paragraph 31 of the Request for Proposal (RFP) as shown in the type-and-strike of staff's analysis in its January 26, 2006 memorandum and incorporate the change by reference into the relay contract with Sprint as Amendment 1?

Recommendation: Staff recommends that the Commission approve the proposed change to Section B, Paragraph 31 of the RFP as shown in the type-and-strike of staff's analysis and incorporate the change into the contract with Sprint as Amendment 1 effective upon the signature of the Commission's Executive Director and Sprint.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open for the duration of the contract.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

4Docket No. 050892-TP - Petition for declaratory statement regarding applicability of Rule 25-24.515(22), F.A.C., or, in the alternative, petition for waiver of rule, by Global Tel*Link Corporation.

Critical Date(s): 02/20/06 (By statute, order must be issued by this date.)

Commissioners Assigned: All Commissioners

Prehearing Officer: Arriaga

Staff: GCL: Cibula
CMP: Curry, C. Lewis

Issue 1: Should the Commission grant Global's Petition for Declaratory Statement?

Recommendation: Yes. The Commission should grant Global's petition and declare that, based on the facts set forth in Global's petition, Rule 25-24.515(22), Florida Administrative Code, does not require Global to connect outgoing local and long distance calls for a minimum elapsed time of ten minutes when a confinement facility requests the company to terminate a call not authorized by the confinement facility.

PAA

Issue 2: Should the Commission grant Global's Alternative Petition for Waiver of Rule?

Recommendation: If the Commission approves staff's recommendation in Issue 1, Global's Alternative Petition for Waiver of Rule will be rendered moot, and the Commission need not consider the alternative petition. If, however, the Commission rejects staff's recommendation in Issue 1, staff recommends that the Commission grant Global's Alternative Petition for Waiver of Rule and waive Rule 25-24.515(22) to the extent that the company may disconnect calls prior to an elapsed time of ten minutes when a called party attempts to connect to a third party, in violation of the practices and procedures of the confinement facility.

Issue 3: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation on the Petition for Declaratory Statement in Issue 1, the order issued by the Commission will be final and the docket may be closed. If the Commission chooses to reject staff's recommendation on the Petition for Declaratory Statement and instead grants the Alternative Petition for Waiver of Rule, as set forth in Issue 2, this docket should be closed upon the issuance of a consummating order if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of issuance of the order.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

5****Docket No. 050421-TL** - Petition by Florida Alliance of Information and Referral Services to initiate rulemaking to require local exchange telecommunications companies to include 211 information on inside cover of telephone directories.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Tew

Staff: GCL: Moore

CMP: Bulecza-Banks, Cordiano, Moses

Issue 1: Should the Commission discontinue rulemaking proceedings on Rule 25-4.040(3)(b), Florida Administrative Code?

Recommendation: Yes. Absent the Florida Alliance of Information and Referral Services' request, there is no need to conduct rulemaking proceedings.

Issue 2: Should this docket be closed?

Recommendation: Yes.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

6Docket No. 060001-EI - Fuel and purchased power cost recovery clause with generating performance incentive factor.

Critical Date(s): None

Commissioners Assigned: Edgar, Deason, Arriaga (for this decision only)

Prehearing Officer: Carter

Staff: GCL: Rodan
ECR: Bohrmann, McNulty

Issue 1: Should the Commission grant OPC's request for oral argument on its motion for clarification or, in the alternative, reconsideration of Order No. PSC-05-1252-FOF-EI?
Recommendation: No. Staff believes that the motion is clear on its face. However, if the Commission believes that oral argument would be helpful, it has the discretion to allow such argument.

Issue 2: Should the Commission grant OPC's motion for clarification or, in the alternative, reconsideration of Order No. PSC-05-1252-FOF-EI?

Recommendation: Yes. The Commission should clarify Order No. PSC-05-1252-FOF-EI as requested in OPC's motion.

Issue 3: Should this docket be closed?

Recommendation: This docket is an ongoing docket and should remain open.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga

ITEM NO.

CASE

7**PAADocket No. 041408-EU - Joint petition of Tampa Electric Company and Withlacoochee River Electric Cooperative, Inc. for expedited interim approval of customer transfers pending consideration of joint application for permanent relocation of territorial boundaries.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Arriaga

Staff: GCL: Rodan
ECR: Breman

Issue 1: Should the Commission approve the joint petition of Tampa Electric Company and Withlacoochee River Electric Cooperative, Inc. for an amendment to their territorial boundaries?

Recommendation: Yes. The proposed amendment is in the public interest and should be approved, effective upon the issuance of a Consummating Order finalizing the Commission's decision.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this amendment, the docket should remain open.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

8****Docket No. 050835-GU** - Petition for approval of Amendment No. 2 to gas transportation agreement (special contract), master gas transportation service termination agreement, delivery point lease agreement and letter agreement: CFG Transportation Aggregation Service between Florida Division of Chesapeake Utilities Corporation and Polk Power Partners, L.P.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Arriaga

Staff: CMP: Bulecza-Banks, Beard, Broussard
ECR: Slemkewicz
GCL: Gervasi

PAA

Issue 1: Should Amendment No. 2 to the Gas Transportation Agreement (Special Contract), Master Gas Transportation Service Termination Agreement, Delivery Point Lease Agreement, and Letter Agreement: CFG Transportation Aggregation Service between Chesapeake and Polk Power be approved?

Recommendation: Yes. Staff recommends that Amendment No. 2 to the Gas Transportation Agreement (Special Contract), Master Gas Transportation Service Termination Agreement, Delivery Point Lease Agreement, and Letter Agreement: CFG Transportation Aggregation Service between Chesapeake and Polk Power should be approved effective January 1, 2005.

Issue 2: Should Chesapeake be required to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Section 366.06(1), Florida Statutes, and Rule 25-9.034(1), Florida Administrative Code, for its failure to obtain Commission approval prior to the execution of Amendment No. 2 to Gas Transportation Agreement (Special Contract) with Polk Power Partners, L.P.?

Recommendation: No. Chesapeake should not be required to show cause why it should not be fined for its apparent violation of Section 366.06(1), Florida Statutes, and Rule 25-9.034(1), Florida Administrative Code, for its failure to obtain Commission approval prior to the execution of Amendment No. 2 to Gas Transportation Agreement (Special Contract) with Polk Power Partners, L.P. However, Chesapeake should be put on notice that future implementation of any rates and/or charges prior to Commission approval, in apparent violation of Section 366.06(1) Florida Statutes and/or Rule 25-9.034(1), Florida Administrative Code, could result in the initiation of show cause proceedings.

Issue 3: Should this docket be closed?

Recommendation: Yes. If no timely protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving the Agreement, this docket should be closed upon the issuance of a Consummating Order. If a protest is

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Docket No. 050835-GU - Petition for approval of Amendment No. 2 to gas transportation agreement (special contract), master gas transportation service termination agreement, delivery point lease agreement and letter agreement: CFG Transportation Aggregation Service between Florida Division of Chesapeake Utilities Corporation and Polk Power Partners, L.P.

