

**MINUTES OF JULY 6, 2004**  
**COMMISSION CONFERENCE**

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

**ADJOURNED:** 2:20 p.m.

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

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

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1\*\*Consent Agenda

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
040540-TX	Broadstar Communications, LLC
040361-TX	Awesome Communications Inc.

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
t040586 TX	Adelphia Telecommunications of Florida, Inc.	12/31/2003

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
040522-TC	Robert E. Martin
040537 TC	James C. Rains d/b/a Rains Resources Inc.

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

DECISION: The recommendation was approved.

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

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2\*\*Docket No. 040451-TP - Petition by Citizens of Florida to initiate rulemaking that would require local exchange telecommunications companies to provide Lifeline service within 30 days of certification. (Deferred from June 29, 2004 conference; revised recommendation filed.)

Critical Date(s): 7/6/04 (30-day statutory deadline waived until this date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: GCL: Cibula  
CMP: C. Williams

Issue 1: Should the Commission grant OPC's petition to initiate rulemaking?

Recommendation: Yes. The Commission should grant the petition to initiate rulemaking.

Issue 2: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, this docket should remain open to proceed with the rulemaking process.

DECISION: The recommendations were approved.

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

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3\*\*Docket No. 030643-TP - Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida for review of decision by The American Arbitration Association, in accordance with Attachment 1 Section 11.2(a) of interconnection agreement between GTE Florida Inc. and TCG South Florida.

Critical Date(s): None

Commissioners Assigned: All Commissioners  
Prehearing Officer: Davidson

Staff: GCL: Banks, Susac  
CMP: Pruitt

Issue 1: Does the Commission have jurisdiction to review the decision rendered by the AAA pursuant to the AT&T/GTE interconnection agreement adopted by TCG?

Recommendation: Yes. As a general matter, the Commission has jurisdiction to resolve disputes arising under an approved interconnection agreement unless its role is restricted by a binding dispute resolution provision in the agreement. Although staff believes that the Commission has jurisdiction to review the AAA decision in this case pursuant to Section 364.162, Florida Statutes, this conclusion should not be construed broadly and should be limited to the facts presented in this case.

DECISION: The recommendation was denied. The Commissioners decided that: A) the Commission has jurisdiction to resolve disputes regarding interconnection agreements; B) the Commission recognizes that parties may choose arbitration to resolve disputes regarding interconnection agreements; and, C) the Commission does not have jurisdiction to consider appeals of arbitration awards in this particular case.

Issue 2: Should the Commission agree to hear or review Verizon's petition against TCG?

Recommendation: No. Staff recommends that the Commission should not agree to hear or review this case and should dismiss Verizon's petition on its own motion because it does not present a compelling issue of public policy that the Commission needs to consider.

DECISION: There was no vote on this issue.

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Docket No. 030643-TP - Petition of Verizon Florida Inc. (f/k/a GTE Florida Inc.) against Teleport Communications Group, Inc. and TCG South Florida for review of decision by The American Arbitration Association, in accordance with Attachment 1 Section 11.2(a) of interconnection agreement between GTE Florida Inc. and TCG South Florida.

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Issue 3: Should this docket be closed?

Recommendation: If the Commission denies staff's recommendation in Issue 1 or approves staff's recommendation in Issue 2, this docket should be closed as no further Commission action is required. If, however, the Commission denies staff's recommendation in Issue 2, this docket should remain open pending the resolution of the issues in the docket.

DECISION: The recommendation was approved.

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

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4\*\*Docket No. 031046-TP - Petition and complaint of AT&T Communications of the Southern States, LLC against BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for alleged anticompetitive pricing of long distance service.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: GCL: Rojas, Christensen

CMP: Pruitt

Issue 1: Should the Commission grant BellSouth's motion to dismiss AT&T's Petition?

Recommendation: Yes. Staff recommends that BellSouth's Motion to Dismiss be granted. Staff further recommends that the Commission, on its own motion, dismiss with prejudice AT&T's request for reduction of BellSouth's access charges. In addition, staff recommends that AT&T be granted leave to amend its Petition within 20 days of issuance of the Commission's Order for the limited purposes of: (1) alleging specific facts and identifying specific violations that may constitute a cause of action arising under Sections 364.08, 364.09, and 364.10; and (2) alleging specific facts to support its assertion that BellSouth and BSLD are acting in concert to enable BellSouth to do that which it is otherwise prohibited by law from doing.

