

**MINUTES OF JANUARY 21, 2003**

**COMMISSION CONFERENCE**

**COMMENCED:** 9:35 a.m.

**ADJOURNED:** 3:30 p.m.

**COMMISSIONERS PARTICIPATING:** Chairman Jaber  
Commissioner Deason  
Commissioner Baez  
Commissioner Bradley  
Commissioner Davidson

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

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1Approval of Minutes

December 17, 2002 Regular Commission Conference

DECISION: The minutes were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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2\*\*Consent Agenda

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
021183-TX	Vox2 Voice, L.C.
021151-TX	Alpha Fiber Inc.
021197-TX	France Telecom Corporate Solutions L.L.C.

PAA           B) Applications for certificates to provide interexchange telecommunications service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
020959-TI	Cinco Telecom Corp. d/b/a CINCO Telecom
021085-TI	Vanilla Inc.
021196-TI	France Telecom Corporate Solutions L.L.C.
020986-TI	1 Com, Inc. d/b/a 1 Com South, Inc.
021022-TI	Primo Communications Inc

PAA           C) Applications for certificates to provide pay telephone service.

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
021184-TC	T & P Enterprises of Bay County, Inc. d/b/a Laguna Beach Christian Retreat
021220-TC	WEB-stations, Inc.

PAA           D) Docket No. 021267-TA - Request for expedited approval of transfer of control of A.SUR Net, Inc. (holder of AAV

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2**	Consent Agenda
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Certificate No. 7790) from current shareholders to Barclays Bank PLC.

PAA	E) Request for cancellation of alternative local exchange telecommunications certificate.
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<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
021201-TX	USLD Communications, Inc.	11/01/02

PAA	F) Requests for exemption from requirement of Rule 25-24.515(13), F.A.C., that each pay telephone station shall allow incoming calls.
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<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>PHONE NO. &amp; LOCATION</u>
021265-TC	Arlen Communications, Inc.	305-531-8711 305-531-9686 305-531-8194 305-532-8691 Versailles Hotel & Condo 3425 Collins Avenue Miami Beach

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<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>PHONE NO. &amp; LOCATION</u>
021266-TC	Qwest Interprise America, Inc.	954-489-9064 BP Oil #5369 850 NE 62 <sup>nd</sup> Street Fort Lauderdale

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

DECISION: The recommendation was approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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3\*\*Docket No. 021166-TP - Proposed adoption of Rule 25-4.119, F.A.C., Line Information Database Maintenance; and proposed amendment to Rules 25-24.830, F.A.C., Consumer Information, and 25-24.840, F.A.C., Service Standards.

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: Full Commission  
Prehearing Officer: Bradley

Staff: GCL: Cibula  
CMP: Moses  
ECR: Hewitt

ISSUE 1: Should the Commission propose the adoption of Rule 25-4.119, Florida Administrative Code, Line Information Database Maintenance, and the amendment of Rules 25-24.830, Florida Administrative Code, Consumer Information, and 25-24.840, Florida Administrative Code, Service Standards?

RECOMMENDATION: Yes. The Commission should propose the adoption of Rule 25-4.119, Florida Administrative Code, and the amendment of Rules 25-24.830 and 25-24.840, Florida Administrative Code, as set forth in Attachment A of staff's January 9, 2003 memorandum.

ISSUE 2: If no request for hearing or comments are filed, should the proposed rules be filed for adoption with the Secretary of State and the docket closed?

RECOMMENDATION: Yes. The docket should be closed if no request for hearing or comments are filed.

DECISION: The recommendations were approved with the following modifications to Issue 1.

- 25-4.119: Add (3) with language indicating the LEC is exempt from (1) and (2) if it has no ALECs in the service area that provide third-party or collect calls; if there is an ALEC providing third-party or collect calls in the service area, the LEC must comply with the rule within six months.

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3**	Docket No. 021166-TP - Proposed adoption of Rule 25-4.119, F.A.C., Line Information Database Maintenance; and proposed amendment to Rules 25-24.830, F.A.C., Consumer Information, and 25-24.840, F.A.C., Service Standards.  (Continued from previous page)  <ul style="list-style-type: none"><li>● 25-24.830: Add language in (2) indicating the customer must receive written notice at time of first communication, and add language in last two sentences of (1) to (2).</li><li>● 25-24.840(3): Change "this rule" to "this Section."</li><li>● 25-24.840(3)(a): Add "of an end-use customer" after the word "information."</li><li>● 25-24.840(3)(b): Delete and renumber accordingly.</li></ul>

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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4\*\*Docket No. 021128-WS - Petition to initiate rulemaking to amend Rule 25-30.041, F.A.C., Application for Approval of Transfer to Governmental Agency, by City of Palm Coast.  
Docket No. 021188-WS - Petition to initiate rulemaking concerning capital charges by City of Palm Coast.

Critical Date(s): 1/21/03 (Statutory deadline waived until this date.)

Commissioners Assigned: Full Commission  
Prehearing Officer: Bradley

Staff: GCL: Cibula, Holley  
ECR: Daniel

ISSUE 1: Should the Commission grant Florida Water's Motions to Dismiss the City's Petitions for Rulemaking?  
RECOMMENDATION: No. Florida Water's Motions to Dismiss filed in Dockets No. 021128-WS and 021188-WS should be denied.

ISSUE 2: Should the Commission grant the City's Petitions to Initiate Rulemaking?

RECOMMENDATION: No. The Commission should deny the City's Petitions to Initiate Rulemaking filed in Dockets No. 021128-WS and 021188-WS.

ISSUE 3: Should these dockets be closed?

RECOMMENDATION: Yes. Dockets Nos. 021128-WS and 021188-WS should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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5Docket No. 010774-TP - Petition of The Citizens of the State of Florida to initiate rulemaking which will require telephone companies to give customers reasonable notice before customers incur higher charges or change in services, and allow them to evaluate offers for service from competing alternative providers.

Critical Date(s): None

Rule Status: Adoption

Commissioners Assigned: Full Commission

Prehearing Officer: Deason

Staff: GCL: Cibula, Brown

CAF: Durbin

CMP: Moses

ECR: Hewitt

ISSUE 1: Should the Commission adopt the changes to proposed Rule 25-24.491, Florida Administrative Code, that AARP has suggested?

RECOMMENDATION: No. The Commission should adopt the proposed rule without the changes suggested by AARP.