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timely filed by a substantially interested person, the Agreement should remain in effect pending resolution of the protest and the docket should remain open.

DECISION: The recommendations were approved. Commissioners Arriaga and Carter dissented on Issue 2.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

9**PAADocket No. 050683-EI - Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: ECR: Breman, Lee, VonFossen
GCL: Stern

Issue 1: Should the Commission approve TECO's petition for the Arsenic Groundwater Standard Program as a new activity for cost recovery through the ECRC?

Recommendation: Yes. Bayside's Arsenic Groundwater Standard Program is eligible for cost recovery through the ECRC. Conditionally, yes, Big Bend's Arsenic Groundwater Standard Program is eligible for recovery.

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: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

10**PAA **Docket No. 050876-EG** - Petition for approval of modifications to residential heating and cooling and new construction programs, by Tampa Electric Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Arriaga

Staff: ECR: McRoy, Haff
GCL: Brown

Issue 1: Should the Commission approve TECO's petition to modify its Residential Heating and cooling and Residential New Construction programs?

Recommendation: Yes. TECO's proposed changes to its Residential Heating and Cooling and Residential New Construction programs are expected to continue to meet the policy objectives of the Florida Energy Efficiency and Conservation Act (FEECA), and will continue to be monitorable and cost-effective.

Issue 2: Should this docket be closed?

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

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

11**PAA Docket No. 050281-WS - Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

Critical Date(s): 02/18/06 (5-month effective date (PAA rate case))

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: ECR: Fletcher, Lester, Lingo, Lowe, Massoudi, Merta, Rendell, Willis
GCL: Gervasi

Issue 1: Is Plantation's historical test period of the twelve months ending December 31, 2004 appropriate and, if not, what is the appropriate test year?

Recommendation: No. The simple average test year ending December 31, 2006, is a representative test period to measure the cost of service and to establish prospective rates.

Issue 2: Is the quality of service provided by Plantation satisfactory?

Recommendation: Staff recommends that the utility's overall quality of service for water should be considered satisfactory and the utility's overall quality of service for wastewater should be considered marginal. The utility should complete any and all improvements to the water and wastewater systems that are necessary to satisfy the standards set by the Department of Environmental Protection (DEP). Also, it is recommended that reuse advisory signs be placed at the beginning tees of each of nine holes at the Plantation Bay Golf Course and also around any pond structures that hold the reclaimed water. The reuse advisory signs should be posted at all locations no later than 90 days from the date of the Consummating Order for this rate case.

Issue 3: Are there any stipulated rate base adjustments that should be made as result of staff's audits and the utility's responses to staff's data requests?

Recommendation: Yes. Based on uncontested audit adjustments, plant should be decreased by \$114,376 ~~\$85,501~~ for water and \$290,569 ~~\$294,141~~ for wastewater.

Issue 4: What are the used and useful percentages for the utility's water and wastewater systems?

Recommendation: Plantation's used and useful percentages should be as follows:

Water Treatment Plant	79.22%
Water Distribution System	93.23%
Wastewater Treatment Plant	37.1%
Wastewater Collection Systems	73.05%
Reuse System	100%

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As a result of the above recommended used and useful percentages, water rate base should be reduced by \$165,804 ~~\$165,538~~ to reflect that 20.78% of treatment plant and 6.77% of distribution system should be considered non-used and useful. Further, wastewater rate base should be reduced by \$921,779 ~~\$924,235~~ to reflect that 62.9% of treatment plant and 26.95% of the collection system should be considered non-used and useful. Accordingly, corresponding adjustments should also be made to reduce depreciation expense by \$15,148 ~~\$15,132~~ and \$55,223 ~~\$55,153~~ for water and wastewater, respectively, and to reduce property tax expense by \$3,272 ~~\$3,270~~ and \$5,266 ~~\$5,260~~, for water and wastewater, respectively.

Issue 5: What is the appropriate value of land acquired from a related party in 2002?

Recommendation: Because the utility has failed to provide the support that the \$25,195 recorded amount is a reasonable or actual market-based amount, the value for the land acquired in 2002 should be \$0. Thus, the \$25,195 amount should be removed from the land for the water system.

Issue 6: Should any further adjustment be made to the utility's December 31, 2004, accumulated depreciation balance?

Recommendation: Based on the stipulated plant adjustments in Issue 3, the utility's full year's depreciation policy, the use of year-end plant balances, and the depreciation rates prescribed by rule, the appropriate 2004 year-end balance for accumulated depreciation should be \$1,566,352 for water and \$1,429,690 for wastewater. Accordingly, the utility's simple average accumulated depreciation balances ending December 31, 2004, should be reduced by \$9,572 ~~\$7,841~~ for water and \$20,163 ~~\$17,381~~ for wastewater. Further, consistent with Issue 7, corresponding adjustments should be made to increase net depreciation expense by \$9,056 ~~\$9,039~~ for water and to decrease net depreciation by \$23,624 ~~(\$22,940)~~ for wastewater.

Issue 7: What are the appropriate balances of contributions in aid of construction (CIAC) and accumulated amortization of CIAC as of December 31, 2004?

Recommendation: The appropriate balances of CIAC as of December 31, 2004, are \$1,800,812 ~~\$1,731,975~~ for water and \$2,371,658 ~~\$2,322,302~~ for wastewater. As a result, CIAC should be decreased by \$87,991 ~~\$46,796~~ for water and increased by \$89,259 ~~\$47,431~~ for wastewater. Further, the corresponding simple average accumulated amortization of CIAC balances are \$545,426 ~~\$518,201~~ for water and \$1,032,251 ~~\$995,455~~ for wastewater. Accordingly, accumulated amortization of CIAC should be decreased by \$30,082 ~~\$17,386~~ for water and increased by \$216,435 ~~\$25,079~~ for wastewater.

Issue 8: Should any net debit deferred taxes be included in rate base and, if so, what is the appropriate amount?

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11**PAA

Docket No. 050281-WS - Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

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Recommendation: A deferred tax debit on net operating loss carry-forwards should not be allowed in the rate base calculation. This disallowance results in a deferred income tax credit of \$233,737 that should be included in the capital structure.

Issue 9: What is the appropriate working capital allowance?

Recommendation: The appropriate amount of working capital is \$29,139 for water and \$32,303 for wastewater.

Issue 10: What is the appropriate rate base for the December 31, 2006, projected test year?

Recommendation: Consistent with the appropriate amount of projected land, non-used and useful, and working capital components that were addressed in earlier issues and based on the recommended adjustments discussed in the analysis portion of staff's January 26, 2006 memorandum, the appropriate rate base for the December 31, 2006 projected test year is ~~\$1,160,115~~ ~~\$1,286,320~~ for water and ~~\$1,899,019~~ ~~\$1,535,228~~ for wastewater. Accordingly, plant should be increased by ~~\$899,136~~ ~~\$897,730~~ for water and ~~\$1,520,443~~ ~~\$1,510,718~~ for wastewater, and accumulated depreciation should be increased by ~~\$197,645~~ ~~\$47,451~~ for water and ~~\$254,011~~ ~~\$253,846~~ for wastewater. Further, CIAC should be increased by \$252,820 for water and \$182,055 for wastewater, and accumulated amortization of CIAC should be increased by ~~\$91,351~~ ~~\$91,280~~ for water and ~~\$113,806~~ ~~\$112,914~~ for wastewater.