DECISION: The Commissioners acknowledged AT&T's voluntary withdrawal of its petition (without prejudice) and strongly recommended that staff and the parties work together to better understand and resolve the outstanding issues in this case..

Issue 2: Should BSLD's and AT&T's Motions for Summary Final Order be granted?

Recommendation: If the Commission approves staff's recommendations in Issue 1, BSLD's and AT&T's separate motions for summary final order will be rendered moot and no further action will need to be taken. If the Commission denies staff's recommendation in Issue 1, BSLD's and AT&T's separate motions for summary final order should be denied as neither has met the legal standard for which Summary Final Order may be granted.

DECISION: The issue is moot.

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Docket No. 031046-TP - Petition and complaint of AT&T Communications of the Southern States, LLC against BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for alleged anticompetitive pricing of long distance service.

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Issue 3: Should this Docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendations in Issues 1 and 2, and no amended petition is filed within 20 days from the issuance of the order, this Docket should be closed as no further action by the Commission will be required. If, however, the parties choose to file an amended petition within 20 days of the order, this docket should remain open for further proceedings.

DECISION: The recommendation was approved. The docket will be closed.

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

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5Docket No. 040086-EI - Petition to vacate Order No. PSC-01-1003-AS-EI approving, as modified and clarified, the settlement agreement between Allied Universal Corporation and Chemical Formulators, Inc. and Tampa Electric Company and request for additional relief, by Allied Universal Corporation and Chemical Formulators, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners  
Prehearing Officer: Jaber

Staff: GCL: Brown, Stern  
ECR: Draper

Issue 1: Should the Commission grant the request for oral argument?

Recommendation: Yes.

Issue 2: Should the Commission dismiss Allied's Petition?

Recommendation: Yes. Allied's petition fails to state a cause of action upon which the Commission can grant relief. The Commission should dismiss the petition with prejudice.

Issue 3: Should the Commission grant Odyssey's Motion for Attorney's Fees and Sanctions?

Recommendation: No. Odyssey's Motion for Attorney's Fees should be denied.

Issue 4: Should this docket be closed?

Recommendation: If the Commission dismisses Allied's petition with prejudice, this docket should be closed. If the Commission dismisses Allied's petition with leave to amend, or denies the motions to dismiss, the docket should remain open.

DECISION: This item was deferred.



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6\*\*PAADocket No. 040249-TL - Amended petition to modify requirement to institute local number portability pursuant to Section 251(f) of the Telecommunications Act of 1996, by GTC, Inc. d/b/a GT Com.

Critical Date(s): 11/7/04 (In accordance with §251(f)(2), the Commission should act on GT Com's petition within 180 days of the amended petition.)

Commissioners Assigned: All Commissioners  
Prehearing Officer: Administrative

Staff: CMP: Maduro, Bulecza-Banks, Casey  
GCL: Susac

Issue 1: Should the Commission grant GT Com's amended request for a temporary suspension of the intermodal porting requirement until August 24, 2004?

Recommendation: Staff recommends that the Commission grant GT Com a temporary suspension of the intermodal porting requirement until August 24, 2004.

Issue 2: Should this docket be closed?

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

DECISION: The recommendations were approved.

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

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7\*\*PAADocket No. 040326-TL - Petition for suspension or modification of local number portability (LNP) requirement in Section 251(b)(2) of the Communications Act of 1934 as amended, by Northeast Florida Telephone Company d/b/a NEFCOM.

Critical Date(s): 10/9/04 (In accordance with §251(f)(2), the Commission should act on NEFCOM's petition within 180 days of the amended petition.)

Commissioners Assigned: All Commissioners  
Prehearing Officer: Administrative

Staff: CMP: Maduro, Bulecza-Banks, Casey  
GCL: Susac

Issue 1: Should the Commission grant NEFCOM's request for a suspension of the intermodal porting requirements for a minimum of six months after the FCC's full and final disposition of issues associated with the porting interval and the routing of calls between wireline and wireless providers?