ISSUE 2: Should the Commission adopt a change to proposed Rule 25-24.491, Florida Administrative Code, to address JAPC's letter requesting clarification?

RECOMMENDATION: Yes. The Commission should adopt proposed Rule 25-24.491 with changes, deleting the word "material" from subsection (1) of the rule.

ISSUE 3: Should the rule be filed for adoption with the Secretary of State and the docket closed?

RECOMMENDATION: Yes. A Notice of Change should be published in the Florida Administrative Weekly and the rule filed with the Secretary of State.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson



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6\*\*Docket No. 021252-TP - Petition for expedited review and cancellation or suspension of BellSouth Telecommunications, Inc.'s Key Customer tariff filed 12/16/02, by Florida Digital Network, Inc.  
Docket No. 020119-TP - Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.  
Docket No. 020578-TP - Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Baez

Staff: GCL: Banks, Dodson  
CMP: Barrett

PAA

ISSUE 1: Did BellSouth comply with the tariff notification obligation contained in the BellSouth-FDN interconnection agreement? If not, should Tariff No. T-021241 remain in effect?

RECOMMENDATION: BellSouth substantially complied with the tariff notification obligation contained in the BellSouth-FDN interconnection agreement and, therefore, Tariff No. T-021241 should remain in effect. In the event the Proposed Agency Action resulting from this recommendation is protested, the tariff notification aspect of the instant docket should not be consolidated with Docket Nos. 020119-TP and 020578-TP for purposes of hearing.

ISSUE 2: Should this docket be consolidated with Docket Nos. 020119-TP and 020578-TP for purposes of hearing on the substantive tariff issues?

RECOMMENDATION: Yes. With the exception of the tariff notification concern addressed in Issue 1, staff recommends that this docket be consolidated with Docket Nos. 020119-TP and 020578-TP for purposes of hearing.

ISSUE 3: Should this docket be closed?

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Docket No. 021252-TP - Petition for expedited review and cancellation or suspension of BellSouth Telecommunications, Inc.'s Key Customer tariff filed 12/16/02, by Florida Digital Network, Inc.

Docket No. 020119-TP - Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc.

Docket No. 020578-TP - Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer promotional tariffs by Florida Competitive Carriers Association.

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RECOMMENDATION: No. If no person whose substantial interests are affected protests the Commission's PAA decision on Issue 1 within 21 days of the issuance of the Order from this recommendation, the decision will become final upon issuance of a Consummating Order. If, however, a timely protest of the PAA portion of the Order is filed, the protested issue should be set for a separate hearing.

Whether staff's procedural recommendation in Issue 2 is approved or rejected, the resulting decision will be final agency action. However, in either case, this docket should remain open to address the issues raised by FDN regarding BellSouth's 2003 Key Customer Tariff.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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7\*\*PAADocket No. 021178-TL - Complaint of Delia Smith against GTC,  
Inc. d/b/a GT Com for unauthorized charges to phone bill.

Critical Date(s): None

Commissioners Assigned: Full Commission

Prehearing Officer: Bradley

Staff: GCL: Dodson, Taylor

CAF: Smith

CMP: Mathis

ISSUE 1: Should the Commission deny Complaint No. 450414T,  
filed by Ms. Delia Smith against GT Com?

RECOMMENDATION: Yes. The Commission should deny Complaint  
No. 450414T filed by Ms. Delia Smith. Ms. Smith has failed  
to show that charges to her GT Com bill were not justified  
or that GT Com failed to properly credit her accounts for  
payments made. Finally, the total local exchange and long  
distance charges on her bill at the time she filed the  
complaint have been removed by the company.

ISSUE 2: Should this docket be closed?

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

DECISION: This item was deferred.

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8\*\*Docket No. 021122-TX - Complaint of Donald Chapman against Florida Digital Network regarding interruption of service and request for compensation.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Davidson

Staff: GCL: Fordham  
CAF: Smith  
CMP: Buys

ISSUE 1: Should the Commission grant FDN's Motion to Dismiss?

RECOMMENDATION: Yes. The Commission should grant FDN's Motion to Dismiss.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open to allow Mr. Chapman to amend the Petition. If Mr. Chapman does not file an amended complaint comporting with Rule 25-22.036(2), F.A.C., within 21 days of the issuance of the order resulting from this recommendation, this docket should be administratively closed.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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9\*\*PAADocket No. 030010-TL - Request by Orlando Regional Healthcare to review allocation of 321 NPA-NXXs in Orlando area.  
Docket No. 010743-TL - Petition for review of proposed numbering plan relief for the 407/321 area codes by Neustar, Inc., as North American Numbering Plan Administrator (NANPA), on behalf of Florida telecommunications industry.

Critical Date(s): None

Commissioners Assigned: Full Commission (010743 - for purposes of this decision)

Prehearing Officer: Administrative (030010)  
Deason (010743)

Staff: CMP: Casey, Bulecza-Banks, Ileri  
GCL: Taylor

ISSUE 1: Should the Commission direct the North American Numbering Plan Administrator (NANPA) to issue a 321 NXX to BellSouth Telecommunications, Inc. (BellSouth) for ORH's use in the Orlando area?

RECOMMENDATION: Yes. The Commission should direct NANPA to issue a 321 NXX code to BellSouth for ORH's use in the Orlando area.

ISSUE 2: Should these dockets 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, these dockets should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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10\*\*PAADocket No. 021206-TC - Compliance investigation of Florida Commercial PayFon, Inc. for apparent violation of Rule 25-4.019, F.A.C., Records and Reports in General.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Administrative

Staff: CMP: Buys  
AUS: Vandiver  
GCL: Taylor

ISSUE 1: Should the Commission impose a \$10,000 penalty on Florida Commercial PayFon, Inc. for apparent violation of Rule 25-4.019, Florida Administrative Code, Records and Reports in General, to be paid to the Florida Public Service Commission, and order the company to submit the required documentation listed in Attachment D, page 15 of staff's January 9, 2003 memorandum, to the Division of Auditing and Safety?