Issue 11: What is the appropriate regulatory treatment of Plantation's affiliate long-term debt?

Recommendation: A promissory note between the utility and a related party, in the amount of \$3,571,367, should be treated as common equity. Based on promissory notes between the utility and related parties Prestwick at Plantation Bay and Intervest at Plantation Bay Partnership, the appropriate balance for long-term debt is \$3,654,614 for the 2006 simple average test year, with a cost rate of 10.00%.

Issue 12: What is the appropriate return on common equity?

Recommendation: The appropriate return on common equity is 11.78% with a range of plus or minus 100 basis points.

Issue 13: What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure for the test year ending December 31, 2006?

Recommendation: The appropriate weighted average cost of capital is 10.01%.

Issue 14: What are the appropriate methodologies for projecting customer growth and consumption for the residential and general service classes for the 2006 average test year, and what are the resulting bills, ERCs and consumption for the water and wastewater systems for that period?

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11**PAA

Docket No. 050281-WS - Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

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Recommendation: The appropriate methodologies for projecting residential customer growth and consumption are quadratic regression for customer growth, multiple linear regression for residential water consumption and simple linear regression for residential wastewater consumption. No customer growth is assumed for the general service class, but the appropriate methodology to project general service consumption is multiple linear regression. The appropriate bills, ERCs and consumption for the water and wastewater systems are shown in the table below:

**STAFF'S RECOMMENDED PROJECTIONS
FOR THE 2006 TEST YEAR**

	<u>Bills</u>	<u>ERCs</u>	<u>Consumption (kgals)</u>
Water	19,147	19,512	67,189.6
Wastewater	14,931	15,195	62,310.3

Issue 15: What adjustments, if any, are necessary to the utility's historical test year revenues to reflect the appropriate number of projected customers, bills and consumption?

Recommendation: Based on the recommended 2006 billing determinants in Issue 14, the utility's operating revenues should be increased by \$140,461 for water and \$81,517 for wastewater.

Issue 16: Should revenues be imputed which are associated with a related party developer's water usage?

Recommendation: Yes. Revenues in the amount of \$2,811 associated with a related party developer's water usage should be imputed.

Issue 17: What is the appropriate amount of reuse revenue to include in the projected test year?

Recommendation: Based on the 2005 annualized reuse gallons and the recommended reuse rate in Issue 32, the appropriate reuse revenue for inclusion in the projected test year is \$1,034.

Issue 18: Are there any stipulated net operating income adjustments that should be made as a result of staff's audits and the utility's responses to staff's data requests?

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Recommendation: Yes. Based on uncontested adjustments, revenues should be decreased by \$2,957 for water and increased by \$2,957 for wastewater. Further, O&M expenses should be decreased by \$20,951 for water and increased by \$36 for wastewater.

Issue 19: Should any other historical O&M expenses adjustments be made?

Recommendation: Yes. To reflect the appropriate 2004 historical purchased power and chemicals and the appropriate amortization of hurricane related costs, O&M expenses should be decreased by \$9,975 for water and increased by \$5,257 for wastewater.

Issue 20: What non-growth related adjustments are necessary to project sludge removal expense, fuel for power production, contractual services - management fees, and contractual services - other?

Recommendation: Based on the non-growth related adjustments discussed in the analysis portion of staff's memorandum, O&M expenses should be increased by \$29,344 for water and \$19,302 for wastewater.

Issue 21: What is the appropriate amount of purchased power expense for the December 31, 2006, projected test year?

Recommendation: The appropriate amount of purchased power expense for the December 31, 2006, projected test year is \$27,835 for water and \$33,425 for wastewater. Accordingly, purchased power expense should be increased by \$8,174 for water and \$9,130 for wastewater.

Issue 22: What is the appropriate amount of chemical expense for the December 31, 2006, projected test year?

Recommendation: The appropriate amount of chemical expense for the December 31, 2006, projected test year is \$21,072 for water and \$5,670 for wastewater. Accordingly, chemical expense should be increased by \$7,711 for water and \$2,400 for wastewater.

Issue 23: What other adjustments, if any, are necessary to the utility's historical test year expenses to reflect the appropriate number of projected customers, bills and consumption?

Recommendation: Based on staff's recommended 2005 expenses in Issue 20, the supplemental audit findings, and the staff's 2005 historical adjustments and the benchmark indices discussed in the analysis portion of staff's memorandum, O&M expenses should be increased by \$33,460 for water and by \$18,755 for wastewater, in order to reflect the appropriate number of projected customers, bills and consumption recommended in Issue 14.

Issue 24: What is the appropriate amount of rate case expense?

Recommendation: No rate case expense should be allowed for water, and the utility's wastewater system should be allowed \$38,680 in rate case expense. Rate case expense should be reduced by \$17,674 for water and by \$7,406 for wastewater.

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Issue 25: What is the appropriate amount of property taxes for the December 31, 2006, projected test year?

Recommendation: The appropriate real estate and tangible property taxes should be ~~\$31,257~~ ~~\$32,234~~ for water and ~~\$47,947~~ ~~\$43,622~~ for wastewater. Accordingly, property taxes should be decreased by ~~\$3,157~~ ~~\$2,180~~ for water and increased by ~~\$24,734~~ ~~\$20,409~~ for wastewater.

Issue 26: Should the utility be entitled to an income tax provision?

Recommendation: No. The utility should not be allowed an income tax provision.

Issue 27: What is the test year water and wastewater operating income or loss before any revenue increase?

Recommendation: Based on the adjustments discussed in previous issues, the test year water operating income before any provision for increased revenues should be ~~\$132,958~~ ~~\$132,009~~. The test year wastewater operating loss before any provision for increased revenues should be ~~(\$71,209)~~ ~~(\$67,286)~~.

Issue 28: What is the appropriate revenue requirement for the December 31, 2006, projected test year?

Recommendation: The following revenue requirement should be approved:

	<u>Projected Test Year Revenues</u>	<u>\$ Increase</u>	<u>Revenue Requirement</u>	<u>% Increase</u>
Water	\$486,554	(\$17,603)	\$468,950	(3.62%)
		(\$3,467)	\$483,087	(0.71%)
Wastewater	\$310,428	\$273,647	\$584,075	88.15%
		-\$231,296	\$541,724	74.51%

Issue 29: What are the appropriate water and wastewater rate structures for this utility?

Recommendation: The appropriate rate structure for the water system is a continuation of the base facility charge (BFC)/uniform gallonage charge rate structure. The appropriate rate structure for the wastewater system is a continuation of the BFC/gallonage charge rate structure. Billed residential monthly wastewater consumption should remain capped at 10,000 gallons (10 kgals), and the general service gallonage charge rate differential should remain 20% greater than the corresponding residential gallonage charge.

