

MINUTES OF JUNE 29,2004
COMMISSION CONFERENCE

COMMENCED: 9:35 a.m.

ADJOURNED: 5:05 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 (**).

1 Approval of Minutes

May 18, 2004 Regular Commission Conference

June 1, 2004 Regular Commission Conference

DECISION: The minutes were approved.

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

ITEM NO. CASE

2**Consent Agenda

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
040461 TX	Trinity Telecommunications, Inc. d/b/a Trinity Connect
040444-TX	Nationwide Computer Systems, Inc. d/b/a Desoto.Net and d/b/a Greenwood.Net
040470-TX	Ringsouth Telecom, Corp
040496-TX	SkyWay Telecom, Inc.
040516-TX	InterGlobe Communications, Inc.
040337-TX	CommPartners, LLC
040460-TX	Talk For Less, Inc.
040463-TX	Skyway Communications Holding Corp.

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>
040468-TC	Waterville Communications, Inc.
040433-TC	Edward Rodtz
040459-TC	Jose Benjamin Sanchez
040492-TC	SeaCoast Communications, L.L.C.
040526-TC	Milton J. Keifer

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ITEM NO. CASE

2** Consent Agenda

(Continued from previous page)

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>EFFECTIVE DATE</u>
040475-TX	RCN Telecom Services, Inc.	4/14/2004

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

ITEM NO.

CASE

3**Docket No. 040493-TP - Proposed amendment of Rule 25-24.516, F.A.C., Pay Telephone Rate Caps, and Rule 25-24.630, F.A.C., Rate and Billing Requirements.

Critical Date(s): None

Rule Status: Proposed

Commissioners Assigned: All Commissioners

Prehearing Officer: Deason

Staff: GCL: Cibula
CMP: Kennedy
ECR: Hewitt

Issue 1: Should the Commission propose the amendment of Rule 25-24.516, F.A.C., Pay Telephone Caps, and Rule 25-24.630, F.A.C., Rate and Billing Requirements?

Recommendation: Yes. The Commission should propose the amendment of the rules to repeal Rules 25-24.516(3) and 25-24.630(2), as set forth in Attachment A of staff's June 17, 2004 memorandum.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no request for hearing or comments are filed, the rules as proposed should be filed for adoption with the Secretary of State and the docket should be closed.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

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

Critical Date(s): 6/29/04 (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 item was deferred.

ITEM NO.

CASE

5Docket No. 020896-WS - Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.
Docket No. 010503-WU - Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Bradley (020896-WS)
Baez (010503-WU)

Staff: GCL: Gervasi, Jaeger
ECR: Walden, Daniel, Kummer, Willis
SCR: Lowery

Issue 1: Should the Commission grant Aloha's Request for Oral Argument on its Motion to Dismiss (Issue 3)?

Recommendation: Yes. Because oral argument may aid the Commission in comprehending and evaluating Issue 3, staff recommends that oral argument be granted. Staff notes that interested persons are permitted to participate on Issues 4-7 in any event. Combined presentations on all issues should be limited to fifteen minutes per side.

DECISION: The recommendation was approved.

Issue 2: Should the Commission grant Aloha's Motion to Strike the supplemental response filed by Dr. Kurien to Aloha's motion to dismiss?

Recommendation: Yes. The Commission should grant Aloha's Motion to Strike.

DECISION: The recommendation was approved.

Issue 3: What action should the Commission take on Aloha's Motion to Dismiss the First Deletion Petition and its Supplemental Motion to Dismiss the Second Deletion Petition?

Recommendation: The Commission should dismiss for lack of jurisdiction the portion of the First Deletion Petition that requests that the Seven Springs territory be made part of the service area of the Pasco County water utility system. The Commission should deny the motions to dismiss the remaining portions of the two deletion petitions.

DECISION: The recommendation was approved.

ITEM NO.

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Docket No. 020896-WS - Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.
Docket No. 010503-WU - Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

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Issue 4: Should the Commission grant Aloha's motion to modify the rate case order, to change the 98% standard for removal of hydrogen sulfide contained therein to agree with the Tampa Bay Water Standard of 0.1 mg/L?