RECOMMENDATION: Yes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. If the Commission's Order is not protested and the payment of the penalty and the required documentation are not received within fourteen calendar days after the issuance of the Consummating Order, Pay Telephone Certificate No. 7545 should be cancelled. Further, if Florida Commercial PayFon's certificate is cancelled in accordance with the Commission's Order from this recommendation, Florida Commercial PayFon should be ordered to immediately cease and desist providing pay telephone service in Florida. This

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10**PAA	Docket No. 021206-TC - Compliance investigation of Florida Commercial PayFon, Inc. for apparent violation of Rule 25-4.019, F.A.C., Records and Reports in General.  (Continued from previous page)  docket should be closed administratively upon either receipt of the payment of the penalty and the required documentation or upon cancellation of Pay Telephone Certificate No. 7545.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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11\*\*PAADocket No. 020825-TC - Cancellation by Florida Public Service Commission of PATS Certificate No. 7919 issued to L.B. Computer Solutions, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees, Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Administrative

Staff: CMP: Isler  
GCL: Dodson

ISSUE 1: Should the Commission impose a penalty of \$500 or cancel L.B. Computer Solutions, Inc.'s certificate for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.505, Florida Administrative Code, with an effective date of December 31, 2002?

RECOMMENDATION: Yes. The Commission should assess a penalty of \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, incorporated by Rule 25-24.505, Florida Administrative Code, with an effective date of December 31, 2002, if the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, are not received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. If the company does not protest the Commission's Order, or if the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, are not received in accordance with the Commission's Order, the company's certificate should be cancelled administratively and the collection of the past due fees should be referred to the Office of the Comptroller for further collection efforts. If the company's certificate is cancelled in accordance with the Commission's Order from this recommendation, the company should be required to immediately cease and desist providing pay telephone service in Florida.



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11\*\*PAA

Docket No. 020825-TC - Cancellation by Florida Public Service Commission of PATS Certificate No. 7919 issued to L.B. Computer Solutions, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees, Telecommunications Companies.

(Continued from previous page)

ISSUE 2: Should this docket be closed?

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

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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12\*\*Docket No. 020703-TI - Cancellation by Florida Public Service Commission of IXC Certificate No. 7428 issued to FairPoint Communications Solutions Corp. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Administrative

Staff: CMP: Isler  
GCL: Dodson

ISSUE 1: Should the Commission accept the settlement offer proposed by FairPoint Communications Solutions Corp. to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.480, Florida Administrative Code, Records & Reports; Rules Incorporated?

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within fourteen (14) calendar days from the date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, Certificate No. 7428 should be cancelled administratively. If FairPoint Communications Solutions Corp.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, FairPoint Communications Solutions Corp. should be required to immediately cease and desist providing interexchange carrier service in Florida.

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12**	Docket No. 020703-TI - Cancellation by Florida Public Service Commission of IXC Certificate No. 7428 issued to FairPoint Communications Solutions Corp. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.
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ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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<u>ITEM NO.</u>	<u>CASE</u>
13**Docket No.	020790-TC - Cancellation by Florida Public Service Commission of PATS Certificate No. 5991 issued to Hitsu, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Administrative

Staff: CMP: Isler  
GCL: Banks

ISSUE 1: Should the Commission accept the settlement offer proposed by Hitsu, Inc. to resolve the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, incorporated by Rule 25-24.505, Florida Administrative Code?

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within fourteen (14) calendar days from the date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of the Commission Order, Certificate No. 5991 should be cancelled administratively. If Hitsu, Inc.'s certificate is cancelled in accordance with the Commission's Order from this recommendation, Hitsu, Inc. should be required to immediately cease and desist providing pay telephone service in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$100 contribution or cancellation of the certificate.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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14\*\*PAADocket No. 021189-TI - Joint application for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., for transfer of retail customer base and related assets of International Exchange Communications, Inc. d/b/a IE Com (holder of IXC Certificate No. 5798) to Matrix Telecom, Inc. (holder of IXC Certificate No. 2495), and request for name change on Certificate No. 2495 to Matrix Telecom, Inc. d/b/a IECOM.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Administrative

Staff: CMP: Pruitt  
GCL: Taylor, Dodson

ISSUE 1: Should the Commission approve the waiver of the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, in the transfer of the retail customer base and related assets from International Exchange Communications, Inc. d/b/a IE Com to Matrix Telecom, Inc.?

RECOMMENDATION: Yes.

ISSUE 2: Should the Commission approve the request for a name change on Interexchange Telecommunications Service Certificate No. 2495 from Matrix Telecom, Inc. to Matrix Telecom, Inc. d/b/a IECOM?

RECOMMENDATION: Yes.

ISSUE 3: 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: Jaber, Deason, Baez, Bradley, Davidson

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15\*\*PAA Docket No. 021198-TI - Petition for waiver of bond requirement in Rule 25-24.490(2), F.A.C., by BellSouth Long Distance, Inc.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Administrative

Staff: CMP: Pruitt  
ECR: Lester  
GCL: Christensen

ISSUE 1: Should BellSouth Long Distance, Inc. (BSLD) be relieved of the bond requirements of Rule 25-24.490(2), Florida Administrative Code, as provided for in the rule?

RECOMMENDATION: Yes. The company should be relieved of the bond requirements of Rule 25-24.490(2), Florida Administrative Code, as provided in the rule.

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: Jaber, Deason, Baez, Bradley, Davidson

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16\*\*PAADocket No. 020469-TX - Application for certificate to provide alternative local exchange telecommunications service by clertech.com.inc. d/b/a clertech.com.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Administrative

Staff: CMP: Williams  
GCL: Dodson

ISSUE 1: Should clertech.com. inc., d/b/a clertech.com's application for certification to provide alternative local exchange company service within the State of Florida be denied?

RECOMMENDATION: Yes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's Proposed Agency Action files a written protest within 21 days of the issuance date of the Proposed Agency Action Order resulting from this recommendation.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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17\*\*Docket No. 021174-GU - Petition for approval of special contract with Minute Maid Company, a Division of the Coca-Cola Company, and Florida Division of Chesapeake Utilities Corporation.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Bradley

Staff: CMP: Makin, Bulecza-Banks, Marshall  
GCL: C. Keating

ISSUE 1: Should the Commission approve the special contract between the Florida Division of Chesapeake Utilities Corporation (Chesapeake or the Company) and Minute Maid Company, a Division of the Coca-Cola Company (Minute Maid)?