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Issue 30: Are adjustments to reflect repression of consumption due to the price changes and changes in rate structure appropriate in this case, and, if so, what are the appropriate repression adjustments for the water and the wastewater systems?

Recommendation: No. In order to monitor the effects of the changes in revenues, the utility should prepare monthly reports for both the water and wastewater systems, detailing the number of bills rendered, the consumption billed, and the revenues billed. These reports should be provided to staff. In addition, the reports should be prepared, by customer class and meter size, on a quarterly basis for a period of two years, beginning the first billing period after the approved rates go into effect.

Issue 31: What are the appropriate resulting water and wastewater rates?

Recommendation: ~~The appropriate monthly water rates are a continuation of current rates, shown on Schedule No. 4-A.~~ The appropriate water and wastewater monthly rates are shown on Schedules Nos. 4-A and 4-B, respectively, of staff's memorandum Schedule No. 4-B. Excluding miscellaneous service and reuse charges, the recommended water and wastewater rates produce revenues of \$463,620 and \$578,262, respectively \$535,911. The utility should file revised ~~wastewater~~ tariff sheets and a proposed customer notice to reflect the Commission-approved rates ~~for the wastewater system.~~ The approved ~~wastewater~~ rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved ~~wastewater~~ rates should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

Issue 32: What are the appropriate reuse rates?

Recommendation: The appropriate reuse rate for this utility should be \$0.07 per 1,000 gallons of usage. The utility should file tariff sheets which are consistent with the Commission's decision within 30 days from the Commission's vote. The tariff sheets should be approved upon staff's verification that the tariffs are consistent with the Commission's decision. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C.

Issue 33: Should Plantation Bay Utility Company's request to implement a \$5.00 late payment charge be approved?

Recommendation: Yes. The utility should be authorized to collect a \$5.00 late fee. The utility should file revised tariff sheets which are consistent with the Commission's vote within 30 days from the Commission's vote. The revised tariff sheets should be approved upon staff's verification that the tariffs are consistent with the Commission's decision. If revised tariff sheets are filed and approved, the late payment fee should

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11**PAA

Docket No. 050281-WS - Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

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become effective for connections made on or after the stamped approval date of the revised tariff sheets, provided no protest is filed and customers have been noticed.

Issue 34: In determining whether any portion of the wastewater interim increase granted should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

Recommendation: The proper refund amount should be calculated by using the same data used to establish final rates, excluding rate case expense. This revised revenue requirement for the interim collection period should be compared to the amount of interim revenues granted. Based on this calculation, no wastewater interim refund is required. Further, upon issuance of the Consummating Order in this docket, the escrow account should be released. ~~the utility should be required to refund 9.15% of wastewater revenues collected under interim rates. The refund should be made with interest in accordance with Rule 25-30.360(4), F.A.C. The utility should be required to submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C.~~

Issue 35: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?

Recommendation: The wastewater rates should be reduced as shown on Schedule No. 4-B to remove \$10,125 of wastewater rate case expense, grossed up for regulatory assessment fees, which is being amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.0816, F.S. The utility should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than 30 days prior to the actual date of the required rate reduction. The approved rates should be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-40.475(1), F.A.C. The rates should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

Issue 36: What are the appropriate service availability charges and/or policy for the utility?

Recommendation: Plantation's current system capacity charges should be discontinued, and the implementation of plant capacity charges of \$400 for water and \$358 for wastewater should be approved. Further, the utility should be allowed to collect donated property beginning January 1, 2007. If there is no timely protest to the Commission's Proposed Agency Action by a substantially affected person, the utility should file the

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11**PAA

Docket No. 050281-WS - Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

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appropriate revised tariff sheets within 10 days of the issuance of the Consummating Order for the Commission-approved tariff changes. Staff should be given administrative authority to approve the revised tariff sheets upon staff's verification that the tariff is consistent with the Commission's decision. If the revised tariff sheets are filed and approved, the tariff sheets should become effective on or after the stamped approval date. Within 10 days of the issuance of the Consummating Order for the Commission-approved tariff changes, the utility shall also provide notice of the Commission's decision to all persons in the service area who are affected by the recommended plant capacity charges and the authorization to collect donated property. The notice should be approved by Commission staff prior to distribution. The utility should provide proof that the appropriate customers or developers have received notice within 10 days of the date of the notice.

Issue 37: Should the Utility be required to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Section 367.071, Florida Statutes, for its failure to file an application for a change in majority organizational control?

Recommendation: No, the utility should not be required to show cause why it should not be fined for its apparent violation of Section 367.071, F.S., for its failure to obtain Commission approval prior to transferring majority organizational control.

Issue 38: Should the utility be required to provide proof, within 90 days of the final order issued in this docket, that it has adjusted its books for all the applicable NARUC USOA primary accounts associated with the Commission-approved adjustments?

Recommendation: Yes. To ensure that the utility adjusts its books in accordance with the Commission's decision, Plantation Bay should provide proof, within 90 days of the final order issued in this docket, that the adjustments for all the applicable NARUC USOA primary accounts have been made.

Issue 39: Should this docket be closed?

Recommendation: No. 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, a consummating order will be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff, and that the interim refund has been completed and verified by staff. Once these actions are complete, this docket should be closed administratively, and the escrow account should be released.

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11**PAA

Docket No. 050281-WS - Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

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DECISION: The recommendations in Issues 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 37, 38 and 39 were approved. Issue 2 was modified to state that no finding on quality of service will be made at this time. Instead, the order will reflect there are deficiencies meeting DEP's requirements, the Commission expects those deficiencies to be corrected, and will establish a monitoring and reporting requirement outside of this docket. The Commission directed the company to work with staff on the reporting requirement and whatever reports are generated are to be shared with the Public Counsel's office. In Issues 3 and 18, the Commission approved these adjustments that staff and the company agree should be made and recognize they are not necessarily being stipulated to by OPC. Issue 24 was approved with a minor clarification to page 60 of staff's recommendation, as stated orally at the conference. Issue 31 was approved with the modification that there will be a 50/50 split between gallonage and base facility, and the order will reflect that the change is for conservation purposes. Issue 36 was denied, and OPC's position as stated at the conference was approved with the continuation of service availability charges to be held subject to refund in the event of a protest, with recognition that staff will recalculate all revenue requirements in the other issues.

Commissioner Deason dissented on Issues 4 and 24. Commissioner Carter dissented on Issues 24 and 37.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

12****Docket No. 050820-WS** - Application for amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include territory in Charlotte County by MSM Utilities, LLC.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Edgar

Staff: ECR: Rieger
GCL: Rodan

Issue 1: Should the Commission approve MSM's application to amend Certificates 611-W and 527-S?

Recommendation: Yes. The Commission should approve MSM's application to amend Certificate Nos. 611-W and 527-S to include territory as reflected in Attachment A of staff's January 26, 2006 memorandum.