Recommendation: Yes, Aloha's motion to modify the rate case order should be granted ~~in part and denied in part~~. The fourth ordering paragraph of the rate case order should be modified to read that "Aloha shall make improvements to its wells 8 and 9 and then to all of its wells as needed to meet a goal of 0.1 mg/L of sulfides in its finished water ~~at the point of delivery with the customer's piping~~. ~~Compliance with such requirement shall be determined based upon samples taken monthly at a minimum of two sites at domestic meters most distant from the multiple treatment facilities. Such sites shall be rotated to provide the greatest likelihood of detecting any departure from the maximum levels permitted~~ as that water leaves the treatment facilities of the utility. Compliance with such requirement shall be determined based upon samples taken at least annually from a point of connection just after all treatment systems and before entry of such water into the transmission and distribution system of the utility. Aloha shall implement this standard no later than February 12, 2005." The Commission should direct Aloha to use the treatment process that Aloha concludes will achieve this level of treatment in the most cost-effective manner. Additionally, Aloha should be required to file comments within 60 days from the date of the Commission's vote on this item regarding the feasibility of collecting and testing monthly samples at domestic meters as proposed by Dr. Kurien. Finally, the Commission should require monthly progress reports, as set forth in the staff analysis.

DECISION: The recommendation was approved.

ITEM NO.

CASE

- 5 Docket No. 020896-WS - Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County.
Docket No. 010503-WU - Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

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- ** Issue 5: What additional steps should Aloha take to address the black water problem occurring in customers' homes?
Recommendation: To assist customers who have experienced damage due to the water's high hydrogen sulfide content, staff recommends that Aloha should be strongly encouraged to implement a low interest loan or a rebate program to assist customers in the Seven Springs service territory who wish to replace their existing copper pipes. The details of two such program proposals are discussed in the staff analysis for the utility's consideration.

DECISION: There was no vote on this issue.

- ** Issue 6: What further action should the Commission take at this time on the deletion petitions?
Recommendation: The Commission should decline to take further action on the customers' requests to delete the Seven Springs area until after Aloha has had an opportunity to implement the new treatment process required by Issue 4. Staff will bring a recommendation for further action on the deletion petitions as soon as practicable after the February 12, 2005 implementation deadline.

DECISION: The Commission voted to deny staff's recommendation and proceed directly to hearing on the deletion petitions.

- ** Issue 7: Should the dockets be closed?
Recommendation: No. Docket No. 010503-WU should remain open to further address the interim rate refund issue. Docket No. 020896-WS should remain open to monitor compliance with the applicable treatment and reporting requirements and to take further action on the request to delete the Seven Springs area from Aloha's certificated territory.

DECISION: The recommendation was approved.

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

ITEM NO.

CASE

6**Docket No. 040156-TP - Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: GCL: Fordham, Banks

CMP: Lee, Dowds

Issue 1: Should the Commission grant Sprint's Motions to Dismiss Verizon's Petition based on its procedural deficiencies?

Recommendation: Yes. Verizon has not complied with the procedural requirements of Section 252(b), nor has it identified specific parties and provided the essential information on the agreements with each of those parties at a level sufficient to enable this Commission to proceed with an arbitration. Therefore, Verizon's Petition is facially deficient. Accordingly, Verizon's Petition should be dismissed, without prejudice, for failure to meet the requirements set forth in Section 252 of the Act. Staff recommends that Verizon be granted leave to refile its corrected Petition(s) within 20 days of the Commission's vote. Additionally, if Verizon elects to refile, its petition(s) should contain, in addition to the requirements of Section 252(b), sufficient information to ease the logistical and administrative burdens of handling Verizon's Petition. That additional information should include, at a minimum, the following:

1. The name of each company with which arbitration is being requested.
2. The present agreement expiration date for each company with which Verizon has a current agreement.
3. The unresolved issues with each specific company.
4. The position of each of the parties with respect to those issues.
5. Whether the present agreement contains a change of law provision.
6. The nature of the change of law provision.
7. Whether the present agreement contains an alternative dispute resolution provision.
8. The type of alternative dispute resolution required.

Though a specific format should not be required, staff recommends that, in the event a future Verizon petition contains multiple companies, a matrix would be valuable for the purpose of organizing and setting forth the required information. (See Attachment A of staff's June 17, 2004 memorandum for example.)

Staff further recommends that if Verizon elects to refile within the 20-day time frame, responses to the corrected Petition should be due within 20 days of service of

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Docket No. 040156-TP - Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.