Recommendation: No. However, staff recommends that the Commission suspend NEFCOM's intermodal porting requirement until six months from the date of the Commission vote on this recommendation.

Issue 2: Should this docket be closed?

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

DECISION: The recommendations were approved.

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

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8Docket No. 040216-GU - Application for rate increase by Florida Public Utilities Company.

Critical Date(s): 7/9/04 (60-day suspension date)  
10/26/04 (5-month effective date)

Commissioners Assigned: All Commissioners  
Prehearing Officer: Davidson

Staff: ECR: Merta, Kenny, Lester, Springer, Wheeler, Winters  
GCL: Jaeger

Issue 1: Should the request for a permanent increase in rates and charges be suspended for FPUC?

Recommendation: Yes. Staff recommends that the requested permanent increase in rates and charges of \$8,186,989 be suspended for FPUC.

Issue 2: Is FPUC's proposed interim test year rate base of \$52,093,355 appropriate?

Recommendation: No. The appropriate interim test year rate base for FPUC is \$50,496,627.

Issue 3: Is FPUC's proposed interim test year net operating income of \$3,078,737 appropriate?

Recommendation: No. The appropriate interim test year net operating income for FPUC is \$3,096,833.

Issue 4: Are FPUC's proposed return on equity of 10.40% and overall cost of capital of 7.68% appropriate for purposes of determining interim rates?

Recommendation: No. Staff recommends that, while FPUC's proposed return on equity of 10.40% is appropriate, the overall cost of capital should be 7.65%.

Issue 5: Are FPUC's proposed revenue expansion factor and interim net operating income multiplier of 0.618087 and 1.61790, respectively, appropriate?

Recommendation: Yes. The appropriate revenue expansion factor is .618087, and the appropriate net operating income multiplier is 1.6179.

Issue 6: Should FPUC's requested interim revenue increase of \$1,490,980 be granted?

Recommendation: No. After making the previous adjustments, the interim revenue increase for FPUC should be \$1,236,108.

Issue 7: How should the interim revenue increase for FPUC be distributed among the rate classes?

Recommendation: Any interim revenue increase approved should be applied evenly across the board to all rate classes based on their base rate revenues, as required by Rule 25-7.040, Florida Administrative Code, and should be recovered on a cents-per-therm basis. The interim rates should be made effective for all meter readings made on or after

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8 Docket No. 040216-GU - Application for rate increase by Florida Public Utilities Company.

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thirty days from the date of the vote approving any interim increase. The company should give notice to customers of the interim increase commencing with the first bill for service that reflects the increase.

Issue 8: What is the appropriate security to guarantee the amount collected subject to refund?

Recommendation: The appropriate security to guarantee the funds collected subject to refund is a corporate undertaking.

Issue 9: Should this docket be closed?

Recommendation: No. This docket should remain open to process the revenue increase request of the company.

DECISION: The recommendations were approved.

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

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9\*\*Docket No. 040442-EI - Petition for authority to implement proposed FlatBill rate schedule by Gulf Power Company.

Critical Date(s): 7/11/04 (60-day suspension date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Springer, Baxter, Slemkewicz  
GCL: Brown

Issue 1: Should Gulf Power Company's proposed FlatBill tariff be suspended?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: No.

DECISION: The recommendations were approved.

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

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10Docket No. 030443-WS - Application for rate increase in Pasco County by Labrador Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: ECR: Merchant, Edwards, Greene, Willis

GCL: C. Keating

Issue 1: Should the Commission grant Forest Lake's request for oral argument on its motion to intervene, motion for reconsideration of interim rate order, and request for emergency rate relief?

Recommendation: The Commission should grant Forest Lake's request for oral argument with respect to its request for emergency rate relief (Issue 4) and deny Forest Lake's request for oral argument with respect to its motion to intervene and motion for reconsideration (Issues 2 and 3).

Issue 2: Should the Commission grant Forest Lake's motion to intervene in this docket?

Recommendation: Yes. Forest Lake has demonstrated that its substantial interests will be affected through this proceeding; therefore its motion to intervene should be granted.