Issue 2: Should this docket be closed?

Recommendation: Yes. If staff's recommendation in Issue 1 is approved, no further action is required and the docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

ITEM NO.

CASE

12A**PAADocket No. **060078-EI** - Proposal to require investor-owned electric utilities to implement ten-year wood pole inspection program.

Docket No. 060077-TL - Proposal to require local exchange telecommunications companies to implement ten-year wood pole inspection program.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: **060078-EI**

ECR: McNulty, Breman, Trapp

GCL: Gervasi

060077-TL

CMP: Moses, Vinson, Harvey

GCL: Teitzman

Issue 1: Should the Commission require each electric IOU to implement a ten-year pole inspection cycle, utilizing the standards of the National Electric Safety Code, and to annually report to the Commission the results of the inspections of its wood transmission and distribution poles?

Recommendation: Yes. The electric IOUs are required by rule to comply with the provisions of the National Electric Safety Code (NESC), including wood pole inspections. The Commission should require each of the electric IOUs to implement a ten-year pole inspection cycle and to annually report the results of their wood pole inspections for the previous year.

Issue 2: Should the Commission require each local exchange company to implement a ten-year pole inspection cycle, utilizing the standards of the requirements of the National Electric Safety Code, and to annually report to the Commission the results of the inspections of wood poles?

Recommendation: Yes. The local exchange companies are required by rule to comply with the provisions of the National Electric Safety Code, including wood pole inspections. The Commission should require each of the companies to implement a ten-year pole inspection cycle and to annually report the results of their wood pole inspections for the previous year.

Issue 3: If the Commission determines in Issues 1 and 2 that the electric IOUs and local exchange companies should annually report the results of pole inspections reflecting a ten-year pole inspection cycle, what method of pole inspection should the electric IOUs and local exchange companies be required to implement?

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CASE

12A**PAA

Docket No. 060078-EI - Proposal to require investor-owned electric utilities to implement ten-year wood pole inspection program.

Docket No. 060077-TL - Proposal to require local exchange telecommunications companies to implement ten-year wood pole inspection program.

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Recommendation: The inspections should be based on the sound and bore technique for all wood poles, and should include excavation for all Southern Pine poles and other wood pole types as appropriate. The inspections should include strength impact assessments of pole attachments.

Issue 4: If the Commission determines in Issues 1 and 2 that the electric IOUs and local exchange companies should annually report the results of pole inspections reflecting a ten-year pole inspection cycle, what should be the filing requirements of the reports?

Recommendation: Preliminary to filing any such reports, and by no later than April 1, 2006, the electric IOUs should submit a comprehensive wood pole inspection plan to the Director of the Division of Economic Regulation. Likewise, the local exchange companies should submit a comprehensive wood pole inspection plan to the Director of the Division of Competitive Markets and Enforcement by April 1, 2006. In their filings, each electric IOU and local exchange company should include their plan for pole-specific data gathering, pole inspection program enforcement, and how poles shared by two or more companies will be inspected. The plans should also identify any pole inspection standards utilized by the electric IOU or local exchange company that supersede those of the NESC and any other details necessary to understand its pole inspection program.

The annual report of pole inspections, hereafter referred to as the Pole Inspection Report, should be filed by March 1 of each year with the Division of Economic Regulation and the Division of Competitive Markets and Enforcement. It should contain the information listed below for the previous calendar year. The first report should be provided March 1, 2007, but it should contain inspection data for May 2006, through December 2006, rather than a full twelve-month period, given the timing of this recommendation. All annual inspection reports, including the 2006 Pole Inspection Report, should contain the following informational sections:

- 1) A review of the methods the company used to determine National Electric Safety Code compliance for strength and structural integrity of the wood poles included in the previous year's annual inspections, taking into account pole loadings where required;
- 2) An explanation of the inspected poles selection criteria, including among other things geographic location age, and the rationale for including each such selection criteria;
- 3) Summary data and results of the companies' previous year's transmission and distribution wood pole inspections, addressing the strength, structural

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Docket No. 060078-EI - Proposal to require investor-owned electric utilities to implement ten-year wood pole inspection program.

Docket No. 060077-TL - Proposal to require local exchange telecommunications companies to implement ten-year wood pole inspection program.

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- integrity, and loading requirements of the National Electric Safety Code (See Attachment B of staff's memorandum for proposed data reporting requirements in a sample format); and
- 4) Identification of the cause(s) of each pole failure for those poles failing the inspection, to the extent that such cause(s) can be discerned. Also, the specific actions the company has taken or will take to correct each pole failure.

Issue 5: Should these dockets be closed?

Recommendation: Yes. If no protest is filed by a person whose interests are substantially affected within 21 days of the Commission order, the dockets should be closed upon the issuance of a consummating order. If a timely protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order, these dockets should remain open pending the resolution of the protest. Any protest of the Commission's decision in this matter should identify with specificity the item or measure being protested, and any such protest should not prevent the remainder of the Order from becoming final and effective.

DECISION: Issue 1 was approved with the modification that electric IOUs will be required to implement an eight-year inspection cycle and with a correction to page 6 of staff's recommendation as stated at the conference. Commissioner Arriaga dissented on Issue 1 only to the extent that electric municipalities and co-ops will not be included in the eight-year inspection cycle requirement. Issue 2 was approved with the modification that local exchange telecommunications companies will be required to implement an eight-year inspection cycle and with a correction to page 13 of staff's recommendation as stated at the conference. Issues 3 and 4 were approved. Issue 5 was approved with the understanding that the PAA order will be severable, that the order will become final for any company not protesting. Additionally, staff will hold an informal workshop with telephone companies. The workshop will be scheduled on an expedited basis before the protest period ends on the PAA. If necessary, staff will bring the matter back to the Commission.

Commissioners participating: Edgar, Deason, Arriaga, Carter, Tew

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CASE

13 **Docket No. 041269-TP** - Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.

Critical Date(s): 03/11/06 (FCC transitional deadline)

Commissioners Assigned: Edgar, Deason, Arriaga

Prehearing Officer: Edgar

Staff: CMP: Barrett, Fogleman, Hallenstein, K. Kennedy, Lee, Marsh, Moss
GCL: Teitzman, Scott

Issue 1: What is the appropriate language to implement the FCC's transition plan for
(1) switching,
(2) high capacity loops and
(3) dedicated transport as detailed in the FCC's Triennial Review Remand Order ("TRRO"), issued February 4, 2005?

Recommendation: Staff recommends that the embedded base as used in the TRRO relates to de-listed UNE arrangements existing on March 11, 2005. Staff recommends that the TRRO transition rates be based on the higher of the rate the CLEC paid for that element or combination of elements on June 15, 2004, or the rate the Commission ordered for that element or combination of elements between June 16, 2004, and March 11, 2005, plus the applicable additive (one dollar for local circuit switching and 15 percent for high-capacity loops and transport and dark fiber). Accordingly, the transition rate for DS0 level capacity switching for customers subject to the four or more line carve-out is the rate in existing contracts. Additionally, staff recommends that the TRRO transitional rates for the de-listed UNEs are effective at the time of the ICA amendment and subject to true-up back to March 11, 2005; the TRO new unbundling obligations should be effective with the ICA amendment.