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Verizon's filing. If Verizon elects not to refile within the allotted time frame, and the time frame is not otherwise extended by the Commission, the Commission's Order should thereafter be deemed final for purposes of appeal.

DECISION: The recommendations were approved with the modification that Verizon be allowed 60 days for filing a corrected petition.

Issue 2: Should the Motions to Dismiss filed by the Competitive Carrier Coalition, Time Warner, Eagle/Myatel, Z-Tel, and AT&T be granted?

Recommendation: If the Commission approves staff's recommendation on Issue 1, these Motions will technically be rendered moot. However, staff recommends that the Commission consider and vote on this issue so as to have these matters settled for purposes of future pleadings in this Docket. Staff recommends that the Commission make the following findings:

- A. Dismissal should not be granted based on allegations of failure to negotiate in good faith, because this allegation does not demonstrate that Verizon has failed to state a cause of action upon which relief can be granted.
- B. Dismissal should not be based on Verizon's alleged failure to follow the Change in Law provisions in its interconnection agreements. This may serve as the basis for denial or summary final order at a later date, but there is insufficient information at this time for this to serve as the basis for dismissal of the Petition in its entirety.
- C. Dismissal should not be based upon allegations that the Petition is premature and a "waste of time" because of the uncertain status of the TRO and the D.C. Circuit's decision in United States Telecom Association v. Federal Communications Commission and United States of America, 359 F.3d 554 (D.C. Cir. 2004) (USTA II). Subject to the applicability of arguments regarding carriers' Change of Law provisions in interconnection agreements, Verizon appears to have otherwise complied with the arbitration filing time frames set forth in Section 252 of the Act. Furthermore, this allegation does not show that Verizon has failed to state a cause of action upon which relief can be granted.

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Docket No. 040156-TP - Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.

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- D. Dismissal should not be based on allegations that the Act does not provide for amendments to arbitration petitions filed outside the arbitration "window" of the 135th and 160th day. While the Act does not provide for such amendments, it also does not preclude them. The Act does, however, limit consideration to issues in the Petition and the Response, which may arguably preclude any new issues raised subsequent to the initial pleading. This question need not be resolved at this time.
- E. Dismissal should not be granted based on allegations that an arbitration can only be opened by a CLEC Petition. Section 252(b)(1) clearly states that ". . . the carrier or *any other party to the negotiation* may petition a State commission to arbitrate any open issues." (emphasis added)
- F. Dismissal should not be based solely on Verizon's failure to identify the agreement status of each named CLEC. While this does appear to identify a flaw in Verizon's Petition, it does not appear to be a requirement for filing an arbitration under Section 252 and as such, does not appear to be a fatal flaw in that it does not show Verizon has failed to state a cause of action upon which relief can be granted. As set forth in Issue 1, Verizon should, however, be directed to correct this flaw when and if it files an Amended Petition in order to ease the logistical and administrative burdens of handling Verizon's Petition.
- G. Dismissal should not be based on the BellAtlantic/GTE merger conditions. Those conditions do not appear to remain in effect. Furthermore, while this allegation could serve as a basis for a summary final order or as a basis for denial of the Petition after hearing, this allegation does not show that Verizon has failed to state a cause of action upon which relief can be granted.

DECISION: There was no vote on this issue.

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CASE

6**

Docket No. 040156-TP - Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.

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Issue 3: Should this Docket be closed?

Recommendation: No.

DECISION: The recommendation was approved as modified, consistent with the decision in Issue 1.

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

ITEM NO.

CASE

7**Docket No. 031038-TL - Petition for approval to revise customer contact protocol by BellSouth Telecommunications, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Pruitt
GCL: Susac

Issue 1: Should the Commission grant BellSouth Telecommunications, Inc.'s Motion to Strike Americatel Corporation's Reply to BellSouth's Response to Americatel's Petition protesting Order No. PSC-04-0115-PAA-TL?

Recommendation: Yes. The Commission should grant BellSouth Telecommunications, Inc.'s Motion to Strike Americatel Corporation's Reply, because the Uniform Rules of Procedure do not expressly authorize replies.

Issue 2: Should the Commission dismiss Americatel Corporation's Petition for the Initiation of Proceedings on its own motion for failure to state a cause of action upon which relief could be granted?