RECOMMENDATION: Yes. The Commission should approve the special contract between Chesapeake and Minute Maid, effective the date of the Commission's vote in this matter.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this special contract, the special contract should remain in effect pending resolution of the protest, with any charges held subject to refund pending resolution of the protest. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson



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18\*\*PAADocket No. 020995-EI - Joint petition for approval of first amendment to restated agreement for purchase of firm capacity and energy between Florida Power & Light Company and AES Cedar Bay, Inc. by Florida Power & Light Company.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Deason

Staff: ECR: Harlow, Haff, D. Lee  
GCL: C. Keating

ISSUE 1: Should the Commission grant the joint petition of Florida Power & Light Company and Cedar Bay Generating Company, Limited Partnership, for approval of the First Amendment to the Restated Agreement for purchase of firm capacity and energy between FPL and AES Cedar Bay, Inc.?  
RECOMMENDATION: Yes. The First Amendment to the Restated Agreement (Amendment) appears to balance the interests of both parties, and will avert further litigation. If Cedar Bay's performance remains the same or deteriorates, capacity payments will be reduced. If Cedar Bay's performance increases significantly, FPL's ratepayers will be responsible for higher capacity payments. However, FPL will enjoy increased reliability and improved flexibility in dispatching the facility. FPL will likely experience energy savings because the Amendment provides an incentive for Cedar Bay to provide additional energy priced below FPL's as-available energy price. FPL should be authorized to recover costs incurred under the Amendment through the Fuel and Purchased Power Cost Recovery Clause and the Capacity Cost Recovery Clause, subject to annual review in those proceedings.

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<u>ITEM NO.</u>	<u>CASE</u>
18**PAA	Docket No. 020995-EI - Joint petition for approval of first amendment to restated agreement for purchase of firm capacity and energy between Florida Power & Light Company and AES Cedar Bay, Inc. by Florida Power & Light Company.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by this 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: Jaber, Deason, Baez, Bradley, Davidson

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19\*\*PAADocket No. 021005-EU - Petition for emergency variance from or waiver of individual metering requirement of Rule 25-6.049(5) (a), F.A.C., by Luxury Resorts International, Inc. d/b/a The Atlantic. (Deferred from December 2, 2002 conference; revised recommendation filed.)

Critical Date(s): 1/21/03 (Statutory deadline.)

Commissioners Assigned: Full Commission  
Prehearing Officer: Administrative

Staff: ECR: Baxter, Wheeler  
GCL: Echternacht

ISSUE 1: Should the Commission grant Luxury Resorts International, Inc.'s request for waiver of the requirements of Rule 25-6.049(5) (a), Florida Administrative Code?

RECOMMENDATION: Yes. Staff recommends that the requested rule waiver be granted, provided that: (1) LRI allocates the cost of electricity to the individual condominium unit owners using a reasonable apportionment method, as required by Rule 25-6.049(6) (a), Florida Administrative Code; and (2) the waiver is effective only so long as the condominium is operated and licensed as a transient occupancy facility. At such time the condominium is no longer so operated and licensed, The Atlantic must immediately inform Florida Power & Light Company (FPL), at which time FPL will install individual meters on the occupancy units. In the event such a conversion to individual metering is required, The Atlantic will be solely responsible for the cost of such conversion.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the proposed agency action files

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19**PAA	Docket No. 021005-EU - Petition for emergency variance from or waiver of individual metering requirement of Rule 25-6.049(5)(a), F.A.C., by Luxury Resorts International, Inc. d/b/a The Atlantic. (Deferred from December 2, 2002 conference; revised recommendation filed.)

(Continued from previous page)

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 with the modification to Issue 1 that LRI will provide a report 12 months after the first unit closes. The waiver will continue during review of the report and until the PSC acts otherwise, and as long as LRI continues to be operated and licensed as a transient occupancy facility.

Chairman Jaber dissented.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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20\*\*PAADocket No. 021213-EI - Request for approval to change rate used to capitalize allowance for funds used during construction (AFUDC) from 8.26% to 7.84% effective 11/1/02, by Florida Power & Light Company.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Administrative

Staff: ECR: Brinkley, Lester  
GCL: C. Keating

ISSUE 1: Should the Commission approve FPL's request to reduce its AFUDC rate from 8.26% to 7.84%?

RECOMMENDATION: Yes. The appropriate AFUDC rate for FPL is 7.84% based on a 13-month average capital structure for the period ending October 31, 2002.

ISSUE 2: What is the appropriate monthly compounding rate to achieve the requested 7.84% annual rate?

RECOMMENDATION: The appropriate monthly compounding rate to maintain a simple rate of 7.84% is 0.630969%.

ISSUE 3: Should the Commission approve Florida Power & Light Company's requested effective date of November 1, 2002, for implementing the revised AFUDC rate?

RECOMMENDATION: Yes.

ISSUE 4: 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: Jaber, Deason, Baez, Bradley, Davidson

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21\*\*PAA Docket No. 021191-GU - Petition for approval of new account and treatment of costs associated with right-of-way expenses, by Florida Public Utilities Company.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Administrative

Staff: ECR: Brinkley  
GCL: Rodan

ISSUE 1: Should Florida Public Utilities Company be allowed to amortize over six years the right-of-way maintenance costs charged to them by Florida East Coast Railway Company?

RECOMMENDATION: Yes. Staff recommends that \$40,509 in right-of way costs be amortized over a six-year period beginning June 1, 2002 and that a new account, "Account 389.2 - Rights-of-Way," be created in order to track these costs.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon the 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 PAA Order.

DECISION: This item was deferred.