Consistent with the Commission's finding in the Verizon Arbitration Order, staff recommends that regardless of when CLECs submit their conversion orders during the transition period, the TRRO rules entitle them to receive the transitional rates for the full 12 months, March 11, 2005 - March 10, 2006, for local circuit switching, high-capacity loops and transport, and 18 months, March 11, 2005 - September 10, 2006, for dark fiber loops and transport. However, transitional pricing ends March 10, 2006, and September 10, 2006, for the affected de-listed arrangements, whether or not the former UNEs have been converted.

With regard to the transition period process, staff recommends that (1) CLECs are required to submit conversion orders for the affected de-listed arrangements by the end of the transition period, but conversions do not have to be completed by the end of the applicable transition period (March 10, 2006, for local circuit switching and affected

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high-capacity loops and transport and September 10, 2006, for dark fiber loops and transport); and (2) there should not be a required date for CLECs to identify the respective embedded bases of the de-listed UNEs. However, if CLECs do not identify the applicable embedded bases by March 10, 2006, and by September 10, 2006, respectively, staff recommends that BellSouth should be permitted to (1) identify the arrangements itself, (2) charge CLECs the applicable disconnect charges and full installation charges, and (3) charge CLECs the resale or wholesale tariffed rate beginning March 11, 2006, for local circuit switching and affected high-capacity loops and transport (September 11, 2006, for dark fiber loops and transport), regardless of when the conversion is completed.

Staff also recommends that BellSouth's proposed "switch-as-is" conversion rates not be approved due to the lack of competent evidence. However, BellSouth is not precluded from initiating a cost proceeding later to address "switch-as-is" conversion rates.

Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that parts of the language proposed by BellSouth and CompSouth should be combined and adopted as discussed in the analysis portion of its memorandum. Staff's recommended language is found in Appendix A of staff's memorandum.

- Issue 2:**
- a. How should existing ICAs be modified to address BellSouth's obligation to provide network elements that the FCC has found are no longer Section 251(c) (3) obligations?
 - b. What is the appropriate way to implement in new agreements pending in arbitration any modifications to BellSouth's obligations to provide network elements that are no longer Section 251(c) (3) obligations?

Recommendation: a) The TRRO has changed BellSouth's obligation to provide unbundled network elements pursuant to its §251(c)(3) obligation. Therefore, staff recommends that existing ICAs should be amended to reflect those changes to BellSouth's obligations. b) Amendments to new ICAs pending arbitration should be based on the Commission's decisions in this proceeding, unless the parties have specifically agreed otherwise. Accordingly, staff believes that all Florida CLECs having ICAs with BellSouth should be bound by the decisions in this proceeding effective upon issuance of the final order.

Issue 3: What is the appropriate language to implement BellSouth's obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport and how should the following terms be defined?

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- (i) Business Line
- (ii) Fiber-Based Collocation
- (iii) Building
- (iv) Route

Recommendation: A business line should include all business UNE-P lines and all UNE-L lines, as well as HDSL-capable loops at full capacity. Fiber-based collocation should be based on the number of fiber-based collocators present in a wire-center at the time the count is made. The definition of a building should be based on a "reasonable telecom person" approach such that a multi-tenant building with multiple telecom entry points will be considered multiple buildings for purposes of DS1/DS3 caps. The FCC's definition of a route is appropriate. Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that parts of the language proposed by BellSouth and CompSouth should be combined and adopted as discussed in the staff analysis. Staff's recommended language is found in Appendix A of its memorandum.

- Issue 4:**
- a. Does the Commission have the authority to determine whether or not BellSouth's application of the FCC's Section 251 non-impairment criteria for high-capacity loops and transport is appropriate?
 - b. What procedures should be used to identify those wire centers that satisfy the FCC's Section 251 non-impairment criteria for high-capacity loops and transport?
 - c. What language should be included in agreements to reflect the procedures identified in (b)?

Recommendation: Staff believes this Commission has authority to resolve an ILEC's challenges to a CLEC self-certification, under an ICA's dispute resolution process. This Commission should also approve the initial wire center lists as requested by the parties. CLECs should exercise due diligence in making inquiries about the availability of UNEs and must self-certify that they are entitled to the UNE. BellSouth should provision such UNEs, but may bring disputes to this Commission for resolution in accordance with the TRRO. Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that parts of the language proposed by BellSouth and CompSouth should be combined and adopted as discussed in the staff analysis. Staff's recommended language is found in Appendix A of its memorandum.

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Issue 5: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?

Recommendation: Staff recommends that:

- High Bit Rate Digital Subscriber (HDSL)-capable loops (i.e., BellSouth's 2-wire or 4-wire High Bit Rate Digital Subscriber Compatible Loop offering) are the equivalent of DS1 loops for the purpose of evaluating impairment and should be counted as 24 voice grade equivalents.
- BellSouth is obligated to provide CLECs with access to copper loops and to condition copper loops upon request; however, BellSouth is not obligated to offer pre-conditioned/pre-packaged loop offerings designed for a specific service type.
- An Unbundled Copper Loop Non-Designed (with or without conditioning) should be counted as one voice grade equivalent for each 2-wire (e.g., one voice grade equivalent for a 2-wire loop and two voice grade equivalents for a 4-wire loop).

Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth in Exhibit 17, with the modifications discussed in the analysis portion of staff's January 26, 2006 memorandum, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

Issue 7(a): Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?

Recommendation: No. Staff believes that the Commission does not have authority to require BellSouth to include in §252 interconnection agreements §271 elements. The inclusion of §271 elements in a §252 agreement would be contrary to both the plain language of §§251 and 252 and the regulatory regime set forth by the FCC in the TRO and the TRRO.

Issue 7(b): If the answer to part (a) is affirmative in any respect, does the Commission have the authority to establish rates for such elements?

Recommendation: If the Commission approves staff's recommendation in Issue 7(a), this issue is moot.

Issue 7(c): If the answer to part (a) or (b) is affirmative in any respect, (i) what language, if any, should be included in the ICA with regard to the rates for such elements, and (ii) what language, if any, should be included in the ICA with regard to the terms and conditions for such elements?

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Recommendation: If the Commission approves staff's recommendation in Issues 7(a) and/or (b), this issue is moot. If the Commission denies staff's recommendation in Issue(s) 7(a) and/or (b), staff recommends the Commission approve the Joint CLECs' proposed language pending a further proceeding to determine permanent rates which meet the standards set forth in §§201 and 202.

Issue 8: What conditions, if any, should be imposed on moving, adding, or changing orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport, and what is the appropriate language to implement such conditions, if any?

Recommendation: Staff recommends that moving or adding orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport are not allowed. However, changes to an existing service, such as adding or removing vertical features, are permitted during the applicable transition period. Staff recommends that no language is needed to effectuate this policy.