Recommendation: Yes. Taking all of the petitioner's allegations as true, Americatel has failed to sufficiently state a cause of action upon which relief could be granted. The Petition should, therefore, be dismissed, and Order Nos. PSC-04-0115-PAA-TL and PSC-04-0115A-PAA-TL should be made final and effective as of the date of the Commission's decision at the Agenda Conference.

Issue 3: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 2, then no other issues will remain for the Commission to address in this docket. This docket should, therefore, be closed.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

8**PAADocket No. 040427-TI - Compliance investigation of FoxTel, Inc. for apparent violation of Sections 364.02 and 364.336, Florida Statutes.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Curry

GCL: Rockette-Gray

Issue 1: Should the Commission impose a penalty in the amount of \$10,000 against Foxtel, Inc. for its apparent violation of Section 364.02, Florida Statutes?

Recommendation: Yes.

Issue 2: Should the Commission impose a \$500 penalty upon Foxtel for its apparent violation of Section 364.336, Florida Statutes, Regulatory Assessment Fees?

Recommendation: Yes.

Issue 3: Should this docket be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the analysis portion of staff's June 17, 2004 memorandum.

DECISION: The recommendations were approved.

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

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ITEM NO.

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9**PAADocket No. 040408-TI - Compliance investigation of Resort Network Services LLC for apparent violation of Section 364.336, Florida Statutes.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Isler
GCL: Rojas

Issue 1: Should the Commission deny granting Resort Network Services LLC a cancellation of its IXC tariff and voluntary removal from the register and cancel the company's tariff and remove its name from the register on the Commission's own motion?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the analysis portion of staff's June 17, 2004 memorandum.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

10**PAA Compliance investigation for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Docket No. 040399-TC - Gene McDonald d/b/a McDonald Communications
Docket No. 040400-TC - Gary E. Akers d/b/a JB Telecom
Docket No. 040402-TC - Keith R. Zinke & Michael Singletary d/b/a Communication Partners
Docket No. 040403-TC - Daytona Telephone Company
Docket No. 040404-TC - Payphone Partners, Inc.
Docket No. 040405-TC - Roberta Rich d/b/a Street Phones Co
Docket No. 040406-TC - Ocean Palms Beach Club, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners
Prehearing Officer: Administrative

Staff: CMP: Isler
GCL: Rojas, Rockette-Gray, Scott

Issue 1: Should the Commission deny granting the companies listed on Attachment A of staff's June 17, 2004 memorandum voluntary cancellation of their respective certificates and cancel the companies' respective certificates on the Commission's own motion?

Recommendation: Yes.

Issue 2: Should these dockets be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the analysis portion of staff's June 17, 2004 memorandum.

DECISION: The item was deferred.

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11 **PAADocket No. 040409-TX - Compliance investigation of LightWave Communications, LLC for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Isler

GCL: Rockette-Gray

Issue 1: Should the Commission deny granting LightWave Communications, LLC a voluntary cancellation of its CLEC certificate and cancel the certificate on the Commission's own motion?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the analysis portion of staff's June 17, 2004 memorandum.

DECISION: The recommendations were approved.

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

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ITEM NO.

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12**PAADocket No. 040426-TX - Compliance investigation of Foxtel, Inc. for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Curry

GCL: Scott

Issue 1: Should the Commission impose a penalty in the amount of \$500 against Foxtel, Inc. for its apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the analysis portion of staff's June 17, 2004 memorandum.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

13**PAA Docket No. 020645-TI - Compliance investigation of UKI Communications, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, and Toll Provider Selection. (Deferred from May 18, 2004 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: CMP: Watts
GCL: Fordham, Rojas, Teitzman
SCR: Lowery

Issue 1: Should the Commission penalize UKI Communications, Inc. \$250,000 for apparent violation of Proposed Agency Action Order No. PSC-03-0990-PAA-TI, issued on September 3, 2003, made final and effective by Consummating Order No. PSC-03-1078-CO-TI, issued on September 30, 2003?

Recommendation: Yes.

Issue 2: Should the Commission order companies that provide billing services or underlying carrier services for UKI Communications, Inc. to stop providing service for it in Florida?

Recommendation: Yes.