Issue 3: Should the Commission grant Forest Lake's motion for reconsideration of the interim rate order issued in this docket?

Recommendation: No. Forest Lake's motion for reconsideration should be denied.

While the motion for reconsideration clarifies that the Forest Lake R.V. Resort pays one monthly bill for all water and wastewater service provided to lots within the R.V. Resort, this point of fact is not material to the Commission's determination of interim rates for Labrador.

Issue 4: Should the Commission grant Forest Lake's request for emergency rate relief?

Recommendation: No. Labrador's interim rates should be deemed effective as of the stamped approval date (February 10, 2004) on the tariff sheets reflecting those rates. The customer notice provided by Labrador complied with the Commission's rules because it was distributed no later than with the first bill to each customer reflecting the interim rates.

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Docket No. 030443-WS - Application for rate increase in Pasco County by Labrador Utilities, Inc.

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Issue 5: Should this docket be closed?

Recommendation: No. This docket should remain open to allow for processing of Labrador's request for permanent rate relief.

DECISION: The recommendations were approved.

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

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11Docket No. 030445-SU - Application for rate increase in Lee County by Utilities, Inc. of Eagle Ridge.

Critical Date(s): 7/11/04 (60-day suspension date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: ECR: Joyce, Merchant, Redemann, Willis

GCL: Gervasi

Issue 1: Should the utility's proposed wastewater rates be suspended?

Recommendation: Yes. Eagle Ridge's proposed 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. The interim increase should be approved with adjustments as set forth in the analysis portion of staff's June 24, 2004 memorandum. On an interim basis, the utility should be authorized to collect annual wastewater revenues as indicated below:

	<u>Test Year</u> <u>Revenues</u>	<u>\$ Increase</u>	<u>Revenue</u> <u>Requirement</u>	<u>% Increase</u>
Wastewater	\$712,336	\$62, 666	\$775,002	8.80%

Issue 3: What are the appropriate interim wastewater rates?

Recommendation: The service rates for Eagle Ridge in effect as of December 31, 2002, should be increased by 8.82% to generate the recommended revenue increase 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. Also, the rates should not be implemented until the required security has been filed. The utility should provide proof to staff of the date notice was given within 10 days after the date of notice.

Issue 4: What is the appropriate security to guarantee the interim increase?

Recommendation: 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 wastewater revenues collected under interim conditions. Staff has recommended an incremental corporate undertaking guarantee in this docket of \$31,414. This request will raise UI's total



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Docket No. 030445-SU - Application for rate increase in Lee County by Utilities, Inc. of Eagle Ridge.

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guarantee to a cumulative amount of \$460,929. 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: Baez, Deason, Jaber, Bradley, Davidson

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12Docket No. 020129-TP - Joint petition of US LEC of Florida, Inc., Time Warner Telecom of Florida, L.P., and ITC^DeltaCom Communications objecting to and requesting suspension of proposed CCS7 Access Arrangement tariff filed by BellSouth Telecommunications, Inc.

Critical Date(s): None

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

Staff: CMP: Gilchrist, Simmons  
GCL: Teitzman, Christensen

Issue 1: Should the Commission grant the Joint Motion filed by BellSouth Telecommunications, Inc, US LEC of Florida, Inc., MCI WorldCom Communications, Inc., and MCI Metro Access Transmission Services, LLC (the "Parties"), for approval of their Stipulation and Agreement?

Recommendation: Yes. The Commission should grant the Joint Motion filed by BellSouth Telecommunications, Inc, US LEC of Florida, Inc., MCI WorldCom Communications, Inc., and MCI Metro Access Transmission Services, LLC, for approval of their Stipulation and Agreement. If approved, staff recommends that the Stipulation and Agreement renders all issues previously voted on by the Commission and the remaining three issues moot.

Issue 2: Should the docket be closed?

Recommendation: If the Commission approves staff's recommendation on Issue 1, a Final Order will be issued. The docket should remain open to process the refunds. When BellSouth completes the refunds, this docket should be closed administratively.

DECISION: The recommendations were approved.

Commissioners participating: Baez, Deason, Jaber, Bradley