Issue 9: What rates, terms, and conditions should govern the transition of existing network elements that BellSouth is no longer obligated to provide as Section 251 UNEs to non-Section 251 network elements and other services and

- a. what is the proper treatment for such network elements at the end of the transition period; and
- b. what is the appropriate transition period, and what are the appropriate rates, terms and conditions during such transition period, for unbundled high capacity loops, high capacity transport, and dark fiber transport in and between wire centers that do not meet the FCC's non-impairment standards at this time, but that meet such standards in the future?

Recommendation:

(a) Transition of UNEs de-listed in the TRO

If a CLEC has any de-listed TRO elements or arrangements in place after the effective date of the change-of-law amendment, staff recommends that BellSouth should be authorized to disconnect or convert such services, after a 30-day written notice and absent a CLEC disconnection or conversion order. If CLECs submit the requisite orders during the 30-day period, staff recommends that conversions be subject to Commission-approved switch-as-is rates. If CLECs do not submit the requisite orders during the 30-day period, staff recommends that BellSouth should be allowed to transition such circuits to equivalent BellSouth tariffed services and impose full nonrecurring charges as set forth in BellSouth tariffs.

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Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with the modifications discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

(b) Subsequent Transition Period

- Staff recommends that BellSouth should identify and post on its website subsequent wire centers meeting the non-impairment criteria set forth in the TRRO (Subsequent Wire Center List) in a Carrier Notification Letter (CNL).
- Staff recommends that CLECs have 30 calendar days following the CNL to dispute a non-impaired wire center claim. During the 30 days, rates for de-listed UNEs (DS1 and DS3 loops and transport and dark fiber transport) do not change.
- 30 calendar days after the CNL, staff recommends that BellSouth no longer has an obligation to provide unbundling of new de-listed UNEs, as applicable, in the wire centers listed on the Subsequent Wire Center List. If a CLEC disputes a specific non-impaired wire center claim with a UNE order within 30 calendar days following the CNL, BellSouth will provision the CLEC's ordered UNE. BellSouth will review the CLEC claim and will seek dispute resolution if needed. During the dispute resolution period, the applicable UNE rates will not change unless ordered by the Commission. Upon the Commission's resolution of the dispute, the rates will be trued up, if necessary, to the time BellSouth provisioned the CLEC's order.
- Staff recommends that the Subsequent Transition Period for DS1 and DS3 loops and transport in a wire center identified on the Subsequent Wire Center List is 180 calendar days and begins on day 30 following issuance of the CNL; the Subsequent Transition Period for dark fiber transport is 270 calendar days beginning on day 30 following issuance of the CNL.
- Staff recommends that the Subsequent Transition Period applies to the Subsequent Embedded Base (all de-listed UNE arrangements in service in a wire center identified on the Subsequent Wire Center List on the thirtieth day following issuance of the CNL).
- Staff recommends that the transition rates to apply to the Subsequent Embedded Base throughout the Subsequent Transition Period should be the rate paid for that element at the time of the CNL posting, plus 15 percent.
- Staff recommends that CLECs be required to submit spreadsheets identifying the Subsequent Embedded Base of circuits to be disconnected or converted to other BellSouth services no later than the end of the Subsequent Transition Period (210

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days following the CNL for DS1 and DS3 loops and transport and 300 days following the CNL for dark fiber transport). A project schedule for the conversion of these affected circuits will be negotiated between the parties.

- For the Subsequent Embedded Base circuits identified by the end of 210 days for DS1 and DS3 high-capacity loops and transport (300 days for dark fiber transport) following the CNL, BellSouth should convert the applicable circuits at Commission-approved switch-as-is rates and UNE disconnect charges do not apply. The applicable recurring tariff charges will apply beginning on the first day following the end of the Subsequent Transition Period.
- If CLECs do not submit the spreadsheets for all of their Subsequent Embedded Base by the end of the Subsequent Transition Period, staff recommends that BellSouth be permitted to identify the remaining Subsequent Embedded Base and transition the circuits to the equivalent BellSouth tariffed services. Additionally, the circuits identified and transitioned by BellSouth should be subject to the applicable UNE disconnect charges and the full non-recurring charges for installation of the BellSouth equivalent tariffed service.
- For the Subsequent Embedded Base circuits, staff recommends that the applicable recurring tariff charges should apply beginning on the first day following the end of the Subsequent Transition Period, whether or not the circuits have been converted. Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with the modifications discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

Issue 10: What rates, terms and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if any, should the conduct of the parties have upon the determination of the applicable rates, terms and conditions that apply in such circumstances?

Recommendation: The staff recommendation addressing this issue is included in the recommendation for Issue 1. Therefore, if the staff recommendation in Issue 1 is approved, this issue is moot.

Issue 12: Should network elements de-listed under Section 251(c)(3) be removed from the SQM/PMAP/SEEM?

Recommendation: Yes. Performance data for services (de-listed elements) no longer under Section 251(c)(3) should be removed from BellSouth's SQM/PMAP/SEEM. Staff believes that the language proposed by BellSouth, with the modification discussed in the

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staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

Issue 13: What is the scope of commingling allowed under the FCC's rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?

Recommendation: Staff recommends that: (1) BellSouth is required to permit a requesting telecommunications carrier to commingle a UNE or a UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under §251(c)(3) of the Act, unless otherwise specifically prohibited; (2) BellSouth is not required to commingle UNEs or combinations of UNEs with another carrier; and (3) multiplexing in a commingled circuit should be billed from the same agreement or tariff as the higher bandwidth circuit. Staff believes that neither the language proposed by BellSouth nor the Joint CLECs is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with the modifications discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

Issue 14: Is BellSouth required to provide conversion of special access circuits to UNE pricing, and, if so, at what rates, terms and conditions and during what time frame should such new requests for such conversions be effectuated?

Recommendation: Staff recommends that BellSouth is obligated to provide conversions of special access to UNE pricing. Staff defers recommendation of the rates for conversions to Issue 1. Staff believes that the language proposed by BellSouth best implements this recommended decision and should be adopted. The recommended language is found in Appendix A of staff's memorandum.

Issue 15: What are the appropriate rates, terms, conditions and effective dates, if any, for conversion requests that were pending on the effective date of the TRO?

Recommendation: Staff recommends that any conversions to stand-alone UNEs pending on the effective date of the TRO should be effective with the date of an amendment or interconnection agreement that incorporates conversions. Since neither party proposed or contested language as part of this issue, staff created its own language to cover this issue.

Issue 16: Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?

Recommendation: Staff recommends that BellSouth is not obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC

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customers after October 1, 2004. The recommended language for this issue is addressed in Issue 17.

Issue 17: If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC's existing line sharing arrangements?

Recommendation: Staff believes that neither the language proposed by CompSouth nor BellSouth is totally appropriate to implement the recommended decision in Issue 16. Instead the language proposed by BellSouth in Exhibit 12, with modifications discussed in the staff analysis, should be adopted. The recommended language is found in Appendix A of staff's memorandum.