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<u>ITEM NO.</u>	<u>CASE</u>
22**Docket No.	030005-WS - Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4) (a), F.S.
	Critical Date(s): 3/31/03 (Statutory reestablishment deadline.)
	Commissioners Assigned: Full Commission Prehearing Officer: Administrative
	Staff: ECR: Fitch, Rendell GCL: Rodan
PAA	<u>ISSUE 1:</u> Which index should be used to determine price level adjustments? <u>RECOMMENDATION:</u> The Gross Domestic Product Implicit Price Deflator Index is recommended for use in calculating price level adjustments. Staff recommends calculating the 2003 price index by using a fiscal year, four quarter comparison of the Implicit Price Deflator Index ending with the third quarter 2002.
PAA	<u>ISSUE 2:</u> What percentage should be used by water and wastewater utilities for the 2003 Price Index? <u>RECOMMENDATION:</u> The 2003 Price Index for water and wastewater utilities should be 1.31%.
PAA	<u>ISSUE 3:</u> Should an affirmation be added to the index application regarding the utility's active complaints, corrective orders, or outstanding citations with the Department of Environmental Protection (DEP), County Health Departments, or the Public Service Commission (PSC)? <u>RECOMMENDATION:</u> Yes. An affirmation should be added to the index application regarding the utility's active complaints, corrective orders, or outstanding citations with the DEP, County Health Departments, or the PSC. The utility should affirm that it does not have any active complaints, corrective orders, or outstanding citations with the DEP, County Health Departments, or the PSC. If the utility does have any active complaints, corrective orders, or outstanding citations with the DEP, County Health Departments, or the PSC, it should affirm that these items

<u>ITEM NO.</u>	<u>CASE</u>
22**	<p>Docket No. 030005-WS - Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4) (a), F.S.</p> <p>(Continued from previous page)</p> <p>are outstanding and provide staff with a description of the complaint, corrective order, or outstanding citation.</p>
PAA	<p><u>ISSUE 4:</u> What is the appropriate treatment of DEP required testing pursuant to Section 367.081(4) (b), Florida Statutes, and Rule 25-30.425(4), Florida Administrative Code?</p> <p><u>RECOMMENDATION:</u> The appropriate treatment of DEP required testing pursuant to Section 367.081(4) (b), Florida Statutes, and Rule 25-30.425(4), Florida Administrative Code, is to include existing DEP required testing in the calculation of an annual index filing and exclude the cost associated with "new" testing requirements that were required within 12 months of the utility's filing for an index increase. The utility can recover the cost associated with "new" testing requirements that were required within 12 months of the utility's filing by a pass-through rate adjustment. The index application should be modified to include language that clarifies the appropriate treatment of DEP required testing in an index and pass-through filing.</p> <p><u>ISSUE 5:</u> How should the utilities be informed of the indexing requirements?</p> <p><u>RECOMMENDATION:</u> Pursuant to Rule 25-30.420(1), Florida Administrative Code, the Division of the Commission Clerk and Administrative Services, after the expiration of the PAA protest period, should mail each regulated water and wastewater utility a copy of the PAA order establishing the index which will contain the information presented in Form PSC/WAW 15 (4/99) and Appendix A (Attachment 1 to staff's January 9, 2003 memorandum). A cover letter from the Director of the Division of Economic Regulation should be included with the mailing of the order (Attachment 2 to staff's memorandum). If a protest is filed and a hearing is held, the Division of the Commission Clerk and Administrative Services should mail each regulated water and wastewater utility a copy of the final order establishing the index which will contain the information presented in</p>



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<u>ITEM NO.</u>	<u>CASE</u>
22**	Docket No. 030005-WS - Annual reestablishment of price increase or decrease index of major categories of operating costs incurred by water and wastewater utilities pursuant to Section 367.081(4) (a), F.S.

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Form PSC/WAW 15 (4/99) and Appendix A (Attachment 1 to staff's memorandum). A cover letter from the Director of the Division of Economic Regulation should be included with the mailing of the order (Attachment 2 to staff's memorandum).

ISSUE 6: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed upon the issuance of the Consummating Order if no substantially affected person files a timely protest within the 14-day protest period after issuance of the PAA Order. Any party filing a protest should be required to prefile testimony with the protest.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

ITEM NO. CASE

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23Docket No. 020407-WS - Application for rate increase in Polk  
County by Cypress Lakes Utilities, Inc.

Critical Date(s): 1/30/03 (60-day suspension date)

Commissioners Assigned: Full Commission

Prehearing Officer: Deason

Staff: ECR: Revell, Joyce, Edwards, D. Draper, Merchant

GCL: Echternacht

ISSUE 1: Should the utility's proposed water and wastewater rates be suspended?

RECOMMENDATION: Yes. Cypress Lakes' proposed water and wastewater rates should be suspended. The docket should remain open pending the Commission's final action on the utility's requested rate increase.

ISSUE 2: Should an interim revenue increase be approved?

RECOMMENDATION: Yes. On an interim basis, the utility should be authorized to collect annual water and wastewater revenues as indicated below:

	<u>Adjusted Test</u>	<u>\$</u>	<u>Revenue</u>	<u>%</u>
	<u>Year Revenues</u>	<u>Increase</u>	<u>Requirement</u>	<u>Increase</u>
Water	\$114,552	\$140,644	\$255,196	122.78%
Wastewater	\$234,778	\$104,389	\$339,167	44.46%

ISSUE 3: What are the appropriate interim water and wastewater rates?

RECOMMENDATION: The service rates for Cypress Lakes in effect as of December 31, 2001, should be increased by 125.89% for water operations and 44.46% for wastewater operations to generate the recommended revenue increases for the interim period. The approved rates should be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided the customers have received notice. The rates should not be implemented until the required security has been filed. The utility should provide proof of the date notice was given within 10 days after the date of notice.

<u>ITEM NO.</u>	<u>CASE</u>
23	Docket No. 020407-WS - Application for rate increase in Polk County by Cypress Lakes Utilities, Inc.  (Continued from previous page)  <u>ISSUE 4</u> : What is the appropriate security to guarantee the interim increase? <u>RECOMMENDATION</u> : A corporate undertaking is acceptable contingent upon receipt of the written guarantee of the parent company, Utilities, Inc. (UI), and written confirmation of UI's oral attestation that it does not have any outstanding guarantees on behalf of UI-owned utilities in other states. UI should be required to file a corporate undertaking on behalf of its subsidiaries to guarantee any potential refunds of water and wastewater revenues collected under interim conditions. While the incremental amount subject to refund in this docket is \$164,161, this request will raise UI's total guarantee to a cumulative amount of \$534,776. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility should provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund should be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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24\*\*PAADocket No. 020439-SU - Application for staff-assisted rate case in Lee County by Sanibel Bayous Utility Corporation. Docket No. 020331-SU - Investigation into alleged improper billing by Sanibel Bayous Utility Corporation in Lee County in violation of Section 367.091(4), Florida Statutes.

Critical Date(s): 10/14/03 (15-month effective date)

Commissioners Assigned: Full Commission  
Prehearing Officer: Deason (020439)  
Bradley (020331)

Staff: ECR: Merta, Davis, Iwenjiora, Massoudi  
GCL: Jaeger

ISSUE 1: Is the quality of service provided by Sanibel Bayous Utility Corporation considered satisfactory?