Issue 3: Should this docket be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the analysis portion of staff's June 17, 2004 memorandum.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

14**PAADocket No. 031031-TI - Compliance investigation of Miko Telephone Communications, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection. (Deferred from May 18, 2004 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: CMP: Buys
 GCL: Fordham, Rojas, Teitzman
 SCR: Lowery

Issue 1: Should the Commission penalize Miko Telephone Communications, Inc. \$10,000 per apparent violation, for a total of \$1,540,000 for 154 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

Recommendation: Yes.

Issue 2: If, as a result of failing to pay the penalty or contest the Commission's Order resulting from this recommendation, Miko Telephone Communications, Inc. is ordered to cease and desist providing intrastate interexchange telecommunications service in Florida, should the Commission also order any company that is providing billing services or underlying carrier services for Miko Telephone Communications, Inc. to stop providing service for it in Florida?

Recommendation: Yes.

Issue 3: Should this docket be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the analysis portion of staff's June 17, 2004 memorandum.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

15**PAADocket No. 040062-TI - Compliance investigation of New Century Telecom, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection. (Deferred from May 18, 2004 conference; revised recommendation filed.)

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: CMP: Buys
GCL: Fordham, Rojas, Teitzman
SCR: Lowery

Issue 1: Should the Commission accept New Century Telecom, Inc.'s settlement offer to resolve forty-two (42) apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

Recommendation: No. The Commission should reject New Century Telecom, Inc.'s settlement offer. Instead, the Commission should penalize the company \$10,000 per apparent violation, for a total of \$420,000, for 42 apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. If New Century Telecom, Inc. fails to request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If the company fails to pay the amount of the penalty within fourteen calendar days after issuance of the Consummating Order, registration number TI427 should be removed from the register, the company's tariff should be cancelled, and the company should also be required to immediately cease and desist providing intrastate interexchange telecommunications service within Florida.

Issue 2: If, as a result of the Commission's Order resulting from this recommendation, New Century Telecom, Inc. is ordered to cease and desist providing intrastate interexchange telecommunications service in Florida, should the Commission also order any company that is providing billing services or underlying carrier services for New Century Telecom, Inc. to stop providing service for it in Florida?

Recommendation: Yes.

Issue 3: Should this docket be closed?

Recommendation: Staff recommends that the Commission take action as set forth in the analysis portion of staff's June 17, 2004 memorandum.

DECISION: This item was deferred to allow a 30-day negotiation period between New Century Telecom and staff regarding a settlement.

ITEM NO.

CASE

16**Docket No. 031057-EI - Review of Progress Energy Florida, Inc.'s benchmark for waterborne transportation transactions with Progress Fuels.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Davidson

Staff: ECR: Floyd, Matlock, Windham, Maurey, McNulty, VonFossen
GCL: C. Keating, Rodan
RCA: Vandiver

Issue 1: Should the Commission approve the Stipulation and Settlement?

Recommendation: Yes. The Stipulation and Settlement, as clarified by the parties' joint response to staff's questions, represents a fair and reasonable resolution of all issues in this docket.

Issue 2: Should Docket No. 031057-EI be closed?

Recommendation: Yes. If there is no appeal of the Commission's order on this matter, this docket should be closed after the time for filing an appeal of the Commission's order has run.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

17**Docket No. 040085-EI - Petition for approval of new curtailable service rate Schedules CS-3 and CST-3 by Progress Energy Florida, Inc.

Critical Date(s): 7/18/04 (60-day suspension date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Wheeler

GCL: Brown

Issue 1: Should the Commission approve Progress Energy Florida, Inc.'s (PEF'S) proposed changes to its Curtailable General Service - Fixed Curtailable Demand Rate Schedule CS-3 and Curtailable General Service - Fixed Curtailable Demand Rate Schedule CST-3 - Optional Time of Use rate schedules?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, this tariff should become effective on June 29, 2004. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, 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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CASE

18**Docket No. 040252-EI - Petition for approval of revisions to Tariff Sheet No. 9.930,
application form for Medically Essential Service, by Florida Power & Light Company.

Critical Date(s): 11/21/04 (8-month effective date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Wheeler, Kummer

GCL: Brown

Issue 1: Should the Commission approve FPL's proposed changes to its Application
Form for Medically Essential Service Tariff?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, this tariff should become effective on
June 29, 2004. If a protest is filed within 21 days of the issuance of the order, this tariff
should remain in effect pending resolution of the protest. If no timely protest is filed, this
docket should be closed upon the issuance of a consummating order.