Issue 18: What is the appropriate ICA language to implement BellSouth's obligations with regard to line splitting?

Recommendation: Staff's recommended language is based on the following three points:

1. BellSouth's obligation with regard to line splitting is to provide nondiscriminatory access to operations support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.
2. The CLEC requesting a line splitting arrangement should purchase the whole loop and provide its own splitter to be collocated in the central office.
3. The CLEC requesting a line splitting arrangement should indemnify, defend and hold BellSouth harmless against any and all claims, loss or damage except where arising from or in connection with BellSouth's gross negligence or willful misconduct.

Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with modifications discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

Issue 21: What is the appropriate ICA language, if any, to address access to call related databases?

Recommendation: BellSouth is obligated to offer all CLECs unbundled access to the 911 and E911 call-related databases. For CLECs with existing agreements with BellSouth as of March 11, 2005, BellSouth is obligated to offer unbundled access to all other call related databases through March 10, 2006.

Staff believes that neither the language proposed by BellSouth nor the Joint CLECs is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with the modification discussed in the staff

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analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

- Issue 22:**
- a) What is the appropriate definition of minimum point of entry ("MPOE")?
 - b) What is the appropriate language to implement BellSouth's obligation, if any, to offer unbundled access to newly deployed or "greenfield" fiber loops, including fiber loops deployed to the minimum point of entry ("MPOE") of a multiple dwelling unit that is predominantly residential, and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?

Recommendation:

- a) Since no party has proposed language for a definition of MPOE within the contract, staff too concludes that no language is required.
- b) BellSouth is required to unbundle FTTH/FTTC loops to predominantly commercial 21 MDUs, but has no obligation to unbundle such fiber loops to residential MDUs. While the FCC's rules provide that FTTH/FTTC loops serving end user customer premises do not have to be unbundled, CLEC access to unbundled DS1 and DS3 loops was also preserved. Accordingly, in wire centers in which a non-impairment finding for DS1 or DS3 loops has not been made, BellSouth is obligated upon request to unbundle a FTTH/FTTC loop to provide a DS1 or DS3 loop. Staff believes that no party's language is completely appropriate. Staff's recommended language is found in Appendix A of its memorandum.

Issue 23: What is the appropriate ICA language to implement BellSouth's obligation to provide unbundled access to hybrid loops?

Recommendation: Staff recommends BellSouth be required to provide the CLEC with nondiscriminatory access to the time division multiplexing features, functions and capabilities of a hybrid loop, including DS1 and DS3 capacity under Section 251 where impairment exists, on an unbundled basis to establish a complete transmission path between BellSouth's central office and an end user's premises. Staff believes that the language proposed by BellSouth best implements this recommended decision and should be adopted. The recommended language is found in Appendix A of staff's memorandum.

Issue 25: What is the appropriate ICA language to implement BellSouth's obligation to provide routine network modifications?

Recommendation: BellSouth should provide the same routine network modifications and line conditioning that it normally provides for its own customers. Staff believes that neither the language proposed by BellSouth, CompSouth nor Sprint is totally appropriate

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to implement this recommended decision. Instead, staff believes that parts of the language proposed by BellSouth, CompSouth, and Sprint should be combined and adopted as discussed in the staff analysis. Staff's recommended language is found in Appendix A its memorandum.

Issue 26: What is the appropriate process for establishing a rate, if any, to allow for the cost of a routine network modification that is not already recovered in Commission-approved recurring or nonrecurring rates? What is the appropriate language, if any, to incorporate into the ICAs?

Recommendation: BellSouth should use the rates approved by this Commission in the UNE Order. If any additional rates are needed, BellSouth should petition this Commission to establish those rates. Staff believes that neither the language proposed by BellSouth, CompSouth nor Sprint is totally appropriate to implement this recommended decision. Instead, staff believes that parts of the language proposed by BellSouth, CompSouth, and Sprint should be combined and adopted as discussed in the staff analysis. Staff's recommended language is found in Appendix A of its memorandum.

Issue 27: What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?

Recommendation: The unbundling requirements of an incumbent carrier with respect to overbuilt FTTH/FTTC loops are limited to either a 64 Kbps transmission path over the FTTH loop or unbundled access to a copper loop. Staff believes that the language proposed by BellSouth best implements this recommendation, with minor modifications as discussed in the staff analysis, and should be adopted. The recommended language is found in Appendix A of staff's memorandum.

Issue 28: What is the appropriate ICA language to implement BellSouth's EEL audit rights, if any, under the TRO?

Recommendation: BellSouth need not identify the specific circuits that are to be audited or provide additional detailed documentation prior to an audit of a CLEC's EELs. The audit should be performed by an independent, third-party auditor selected by BellSouth. The audit should be performed according to the standards of the American Institute of Certified Public Accountants (AICPA). The CLEC may dispute any portion of the audit following the dispute resolution procedures contained in the interconnection agreement after the audit is complete. Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with the modifications discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

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Issue 30: What language should be used to incorporate the FCC's ISP Remand Core Forbearance Order into interconnection agreements?

Recommendation: Staff recommends that while the Commission should make it clear that all affected CLECs are entitled to amend their agreements to implement the ISP Remand Core Forbearance Order, such amendments should be handled on a carrier-by-carrier basis. Accordingly, no language is necessary for this issue.

Issue 31: How should the determinations made in this proceeding be incorporated into existing Section 252 interconnection agreements?

Recommendation: In accordance with the Commission's ruling in Order No. PSC-05-0639-PCO-TP, issued in this docket, staff believes that parties and non-parties should be bound to the amendments arising from the Commission's determinations in this proceeding. For non-parties, staff recommends that the resulting amendments be limited to the disputed issues in this proceeding and not affect language unrelated to the disputed issues in this proceeding. Staff recommends that it may be appropriate given the FCC's transitional deadlines to order the parties to file their respective amendments or agreements within 20 days of the decisions in this proceeding. Staff believes that this would allow the parties sufficient time to comply with the Commission's decisions in this proceeding and meet the March 11, 2006 deadline. In addition, staff requests that the Commission grant it administrative authority to approve any amendments and agreements filed in accordance with the Commission's decisions in this proceeding.

Issue 32: Should this docket be closed?

Recommendation: No. The parties should be required to submit signed amendments or agreements that comply with the Commission's decisions in this docket for approval within 20 days of the Commission's decisions in this proceeding. This docket should remain open pending Commission approval of the final arbitration agreements in accordance with §252 of the Telecommunications Act of 1996.

DECISION: The recommendations in Issues 1, 2, 3, 4, 5, 7(a), 8, 9, 10, 12, 14, 15, 16, 17, 18, 21, 22, 23, 25, 26, 27, 28, 30, 31 and 32 were approved. Issues 7(b) and 7(c) were rendered moot. Issue 13 was denied. Commissioner Arriaga dissented on Issues 7(a) and 13.

Commissioners participating: Edgar, Deason, Arriaga