RECOMMENDATION: No. The quality of the wastewater plant-in-service provided by SBUC should not be considered satisfactory. The utility should complete any and all improvements to the system that are necessary to satisfy the standards set by the Florida Department of Environmental Protection (FDEP). Also, it is recommended that a local emergency phone number, that can be easily seen, be posted at the plant and at each lift station. The emergency phone number should be posted at all locations no later than 90 days from the date of the Consummating Order for this rate case.

ISSUE 2: What portions of Sanibel Bayous Utility Corporation are used and useful?

RECOMMENDATION: The utility wastewater treatment plant is considered to be 67% used and useful. The wastewater collection system is considered to be 100% used and useful.

ISSUE 3: What is the appropriate test year rate base for the utility?

RECOMMENDATION: The appropriate test year rate base for the utility is (\$39,997). The utility should be required to complete all pro forma additions, as discussed in the analysis portion of staff's January 9, 2003 memorandum, within six months of the Commission's Consummating Order.

ISSUE 4: What is the appropriate rate of return on equity and the appropriate overall rate of return for this utility?

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RECOMMENDATION: The appropriate rate of return on equity is 10.23% with a range of 9.23% to 11.23%. An overall rate of return should not be established for this utility at this time.

ISSUE 5: What is the appropriate test year revenue?

RECOMMENDATION: The appropriate test year revenue for this utility is \$43,560.

ISSUE 6: What is the appropriate amount of operating expense?

RECOMMENDATION: The appropriate amount of operating expense for this utility is \$54,755. The utility should be required to provide the Commission with proof of the purchase of insurance within 90 days of the Consummating Order, removal of vegetation from the pond berm, the addition of baffles in the chlorine contact chamber and the addition of new diffusers in some of the aeration tanks, as discussed in the analysis portion of staff's January 9, 2003 memorandum, within six months of the Consummating Order.

ISSUE 7: Should the Commission use the operating ratio methodology as an alternative means to calculate the revenue requirement for SBUC and, if so, what is the appropriate margin?

RECOMMENDATION: No. The Commission should not use the operating ratio methodology for calculating the revenue requirement for SBUC; staff believes that the utility should be considered ineligible for the operating ratio methodology at this time.

ISSUE 8: What is the appropriate revenue requirement?

RECOMMENDATION: The appropriate revenue requirement is \$54,755.

ISSUE 9: What are the appropriate rates, rate structure and billing cycle for the system?

RECOMMENDATION: The appropriate rate structure for this system is the flat rate structure. Customers should be

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billed on a quarterly basis. The recommended rates should be designed to produce revenue of \$54,299 excluding miscellaneous service charge revenue, as shown in the analysis portion of staff's memorandum. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), Florida Administrative Code. The rates should not be implemented until notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days after the date of the notice.

ISSUE 10: 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 of staff's memorandum, to remove rate case expense grossed up for regulatory assessment fees and 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, Florida Statutes. 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 one month prior to the actual date of the required rate reduction. If the utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

ISSUE 11: Should the utility be authorized to collect service availability charges, and if so what are the appropriate charges?

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RECOMMENDATION: No. The utility should not be authorized to collect service availability charges. The utility should cease collecting the temporary service availability charge upon issuance of the Consummating Order.

ISSUE 12: Should the utility be authorized to collect late fees, and if so what are the appropriate charges?

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 one month of the Commission's final 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 charge should become effective on the stamped approval date of the revised tariff sheets, if no protest is filed and provided customers have been notified.

ISSUE 13: Should the utility be authorized to collect miscellaneous service charges, and if so, what are the appropriate charges?

RECOMMENDATION: Yes. The utility should be authorized to collect miscellaneous service charges as recommended in the analysis portion of staff's memorandum. The utility should file revised tariff sheets which are consistent with the Commission's vote within one month of the Commission's final 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 miscellaneous service charges should become effective for connections made on or after the stamped approval date of the revised tariff sheets, if no protest is filed.

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ISSUE 14: Should the recommended rates be approved for the utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the utility?

RECOMMENDATION: Yes. Pursuant to Section 367.0814(7), Florida Statutes, the recommended rates should be approved for the utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the utility. Prior to implementation of any temporary rates, the utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the utility should be subject to the refund provisions discussed in the analysis portion of staff's memorandum. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(7), Florida Administrative Code, the utility should file reports with the Division of the Commission Clerk and Administrative Services no later than 20 days after each monthly billing. These reports should indicate the amount of revenue collected under the increased rates subject to refund.

ISSUE 15: Should SBUC be required to make an additional refund to customers for amounts it collected in violation of Section 367.091(4), Florida Statutes, and if so, what is the amount of the additional refund?

RECOMMENDATION: Yes. SBUC should be required to make an additional refund in the amount of \$6,732 in service rates. In addition, the utility should be required to refund approximately \$750 in unauthorized late payment fees. The refunds should be made with interest in accordance with Rule 25-30.360(4), Florida Administrative Code. Further, the refunds should be made within 90 days in accordance with Rule 25-30.360(2), Florida Administrative Code. The refunds and the accrued interest should be paid only to those customers who paid the unauthorized service rates from April 2000 through September 2002 and the unauthorized late



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payment fees from January 2000 to the current date. Pursuant to Rule 25-30.360(7), Florida Administrative Code, the utility shall provide monthly reports on the status of the refund by the 20th of the following month. The utility should treat any unclaimed refunds in accordance with Rule 25-30.360(8), Florida Administrative Code. In no instance should maintenance and administrative costs associated with any refund be borne by the customers; the costs are the responsibility of, and should be borne by, the utility.

ISSUE 16: Should Sanibel Bayous Utility Corporation be ordered to show cause, in writing within 21 days, why it should not be fined for collecting rates and charges not approved by the Commission, in apparent violation of Sections 367.081(1) and 367.091(4), Florida Statutes, and Rule 25-30.135(2), Florida Administrative Code?

RECOMMENDATION: Yes. Sanibel Bayous should be ordered to show cause, in writing within 21 days, why it should not be fined \$300 for its apparent violation of those statutes and rule. The order to show cause should incorporate the conditions stated in the staff analysis.

ISSUE 17: Should these dockets be closed?