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

19**Docket No. 040313-EI - Request for approval of 2004 underground differential cost report (Form PSC/EAG 13) and revised tariff sheets, by Gulf Power Company.

Critical Date(s): 12/1/04 (8-month effective date)

Commissioners Assigned: All Commissioners

Prehearing Officer: Administrative

Staff: ECR: Draper, Breman

GCL: Rodan

Issue 1: Should the Commission approve Gulf's revised Underground Residential Distribution tariffs and their associated charges?

Recommendation: Yes.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, this tariff should become effective on June 29, 2004. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, 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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ITEM NO.

CASE

20**PAA Docket No. 040320-EI - Request for exclusion under Rule 25-6.0455(3), F.A.C., for an outage event on March 17, 2004, by Gulf Power Company.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Bradley

Staff: ECR: Breman, Lee

GCL: C. Keating

Issue 1: Should the Commission approve Gulf's petition to exclude from its 2004 Annual Distribution Service Reliability Report service interruptions that occurred in Pensacola on March 17, 2004, when a marine vessel contacted feeder wires at Bayou Chico?

Recommendation: Yes. Gulf has demonstrated that the contact to their feeder wires was not within the utility's control and that it took reasonable steps to construct the feeder in a manner to avoid contact with the feeder wires.

Issue 2: Should this docket be closed?

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

DECISION: The recommendations were approved.

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

ITEM NO.

CASE

21**Docket No. 981079-SU - Application for amendment of Certificate No. 104-S to extend service territory in Pasco County by Hudson Utilities, Inc., and request for limited proceeding.

Docket No. 020254-SU - Application for increase in service availability charges for wastewater customers in Pasco County by Hudson Utilities, Inc.

Critical Date(s): None

Commissioners Assigned: All Commissioners

Prehearing Officer: Baez (981079-SU)

Davidson (020254-SU)

Staff: ECR: Clapp, Redemann, Revell, Merchant

GCL: Gervasi

Issue 1: Should Hudson's Notice of Completion of Signal Cove Service Territory and Proof of the Transfer of Territory from Pasco County to Hudson Utilities, Inc. be acknowledged?

Recommendation: Yes. The Notice should be acknowledged.

DECISION: The recommendation was approved.

Issue 2: Should Dockets Nos. 981079-SU and 020254-SU be closed?

Recommendation: Yes. Because no further action is necessary in these dockets, the dockets should be closed.

DECISION: The recommendation was approved with the following modifications: That Docket 020254-SU will be closed. Docket 981079-SU will remain open, with the company to provide information within 30 days and the docket to come back to Agenda as soon as plausible.

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

ITEM NO.

CASE

22**Docket No. 030103-TP - Request for arbitration concerning complaint of MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc. against BellSouth Telecommunications, Inc. for alleged breach of interconnection agreements with respect to rates charged for certain high-capacity circuits.

Critical Date(s): None

Commissioners Assigned: Baez, Deason, Davidson

Prehearing Officer: Baez

Staff: CMP: Muskovac

GCL: Fordham

Issue 1: Should the Commission acknowledge MCI's Notice of Dismissal of its Complaint and close this docket?

Recommendation: Yes.

DECISION: The recommendation was approved.

Commissioners participating: Baez, Deason, Davidson

ITEM NO.

CASE

23**Docket No. 030301-TP - Petition by Mpower Communications Corp. and Florida Digital Network, Inc. for expedited temporary and permanent relief against BellSouth Telecommunications, Inc. for alleged anticompetitive conduct regarding Florida Digital Network Inc.'s proposed acquisition of assets and customer base of Mpower Communications Corp.

Critical Date(s): None

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

Staff: GCL: Banks, Fordham
CMP: Harvey, Bulecza-Banks, Fisher

Issue 1: Should the Commission acknowledge Mpower and FDN's Notice of Voluntary Withdrawal of their petition and close this docket?

Recommendation: Yes. The Commission should acknowledge Mpower and FDN's Notice of Voluntary Withdrawal of their Petition and close this docket. In addition, the Commission should find that the voluntary withdrawal renders any and all outstanding motions moot, and all confidential materials in this Docket should be returned to the filing party. Since no further Commission action is necessary, staff recommends that this docket be closed.

DECISION: The recommendation was approved.

Commissioners participating: Deason, Bradley, Davidson