RECOMMENDATION: No. If no timely protest is received upon expiration of the protest period, the PAA Order will become final upon the issuance of a Consummating Order. However, these dockets should remain open for an additional seven months from the Consummating Order to allow staff to verify completion of pro forma items as described in Issue Nos. 3 and 6, to verify that the utility has purchased insurance within 90 days as described in Issue No. 6, to verify that

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the refund has been made to SBUC customers, and to process the show cause proceeding. Once staff has verified that this work has been completed, the docket should be closed administratively.

DECISION: This item was deferred.

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25\*\*Docket No. 021023-WS - Joint application for approval of acquisition by Philadelphia Suburban Corporation of stock of AquaSource Utility, Inc., and resulting transfer of controlling interest of Arrendondo Utility Company, Inc., Crystal River Utilities, Inc., Jasmine Lakes Utilities Corporation, Lake Suzy Utilities, Inc., and Ocala Oaks Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: Full Commission  
Prehearing Officer: Baez

Staff: ECR: Brady  
GCL: Harris

ISSUE 1: Should the transfer of majority organizational control of AquaSource Utility, Inc. from DQE, Inc. to Philadelphia Suburban Corporation be approved?

RECOMMENDATION: Yes. The transfer of majority organizational control of AquaSource Utility, Inc. from DQE, Inc. to Philadelphia Suburban Corporation should be approved. The approved rates and charges of the regulated companies should be continued until authorized to change by the Commission in a subsequent proceeding.

ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes. There are no issues remaining and the docket should be closed upon the issuance of the Final Order.

DECISION: The recommendations were approved.

Commissioners participating: Jaber, Deason, Baez, Bradley, Davidson

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26Docket No. 000075-TP - Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996.

Critical Date(s): None

Commissioners Assigned: Jaber, Deason, Baez  
Prehearing Officer: Jaber

Staff: GCL: B. Keating  
CMP: Marsh, Dowds

ISSUE 1: Should Verizon's Request for Oral Argument on its Motion be granted?

RECOMMENDATION: No. Staff recommends that the issue before the Commission is fully set forth in the parties' pleadings and that additional oral argument is not likely to lend any further clarity to the issue being addressed.

ISSUE 2: Should Verizon's Motion for Reconsideration of Commission Vote for Procedural Impropriety be granted?

RECOMMENDATION: No.

ISSUE 3: Should this Docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation on Issue 2, this Docket should be closed. If, however, the Commission denies staff's recommendation on Issue 2, this Docket should remain open as necessary for further consideration of the Motions for Reconsideration in this Docket that were originally addressed at the Commission's December 17, 2002, Agenda Conference.

DECISION: The recommendation in Issue 1 was denied; the recommendations in Issues 2 and 3 were approved.

Commissioners participating: Jaber, Deason, Baez

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27Docket No. 020953-EI - Petition to determine need for Hines Unit 3 in Polk County by Florida Power Corporation.

Critical Date(s): 2/10/03 (Order to be submitted to the Department of Environmental Protection pursuant to Section 403.507(2)(a)2, Florida Statutes.)

Commissioners Assigned: Deason, Baez, Bradley  
Prehearing Officer: Baez

Staff: ECR: Colson, Bohrmann, Breman, D. Draper, Harlow, Stallcup  
CMP: Futrell, Makin, Marshall  
GCL: Harris, Stern

ISSUE 1: Is there a need for the proposed Hines Unit 3, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?

RECOMMENDATION: Yes. Florida Power Corporation has a need for additional capacity by December 2005, the in-service date of Hines Unit 3. The Commission approved a joint proposal from the investor-owned utilities in Peninsular Florida to increase minimum planning reserves to at least 20 percent by the summer of 2004. Without the Hines Unit 3 capacity, FPC's reserve margin will decrease to approximately 17 percent in 2005/06 and 14 percent by 2006/07. The Hines Unit 3 addition allows FPC to maintain a minimum 20 percent Reserve Margin. FPC is projected to grow into the capacity to be provided by the addition of Hines Unit 3.

ISSUE 2: Is there a need for the proposed Hines Unit 3, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?

RECOMMENDATION: Yes. As discussed in Issue 1, Hines Unit 3 will contribute to the reliability of FPC's system. Also, the results of FPC's resource planning analyses show that the economics favor combined cycle units over combustion turbine (CT), coal, or nuclear when a generator is needed to run more than approximately 20 percent of the time. With

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Docket No. 020953-EI - Petition to determine need for Hines Unit 3 in Polk County by Florida Power Corporation.

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current projections, Hines Unit 3 is expected to provide adequate electricity at a reasonable cost.

ISSUE 3: Has Florida Power Corporation met the requirements of Rule 25-22.082, Florida Administrative Code, "Selection of Generating Capacity"?

RECOMMENDATION: Yes. FPC administered its RFP process and evaluated the resulting bids fairly and appropriately.

ISSUE 4: Is the proposed Hines Unit 3 the most cost-effective alternative available, as the criterion is used in Section 403.519, Florida Statutes?

RECOMMENDATION: Yes. Hines Unit 3 appears to be the most cost-effective alternative over the 25 years during which FPC's ratepayers will be obligated for the cost of the unit.

ISSUE 5: Are there any conservation measures taken by or reasonably available to Florida Power Corporation which might mitigate the need for the proposed power plant?

RECOMMENDATION: No. There are no conservation measures reasonably available to FPC which might mitigate the need for the proposed power plant.

ISSUE 6: Has Florida Power Corporation adequately ensured the availability of fuel commodity and transportation to serve Hines Unit 3?

RECOMMENDATION: Yes. While FPC has yet to sign a contract to supply natural gas to the proposed unit, FPC will provide the Commission with a copy of the signed contract for commodity and transportation to serve Hines Unit 3.

ISSUE 7: Based on the resolution of the foregoing issues, should the Commission grant Florida Power Corporation's petition to determine the need for the proposed Hines Unit 3?

RECOMMENDATION: Yes. FPC's petition for determination of need for Hines Unit 3 meets the statutory requirement of Section 403.519, Florida Statutes, as discussed in prior issues. FPC should continue to monitor the cost-effectiveness of Hines Unit 3 prior to committing substantial capital dollars.

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ISSUE 8: Should this docket be closed?

RECOMMENDATION: The docket should be closed after the time for filing an appeal has run.

DECISION: The recommendations were approved.

Commissioners participating: Deason, Baez, Bradley

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28\*\*Docket No. 011119-TP - Petition by XO Florida, Inc. for arbitration of unresolved issues with BellSouth Telecommunications, Inc.

Critical Date(s): 3/5/03 (Pursuant to Section 252(e)(4) of the Telecommunications Act of 1996.)

Commissioners Assigned: Deason, Bradley  
Prehearing Officer: Bradley

Staff: GCL: Teitzman  
CMP: Simmons

ISSUE 1: Should the Commission approve the interconnection agreement between BellSouth and XO?

RECOMMENDATION: Yes. The Commission should approve the interconnection agreement between BellSouth and XO.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. Docket No. 011119-TP should be closed.

DECISION: The recommendations were approved.

Commissioners participating: Deason, Bradley



ITEM NO.

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29Docket No. 020099-TP - Complaint of ALEC, Inc. d/b/a  
Volaris Telecom, Inc. for enforcement of interconnection  
agreement with Sprint-Florida, Incorporated and request for  
relief.

Critical Date(s): None

Commissioners Assigned: Baez, Bradley  
Prehearing Officer: Baez

Staff: CMP: Brown  
GCL: Dodson, Knight

ISSUE 1: Does the Commission have jurisdiction in this  
matter?

RECOMMENDATION: Yes. Pursuant to Section 252(e) of the  
Telecommunications Act of 1996, the Commission approved the  
Agreement between ALEC, Inc. and Sprint-Florida,  
Incorporated. As such, the Commission has jurisdiction to  
resolve this dispute pursuant to Sections 251 and 252 of the  
Telecommunications Act of 1996, and Section 364.162(1),  
Florida Statutes.

ISSUE 2: Under the terms of the Parties' Interconnection  
Agreement, what are the appropriate dedicated transport  
charges for transport facilities used to transport Sprint-  
originated traffic from the POI to ALEC's switch?

ISSUE 2A: Has ALEC applied the correct methodology to  
calculate the appropriate recurring and nonrecurring  
dedicated transport charges to Sprint for such facilities?

ISSUE 2B: Has ALEC applied the correct rate to calculate  
the appropriate recurring and nonrecurring dedicated  
transport charges to Sprint for such facilities?

RECOMMENDATION: No. ALEC did not use the correct  
methodology or rates to calculate the appropriate recurring  
and nonrecurring dedicated transport charges it billed  
Sprint. ALEC's practice of billing multiple times for the  
same underlying facilities is duplicative and should not be  
permitted. Sprint's methodology and the rates contained in  
the Agreement should apply.

ISSUE 3: Under the terms of the Parties' Interconnection  
Agreement, what minute-of-use charges are applicable for the

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Docket No. 020099-TP - Complaint of ALEC, Inc. d/b/a Volaris Telecom, Inc. for enforcement of interconnection agreement with Sprint-Florida, Incorporated and request for relief.

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transport of Sprint-originated traffic from the POI to ALEC's switch?

RECOMMENDATION: The parties have withdrawn this issue. Thus, no vote is necessary on this issue.

ISSUE 4: Has Sprint paid ALEC the appropriate charges pursuant to the terms of the Parties' Interconnection Agreement?

RECOMMENDATION: Yes. Based on staff's recommendation in Issues 2, 2A and 2B, and its analysis in its January 9, 2003 memorandum, staff believes that Sprint has paid ALEC all sums appropriately due according to the terms of the interconnection agreement.

ISSUE 5: Did Sprint waive its right to dispute charges because it did not properly follow applicable procedures outlined in the Parties' Interconnection Agreement?

PRIMARY RECOMMENDATION: Yes. Primary staff believes that taking the language of the agreement as a whole, Sprint has waived its right to dispute ALEC's charges for April, May, June, and July 2001, under Section 21.2 of the Agreement. Sprint failed to properly notify ALEC of its billing dispute, and ALEC has not waived any provision, including Section 21.2, of the Agreement. Although the audit provisions of the contract are otherwise available to Sprint, those provisions are inapplicable here as Sprint failed to request an audit within the appropriate time frame such that the audit would cover the time period in dispute here.

ALTERNATIVE RECOMMENDATION: No. Alternative staff believes that while Sprint did not adhere to the letter of the dispute resolution procedures as outlined in the agreement, Sprint does appear to have substantially performed its obligations and did not waive its right to dispute charges rendered by ALEC for April, May, June, and July 2001.

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29	Docket No. 020099-TP - Complaint of ALEC, Inc. d/b/a Volaris Telecom, Inc. for enforcement of interconnection agreement with Sprint-Florida, Incorporated and request for relief.  (Continued from previous page)  <u>ISSUE 6:</u> Should this docket be closed? <u>RECOMMENDATION:</u> Yes. Whether the Commission approves staff's primary or alternative recommendation on Issue 5, this docket should be closed.  <u>DECISION:</u> This item was deferred.

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30\*\*Docket No. 020665-TI - Compliance investigation of Telecore Communications Corp. for apparent violation of Rule 25-24.910, F.A.C., Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

Critical Date(s): None

Commissioners Assigned: Baez, Bradley, Davidson  
Prehearing Officer: Baez

Staff: CMP: Buys  
GCL: L. Fordham

ISSUE 1: Should the Commission accept the settlement offer proposed by Telecore Communications, Corp. which includes a contribution of \$15,000 to the State General Revenue Fund to resolve the apparent violations of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The monetary contribution should be paid to the Florida Public Service Commission and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund. The payment should identify the docket number and company name. If the company's payment is not received within fourteen calendar days after the issuance of the Order, IXC Certificate No. 8042 should be cancelled. If the company's IXC certificate is cancelled, Telecore Communications, Corp. should be required to immediately cease and desist providing prepaid calling services and IXC telecommunications services in Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation, this docket should remain open pending remittance of Telecore's contribution of \$15,000. If the company fails to remit the contribution within fourteen calendar days of the issuance date of the Commission's

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<u>ITEM NO.</u>	<u>CASE</u>
30**	Docket No. 020665-TI - Compliance investigation of Telecore Communications Corp. for apparent violation of Rule 25-24.910, F.A.C., Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

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Order, Certificate No. 8042 should be cancelled. Docket No. 020665-TI should be closed administratively upon either receipt of the \$15,000 contribution or upon cancellation of the company's certificate.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Bradley, Davidson